

# NEPAL ELECTRICITY AUTHORITY

(An Undertaking of Government of Nepal)



**KfW Development Bank (No.: 2015-68-112)**  
**Reconstruction and Improvement of Electricity in Earthquake Affected  
Districts of Rasuwa and Nuwakot**  
**Social Infrastructure Development Component**  
**Rasuwa Nuwakot Distribution System Reconstruction and Improvement  
Project**

**BIDDING DOCUMENT  
FOR**

**Construction works of Social Infrastructure  
Consisting of School, Health Post, Community Building and Cultural  
Heritage**

**Single-Stage, Two-Envelope  
Bidding Procedure**

**Issued on:** 21 June, 2019  
**Invitation for Bids No.:** NCB-REIP-SDC-2019-01  
**NCB No.:** NCB-REIP-SDC-2019-01  
**Employer:** Nepal Electricity Authority  
**Country:** Nepal

VOLUME 1 OF 3

Rasuwa Nuwakot Distribution System Reconstruction and Improvement Project  
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# Foreword

This Standard Bidding Document for Procurement of Plant – Design, Estimation, and Construction of Building has been prepared by the Asian Development Bank (ADB) and is based on the Master Procurement Document prepared by multilateral development banks and other public international financial institutions which reflects the majority view of these institutions. This document has the structure and the provisions of the Master Procurement Document, except where ADB-specific considerations have required a change. In addition KfW -specific changes have been made to reflect KfW-specific requirements.

The SBD Plant is intended to be used for the procurement of plant through international competitive bidding when

- the contract involves the design, supply, and construction of civil Infrastructure such as School, Community building, Health post, Religious Places, Vegetable Collection Center etc.
- the value of the construction works represents the major part of the estimated contract value; and
- the nature and complexity of the plant such that the facilities cannot safely be taken over by the Employer without comprehensive acceptance procedures being followed.

The SBD Plant documents anticipate that the contractor is responsible for each activity required to complete the facilities, e.g., construction and required civil works portions. However, these conditions may be adapted for single-responsibility contracts where some activities, such as parts of the preliminary design or site preparation works, are done by others.

An important feature of this SBD is that it can be used with minimum changes, as it does not contain explanatory commentary not forming part of the bidding document.

This SBD is supported by a User's Guide. The User's Guide contains detailed explanations and recommendations to Employers on how to prepare a specific bidding document for the procurement of plant and how to evaluate bids. The User's Guide is not a part of the bidding document.

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# Section 1 - Instructions to Bidders

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# 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 the Works as specified in Section 6 (Employer's Requirements). The name, identification, and number of contracts of this bidding are provided in the BDS.
  - 1.2 Throughout this Bidding Document,
    - (a) the term "in writing" means communicated in written form and delivered against receipt;
    - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
    - (c) "day" means calendar day.
2. **Source of Funds**
  - 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the the Kreditanstalt für Wiederaufbau, a German Government owned Development Bank (hereinafter called "KfW") toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
  - 2.2 Payments by KfW will be made only at the request of the Borrower and upon approval by KfW in accordance with the terms and conditions of the Financing Agreement between the Borrower and KfW (hereinafter called "Financing Agreement"), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds..
3. **Fraud and Corruption**
  - 3.1 KfW requires Borrowers (including beneficiaries of KfW-financed activity), as well as Bidders, Suppliers, and Contractors under KfW-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance, KfW
    - (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;
- (v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an KfW investigation; (b) making false statements to investigators in order to materially impede an KfW investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) 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 (e) materially impeding KfW's contractual rights of audit or access to information; and
  - (vi) "integrity violation" is any act which violates KfW's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of KfW sanctions, retaliation against whistleblowers or witnesses, and other violations of KfW's Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of KfW-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to KfW to remedy the situation;
- 3.2 Furthermore, Bidders shall be aware of the provision stated in GCC 9.6 and GCC 42.2.1 (c).
- 3.3 KfW's Anticorruption Policy requires Borrowers (including beneficiaries of KfW-financed activity), as well as Bidders, Suppliers, and Contractors under KfW-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, KfW
- (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;
  - (v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an KfW investigation; (b) making false statements to investigators in order to materially impede an KfW investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) 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 (e) materially impeding KfW's contractual rights of audit or access to information; and
  - (vi) "integrity violation" is any act which violates KfW's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of KfW sanctions, retaliation against whistleblowers or witnesses, and other violations of KfW's Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of KfW-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to KfW to remedy the situation;

#### 4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, or government-owned enterprises subject to ITB 4.5 – or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture:
  - (a) all partners shall be jointly and severally liable; and
  - (b) the Joint Venture 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 Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, 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 subcontractors 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 of the Bidding Document. 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 works 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 Engineer for the contract.
- 4.4 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Employer.
- 4.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.6 The borrower is entitled to exclude bidders if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that county or any payments to persons or entities in that country or if the bidder has been included in the list of sanctions of the United Nations, of the EU, of the German Government or in any other list of sanctions
- 4.7 In case a prequalification process has been conducted prior to the

bidding process, this bidding is open only to prequalified Bidders.

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

## **B. Contents of Bidding Document**

- 6. Sections of Bidding Document**
- 6.1 The Bidding Document consist of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.
- PART 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 - Particular Conditions of Contract (PCC)  
 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 their 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 his inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within a period given in the BDS. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in

accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.

- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
  - 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter 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 to submit any questions in writing, to reach the Employer not later than 1 week before the meeting.
  - 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
  - 7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.
- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.
  - 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.
  - 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 22.2.

### **C. Preparation of Bids**

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the 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 in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid**
- 11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.
- 11.2 The Technical Bid shall comprise the following:
- (a) Letter of Technical Bid;
  - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 19;
  - (c) alternative Bids, at Bidder's option and if permissible, in accordance with ITB 13;
  - (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
  - (e) documentary evidence in accordance with ITB 17, establishing the Bidder's qualifications to perform the contract;
  - (f) Technical Proposal in accordance with ITB 16;
  - (g) Any other document required in the BDS.
- 11.3 The Price Bid shall comprise the following:
- (a) Letter of Price Bid;
  - (b) completed Price Schedules, in accordance with ITB 12 and ITB 14, or as stipulated in the BDS;
  - (c) alternative price Bids, at Bidder's option and if permissible, in accordance with ITB 13;
  - (d) Any other document required in the BDS.
- 11.4 In addition to the requirements under ITB 11.2, Bids submitted by a Joint Venture 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.
- 12. Letters of Bid and Schedules** 12.1 The Letters of Technical Bid and Price Bid, and the Schedules, and all documents listed under Clause 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 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.
- 13.3 When specified in the BDS pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.
- 13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section 6 (Employer's Requirements). The method for their evaluation will be stipulated in Section 3 (Evaluation and Qualification Criteria).
- 14. Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Letter of Price Bid and in the Schedules shall conform to the requirements specified below.
- 14.2 The Bidder shall submit a bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section 4 (Bidding Forms). In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
- 14.3 The price to be quoted in the Letter of Price Bid shall be the total price of the Bid, excluding any discounts offered. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the Bid.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Price Bid, in accordance with ITB 12.1.
- 14.5 Unless otherwise provided in the BDS and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indexes and weightings for the price adjustment formulas in the Table(s) of Adjustment Data in Section 4 (Bidding Forms) and the Employer may require the Bidder to justify its proposed indexes and weightings.
- 14.6 If so indicated in ITB 1.1, bids are being invited for individual contracts or for any combination of contracts (packages). Bidders wishing to

offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all contracts are submitted and opened at the same time.

- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 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.
- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the Bid and payment shall be as specified in the BDS.
- 15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the appropriate form(s) of Section 4, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.
- 16. Documents Comprising the Technical Proposal**
- 16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule, and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.
- 17. Documents Establishing the Qualifications of the Bidder**
- 17.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).
- 17.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility in accordance with ITB 35.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended 28 days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.
- 19. Bid Security/Bid-Securing Declaration**
- 19.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its Bid, in original form, either a Bid-Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount and currency shall be as specified in the BDS.

- 19.2 If a Bid-Securing Declaration is required pursuant to ITB 19.1, it shall use the form included in Section 4 (Bidding Forms). The Employer will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if the Bid-Securing Declaration is executed.
- 19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be, at the Bidder's option, in any of the following forms:
- (a) an unconditional bank guarantee,
  - (b) an irrevocable letter of credit, or
  - (c) a cashier's or certified check,
- all from a reputable bank from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Employer. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.
- 19.4 Unless otherwise specified in the BDS, any Bid not accompanied by a substantially compliant bid security or Bid-Securing Declaration, if one is required in accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive.
- 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 42.
- 19.6 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
- 19.7 The bid security may be forfeited or the Bid-Securing Declaration executed
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letters of Technical Bid and Price Bid, except as provided in ITB 18.2; or
  - (b) if the successful Bidder fails to
    - (i) sign the Contract in accordance with ITB 41;
    - (ii) furnish a performance security in accordance with ITB 42;
    - (iii) accept arithmetical corrections in accordance with ITB 33; or
    - (iv) furnish a domestic preference security, if applicable, in accordance with ITB 42.
- 19.8 The bid security or the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding,

the bid security or the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

**20. Format and Signing of Bid**

- 20.1 The Bidder shall prepare one original set of the Technical Bid and one original 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.
- 20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Employer shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the prescribed period of receiving such a request shall cause the rejection of the Bid.
- 20.3 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**

**21. Sealing and Marking of Bids**

- 21.1 Bidders may always submit their Bids by mail or by hand. 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 or by hand shall enclose the original of the Technical Bid, the original of the Price Bid, and each copy of the Technical Bid and each copy of the Price Bid, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL - TECHNICAL BID," "ORIGINAL - PRICE BID," and "COPY NO... - TECHNICAL BID," and "COPY NO.... - PRICE BID." These envelopes, the first containing the originals and the others containing copies, shall then be enclosed in one single envelope per set. If permitted in accordance with ITB 13, alternative Bids shall be similarly sealed, marked and included in the sets. The rest of the procedure shall be in accordance with ITB 21.2 and ITB 21.3.
- (b) Bidders submitting Bids electronically shall follow the electronic bid submission procedures specified in the BDS.
- 21.2 The inner and outer envelopes shall
- (a) bear the name and address of the Bidder;



- (b) be addressed to the Employer as provided in BDS 22.1; and
- (c) bear the specific identification of this bidding process indicated in the BDS 1.1.

21.3 The outer envelopes and the inner envelopes containing the Technical Bid shall bear a warning not to open before the time and date for the opening of Technical Bid, in accordance with ITB 25.1.

21.4 The inner envelopes containing the Price Bid shall bear a warning not to open until advised by the Employer in accordance with ITB 25.7.

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

**22. Deadline for Submission of Bids**

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

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

**23. Late Bids**

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

**24. Withdrawal, Substitution, and Modification of Bids**

24.1 A Bidder may withdraw, substitute, or modify its Bid – Technical or Price – after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be

(a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and

(b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

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

**25. Bid Opening**

25.1 The Employer shall open the Technical Bids in public at the address,

on the date, and time specified in the BDS in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS. 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 envelope, the Employer may reject the entire Bid. Alternatively, the Price Bid may be immediately resealed for later evaluation.

- 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.
- 25.3 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 25.1. 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.
- 25.4 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 and Modification, will remain unopened in accordance with ITB 25.1.
- 25.5 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 23.1.
- 25.6 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, substitution, or modification; alternative proposals; and the presence or absence of a bid security or a Bid-

Securing Declaration, 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.

- 25.7 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 for the opening of Price Bids.
- 25.8 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.
- 25.9 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.
- 25.10 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 or substitution;
  - (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 Schedules 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 Price Bids.
- 25.11 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**

### **26. Confidentiality**

- 26.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially

concerned with such process until information on Contract award is communicated to all Bidders.

- 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, 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 Price Bids, in accordance with ITB 33.
- 27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 29. Examination of Technical Bids**
- 29.1 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.
- 29.2 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 or Bid-Securing Declaration, if applicable; and
  - (d) Technical Proposal in accordance with ITB 16.
  - (e) Declaration of Undertaking
- 30. Responsiveness of Technical Bid**
- 30.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.

30.2 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 Works specified in the Contract; or
- (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

30.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation, reservation, or omission.

30.4 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.

### **31. Nonmaterial Nonconformities**

31.1 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.

31.2 Provided that a Technical 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 Technical 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.

31.3 Provided that a Technical 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).

### **32. Qualification of the Bidder**

32.1 The Employer shall determine to its satisfaction during the evaluation of Technical Bids whether Bidders meet the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).

32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1.

32.3 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.

**33. Correction of Arithmetical Errors**

33.1 During the evaluation of Price Bids, the Employer shall correct arithmetical errors on the following basis:

- (a) Only for unit price contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected.
- (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
- (c) If there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in item (c) of the Letter of Price Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of Price Bid will be corrected.
- (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 arithmetic error, in which case the amount in figures shall prevail subject to (a), (b) and (c) above.

33.2 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.

**34. Conversion to Single Currency**

34.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.

**35. Margin of Preference**

35.1 Unless otherwise specified in the BDS, a margin of preference shall not apply.

**36. Evaluation of Price Bids**

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

36.2 To evaluate the Price Bid, the Employer shall consider the following:

- (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities for admeasurement contracts, or Schedule of Prices for lump sum contracts, but including Day work items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.4;
- (d) converting the amount resulting from applying (a) to (c) above, if

relevant, to a single currency in accordance with ITB 34;

- (e) adjustment for nonconformities in accordance with ITB 31.3; and
- (f) application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

36.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

36.4 If this Bidding Document allows Bidders to quote separate prices for different contracts, and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Price Bid, is specified in Section 3 (Evaluation and Qualification Criteria).

36.5 If the Bid for an admeasurement 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 analyses 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 analyses, 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 to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

**37. Comparison of Bids**

37.1 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated Bid, in accordance with ITB 36.2.

**38. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**

38.1 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**

**39. Award Criteria**

39.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

**40. Notification of Award**

40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted.

40.2 At the same time, the Employer shall also notify all other Bidders of the results of the bidding and whether their bid fulfilled the general and technical procurement conditions. The Employer will publish in an English language newspaper or well-known freely accessible website the results 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 that was evaluated; (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. After publication of the award, 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, after publication of contract award, requests a debriefing.

40.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

**41. Signing of Contract**

41.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

41.2 Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

**42. Performance Security**

42.1 Within 28 days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, subject to ITB 36.5, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer.

42.2 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 or execution of the Bid-Securing Declaration. 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.

42.3 The above provision shall also apply to the furnishing of a domestic preference security, if so required.



## Section 2 - Bid Data Sheet

### A. General

ITB 1.1	The number of the Invitation for Bids (IFB) is: NCB-REIP-SDC-2019-01
ITB 1.1	The Employer is: <i>Nepal Electricity Authority</i>
ITB 1.1	<p>The name of the bidding process is: <i>Construction of Social Infrastructure works such like as School, Community Building, Health post, Cultural Heritage, Vegetable Collection Center under Reconstruction and Improvement of Electricity in Earthquake Affected Districts of Rasuwa and Nuwakot Project.</i></p> <p>The identification number of the bidding process is: <i>NCB-REIP-SDC-2019-01</i></p> <p>The number and identification of lots comprising this bidding process is: <i>Construction of Social Infrastructure works such like as School, Community Building, Health post, Cultural Heritage, Vegetable Collection Center under Reconstruction and Improvement of Electricity in Earthquake Affected Districts of Rasuwa and Nuwakot Project.</i></p>
ITB 2.1	The Borrower is: <i>Nepal (Nepal Electricity Authority/ Government of Nepal)</i>
ITB 2.1	The name of the Project is: <i>Reconstruction and Improvement of Electricity in Earthquake Affected Districts of Rasuwa and Nuwakot Project</i>

### B. Contents of Bidding Documents

ITB 7.1	<p>For <b>clarification purposes</b> only, the Employer's address is:</p> <p>Attention: <i>Mr. Prakash Raut</i></p> <p>Street address: <i>NEA DCSD Building, Ratnapark</i></p> <p>Floor/Room number: <i>Fourth</i></p> <p>City: <i>Kathmandu</i></p> <p>ZIP code: <i>44804</i></p> <p>Country: <i>Nepal</i></p> <p>Telephone: <i>+ 977 (01) 4153147,4153141</i></p> <p>Fax: <i>+ 977 (01) 4153147</i></p> <p>E-mail: <i>rautprakash@nea.org.np, rautprakash@gmail.com</i> Requests for clarification should be received by the Employer no later than <i>21 days</i></p>
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<b>ITB 7.4</b>	<p>A Pre-Bid meeting shall take place.</p> <p>Date: July 7, 2019</p> <p>Time: 11:00 HRs</p> <p>Place: <i>NEA DCSD Building, Ratnapark</i></p> <p>A site visit conducted by the Employer <i>shall not</i> be organized.</p>
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### C. Preparation of Bids

<b>ITB 10.1</b>	The language of the Bid is: <i>English</i>
<b>ITB 11.2 (g)</b>	<p>The Bidder shall submit with its Technical Bid the following additional documents:</p> <ul style="list-style-type: none"> <li>(l) Declaration of Undertaking and Covenant of Integrity as per format enclosed at Section-4 (Bidding Forms).</li> <li>(m) In the case a bid is submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners</li> <li>(n) Business registration certificate of the Bidder, and of each Joint-venture partners. In the case of a joint venture, issued by the government or government-authorized body of the country where the Bidder or each joint venture partner is registered.</li> </ul> <p>The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Employer's satisfaction that the Bidder has the financial, technical, production, procurement, shipping, installation and other capabilities necessary to perform the contract, and, in particular, meets the experience and other criteria outlined in the Qualification Criteria for the Bidders in Section-3 Part-B and shall also include:</p> <p>The complete annual reports together with Audited statement of accounts of the company for last five years of its own (separate) immediately preceding from the date of submission of bid. However, in case of non-availability of audited accounting statements of immediately preceding year, bidder may submit the Audited statement of accounts for last five years immediately preceding one year before the date of submission of bid with a certificate from their auditor to this effect</p> <p>[Note I. In the event the Bidder is not able to furnish the above information of its own (i.e., separate), being a subsidiary company and its accounts are being consolidated with its Group/ Holding/ Parent company, the Bidder should submit the audited balance sheet, income statement, other information pertaining to it only (not of its Group/Holding/Parent company) duly certified by any one of the authority [(i) Statutory Auditor of the Bidder/(ii) Company Secretary of the Bidder a (iii) A certified Public Accountant] certifying that such information/documents are based on the audited accounts as the case may be.</p> <p>Note II. Similarly, if the Bidder happens to be a Group/Holding/ Parent company, the Bidder should submit the above documents/information of its own (i.e.,</p>

	exclusive of its subsidiaries) duly certified by any one of the authority mentioned in Note I above certifying that these information/documents are based on audited accounts, as the case may be.]
<b>ITB 11.3 (b)</b>	<p>In accordance with ITB 12 and ITB 14, the following schedules shall be submitted with the bid, including the priced Bill of Quantities for admeasurement contracts and Activity Schedule for lump sum contracts:</p> <p>Schedule 1      Materials to be supplied from abroad: Not applicable</p> <p>Schedule 2      Materials to be supplied from Employer's Country</p> <p>Schedule 3      Local Transportation, Insurance and other incidental services (including port clearance etc.) available for supply of materials: Not applicable</p> <p>Schedule 4      Construction Charges</p> <p>Schedule 5a      Training Charges for Training to be imparted abroad:      Not applicable</p> <p>Schedule 5b      Training Charges for Training to be imparted within Employer's Country: Not applicable</p> <p>Schedule 5c      Maintenance Charges: Not applicable</p> <p>Schedule 6      Grand Summary</p>
<b>ITB 11.3 (d)</b>	<p>The Bidder shall submit with its Price Bid the following additional documents:</p> <p>None</p>
<b>ITB 12.1</b>	<p>The units and rates in figures entered into the Bill of Quantities and Daywork Schedule should be typewritten or if written by hand, must be in print form. Bill of Quantities and Daywork Schedule not presented accordingly may be considered nonresponsive.</p>
<b>ITB 13.1</b>	<p>Alternative bids shall not be permitted.</p>
<b>ITB 13.2</b>	<p>Alternative times for completion shall not be permitted.</p> <p>If alternative times for completion are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria).</p>
<b>ITB 13.4</b>	<p>Alternative technical solutions shall be permitted for the following parts of the Works: None</p> <p>If alternative technical solutions are permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria).</p>
<b>ITB 14.5</b>	<p>The prices quoted by the Bidder shall not subject to adjustment during the performance of the Contract.</p>
<b>ITB 14.7</b>	<p>Taxes have always to be designated separately in the financial offer.</p>

<b>ITB 15.1</b>	The prices shall be quoted by the bidder and shall be paid in: <i>Nepalese Currency</i> <i>All the additional costs regarding currency risks will be borne by NEA</i>
<b>ITB 18.1</b>	The bid validity period shall be <i>90 days</i> .
<b>ITB 19.1</b>	The Bidder shall furnish a bid security in the amount of <b>NRS 5,000,000.00</b> . The bid security must be submitted in the form provided in the bidding document
<b>ITB 19.2</b>	The ineligibility period will be: <i>Not Applicable</i>
<b>ITB 19.4</b>	Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Employer shall request the Bidder to submit a compliant bid security within <i>7 days</i> of receiving such a request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid.
<b>ITB 20.1</b>	In addition to the original Bid, the number of copies is: <i>One</i>
<b>ITB 20.2</b>	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) 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 <i>Power of Attorney</i> shall be signed by the <i>appropriate official of each of the JV</i> partner.
<b>ITB 20.2</b>	The Bidder shall submit an acceptable authorization within <b>7 (Seven)</b> days.

#### D. Submission and Opening of Bids

<b>ITB 21.1</b>	Bidders <i>shall not</i> have the option of submitting their Bids electronically.
<b>ITB 21.1 (b)</b>	If bidders shall have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be: <i>Not Applicable</i>
<b>ITB 22.1</b>	For <b>bid submission purposes</b> only, the Employer's address is: Attention: <i>Mr. Prakash Raut</i> Street address: <i>NEA DCSD Building, Ratnapark</i> Floor/Room number: <i>Fourth</i> City: <i>Kathmandu</i> ZIP code: <i>44804</i>

	<p>Country: <i>Nepal</i></p> <p><b>The deadline for bid submission is:</b></p> <p>Date: 6 August, 2019</p> <p>Time: 12:00 HRs</p>
<b>ITB 25.1</b>	<p>The opening of the Technical Bid shall take place at:</p> <p>Street address: <i>NEA DCSD Building, Ratnapark</i></p> <p>Floor/Room number: <i>Fourth</i></p> <p>City : <i>Kathmandu</i></p> <p>Country: <i>Nepal</i></p> <p>Date: 6 August, 2019</p> <p>Time: <i>Immediately after the deadline for Bid Submission</i></p>
<b>ITB 25.1</b>	<p>If electronic bid submission is permitted in accordance with ITB 21.1, the specific bid opening procedures shall be: <i>Not Applicable</i></p>
<b>ITB 25.5</b>	<p>The Letter of Technical Bid shall be initialed by <i>3 (Three)</i> representatives of the Employer attending the Bid opening.</p>
<b>ITB 25.10</b>	<p>The Letter of Price Bid and Schedules shall be initialed by <i>3 (Three)</i> representatives of the Employer attending the Bid opening.</p> <p>The opening of the Financial Bid shall take place at:</p> <p>Street address: <i>NEA DCSD Building, Ratnapark</i></p> <p>Floor/Room number: <i>Fourth</i></p> <p>City : <i>Kathmandu</i></p> <p>Country: <i>Nepal</i></p> <p>Date:</p> <p>Time: <i>Immediately after evaluation of Technical Bid</i></p>

### E. Evaluation and Comparison of Bids

<b>ITB 34.1</b>	Not applicable.
<b>ITB 35.1</b>	A margin of preference <i>shall not</i> apply.

# Section 3 - Evaluation and Qualification Criteria

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## 1. Evaluation

In addition to the criteria listed in ITB 36.2 (a)–(e), other relevant factors are as follows:

### 1.1 Adequacy of Technical Proposal

*Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 6 (Employer's Requirements).*

*Non-compliance with equipment and personnel requirements described in Section 6 (Employer's Requirements) shall not normally be a ground for bid rejection and such non-compliance will be subject to clarification during bid evaluation and rectification prior to contract award.*

### 1.2 Completion Time

An alternative Completion Time, if permitted under ITB 13.2, will be evaluated as follows:

*Time to complete the works from the effective date specified in Article 3 of the Contract Agreement for determining the time for completion is: 15 months. No credit will be given for earlier completion.*

*The time for the delivery of the Ambulance will be 2 months.  
Bids offering completion beyond the named period will be rejected.*

### 1.3 Technical Alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: Not applicable

### 1.4 Quantifiable Nonconformities and Omissions

Subject to ITB 14.2 and ITB 36.2, the evaluated cost of quantifiable nonconformities including omissions, is determined as follows:

*“Pursuant to ITB 31.3, the cost of all quantifiable nonmaterial nonconformities shall be evaluated, including omissions in Daywork where competitively priced but excluding omission of prices in the Bill of Quantities. 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.”*

### 1.5 Margin of Preference

If a margin of preference shall apply under ITB 35.1, the procedure will be as follows as:

*Applicable*

### 1.6 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

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

#### 2.1.1 Nationality

Nationality in accordance with ITB Subclause 4.2.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI -1; ELI -2 with attachments
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#### 2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB Subclause 4.3.	must meet requirement	must meet requirement	must meet requirement	not applicable	Letter of Technical Bid
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#### 2.1.3 Government-Owned Enterprise

Bidder required to meet conditions of ITB Subclause 4.5.	must meet requirement	must meet requirement	must meet requirement	not applicable	Forms ELI -1, ELI - 2 with attachments
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#### 2.1.4 United Nations Eligibility

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB Subclause 4.7.	must meet requirement	must meet requirement	must meet requirement	not applicable	Letter of Technical Bid
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## 2.2 Pending Litigation and Arbitration

Pending litigation and arbitration criterion shall not apply.

### 2.2.1 Pending Litigation and Arbitration

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
All pending litigation and arbitration, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than <i>50 (Fifty) percent</i> of the Bidder's net worth calculated as the difference between total assets and total liabilities.	must meet requirement by itself or as partner to past or existing Joint Venture	not applicable	must meet requirement by itself or as partner to past or existing Joint Venture	not applicable	Form LIT - 1

## 2.3 Financial Situation

### 2.3.1 Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last <i>3(three) years</i> to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year, calculated as the difference between total assets and total liabilities should be positive.	must meet requirement	not applicable	must meet requirement	not applicable	Form FIN - 1 with attachments

### 2.3.2 Average Annual Construction Turnover

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual construction turnover of <i>NRS 5 Crore</i> calculated as total certified payments received for contracts in progress or completed, within the <i>3 (Three) years</i> .	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 40 % of the requirement	Form FIN - 2

### 2.3.3 Financial Resources

Criteria  Requirement	Compliance Requirements				Documents  Submission Requirements
	Single Entity	Joint Venture			
		All Partners Combined	Each Partner	One Partner	
<p>For Single Entities:</p> <p>The Bidder must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its current contract commitments defined in FIN-4, meet or exceed the total requirement for the Subject Contract of <i>NRS 2 Crore</i>.</p>	must meet requirement	not applicable	not applicable	not applicable	Form FIN – 3 and Form FIN – 4
<p>For Joint Ventures:</p> <p>(1) One partner must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its own current contract commitments defined in FIN-4, meet or exceed its required share of <i>40 %</i> from the total requirement for the Subject Contract.</p> <p>AND</p>	not applicable	not applicable	not applicable	must meet requirement	Form FIN – 3 and Form FIN – 4
<p>(2) Each partner must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its own current contract commitments defined in FIN-4, meet or exceed its required share of <i>25 %</i> from the total requirement for the Subject Contract.</p> <p>AND</p>	not applicable	not applicable	must meet requirement	not applicable	Form FIN – 3 and Form FIN – 4
<p>(3) The joint venture must demonstrate that the combined financial resources of all partners defined in FIN-3, less all the partners' total financial obligations for the current contract commitments defined in FIN-4, meet or exceed the total requirement for the Subject Contract of <i>NRS 2 Crore</i>.</p>	not applicable	must meet requirement	not applicable	not applicable	Form FIN – 3 and Form FIN – 4

## 2.4 Construction Experience

### 2.4.1 Contracts of Similar Size and Nature

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
<p>Participation in at least one contract that has been successfully or substantially completed within the <i>last three (3) years</i> and that is similar to the proposed works, where the value of the Bidder's participation exceeds <i>NRS 5 Crore</i>. The similarity of the Bidder's participation shall be based on the physical size, nature of works, complexity, methods, technology or other characteristics as described in Section 6 (Employer's Requirements).</p> <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 10px;"></div>	<p>must meet requirement</p>	<p>not applicable</p>	<p>not applicable</p>	<p>must meet requirement</p>	<p>Form EXP -1</p>

**2.4.2 Construction Experience in Key Activities**

(May be complied with by specialist subcontractors. The employer shall require evidence of the subcontracting agreement from the bidder. A specialist subcontractor is a specialist enterprise engaged for highly specialized processes, which the main contractor cannot provide.)

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For the above or other contracts executed during the period stipulated in 2.4.1 above, a minimum construction experience in the following key activities:	must meet requirements	must meet requirements <sup>a</sup>	not applicable	not applicable	Form EXP-2
a) The Bidder shall have successfully executed as a prime contractor, management contractor, sub-contractor construction of <i>at least 3 nos. of civil structures within the last seven (7) years, as of the last date of bid submission</i>	must meet all requirements	must meet all requirements	<i>Must have executed construction of at least 1 nos. of civil infrastructures such as buildings.</i>	<i>Must have executed construction of at least 2 nos. of civil infrastructures such as buildings.</i>	

<sup>a</sup> In the case of a joint venture bidder, at least one of the partners must have the experience in the key activity if the bidder itself (not its subcontractor) will carry out the relevant activity.

## Section 5 - Eligible Countries

This section contains the list of eligible countries.

Bidders (of Nepal) may submit bids if none of the following reasons for exclusion apply:

1. The country of origin is ruled out by sanctions issued by the German Government or the Government of Nepal.
2. The Bidder is or was involved as a consultant in the preparation or implementation of the project.
3. The same applies to an enterprise or an individual that is closely connected to the Bidder under a company group or a similar business link, or to several enterprises or individuals associated correspondingly (exception: In BOT projects or turnkey projects a participation of future suppliers or manufacturers may even be desirable).
4. The Bidder is legally barred from the procurement process in the country of the contracting agency on the grounds of previous violations of regulations on fraud and corruption.
5. The bidder is listed in the Central Exclusion Database, maintained by Funding Agency(ies).

# Section 6 – Employer’s Requirements

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# Specifications

(Detailed in Technical Specification Volume 2)



# Drawings

(Detailed in Technical Specification Volume 2)

# Supplementary Information

## Personnel Requirements

Using Form PER - 1 and PER - 2 in Section 4 (Bidding Forms), the Bidder must demonstrate that it has personnel who meet the following requirements:

No.	Position	Total Work Experience [years]	Experience In Similar Work [years]
1	Project Manager	6	4
2	Civil Engineer	5	3
3	Civil Supervisor	5	3

## Equipment Requirements

Using Form EQU in Section 4 (Bidding Forms), the Bidder must demonstrate that it has the key equipment listed below:

No.	Equipment Type and Characteristics	Minimum Number Required
1	General Purpose Truck (Minimum 10 Ton capacity)	1
2	Concrete Mixture	2

## **Section 7 - General Conditions of Contract**

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## General Conditions of Contract

### A. General

#### 1. Definitions

- 1.1 Boldface type is used to identify defined terms.
- (a) The **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
  - (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
  - (c) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 29.1[Appointment of Adjudicator] hereunder.
  - (d) **Bank** means the financing institutions named in the **Particular Conditions of Contract (PCC)**.
  - (e) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
  - (f) **Compensation Events** are those defined in GCC 51.1[Compensation Events] hereunder.
  - (g) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC 69.1 [Completion].
  - (h) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC 2.3 below.
  - (i) The **Contractor** is the party whose Bid to carry out the Works has been accepted by the Employer.
  - (j) The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
  - (k) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
  - (l) **Days** are calendar days; months are calendar months.
  - (m) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
  - (n) A **Defect** is any part of the Works not completed in accordance with the Contract.
  - (o) The **Defects Liability Certificate** is the certificate issued by the Project Manager upon correction of defects by the

Contractor.

- (p) The **Defects Liability Period** is the period calculated from the Completion Date where the Contractor remains responsible for remedying defects.
- (q) **Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (r) The **Employer** is the party who employs the Contractor to carry out the Works, as specified in the **PCC**.
- (s) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) **Force Majeure** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- (u) **In writing** or **written** means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- (v) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
- (w) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the **PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (x) **Letter of Acceptance** means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract at the date of acceptance.
- (y) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (z) **Party** means the Employer or the Contractor, as the context requires.
- (aa) **PCC** means Particular Conditions of Contract.
- (bb) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (cc) The **Project Manager** is the person named in the **PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (dd) **Retention Money** means the aggregate of all monies retained by the Employer pursuant to GCC 55.1 [Retention].
- (ee) **Schedules** means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may

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

## 2. Interpretation

- 2.1 In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is specified in the **PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
  - (a) Contract Agreement,
  - (b) Letter of Acceptance,
  - (c) Letter of Bid,
  - (d) Particular Conditions of Contract,
  - (e) the List of Eligible Countries that was specified in Section 5 of the bidding document,
  - (f) General Conditions of Contract,
  - (g) Specifications,

- (h) Drawings,
  - (i) Completed Activity Schedules or Bill of Quantities, and
  - (j) any other document listed in the **PCC** as forming part of the Contract.
- 3. Language and Law**
- 3.1 The language of the Contract and the law governing the Contract are stated in the **PCC**.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer's country when
- (a) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from, or any payments to, a particular country, person, or entity. Where the borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
- 4. Contract Agreement**
- 4.1 The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the attached Contract forms in Section 8. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.
- 5. Assignment**
- 5.1 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party
- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party; and
  - (b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.
- 6. Care and Supply of Documents**
- 6.1 The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.
- 6.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.
- 6.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
- 6.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

**7. Confidential Details**

- 7.1 The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.
- 7.2 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.
- 7.3 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 Clause.

**8. Compliance with Laws**

- 8.1 The Contractor shall, in performing the Contract, comply with applicable Laws.
- 8.2 Unless otherwise stated in the Particular Conditions,
- (a) 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 [Employer's Country or country where the Site is located] which (i) such authorities or undertakings require the Employer to obtain in the Employer's name, and (ii) 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;
- (b) 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 [Employer's Country or 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 Subclause 8.2(a) hereof and that are necessary for the performance of the Contract. 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 Employer or its personnel, including the Subcontractors and their personnel, but without prejudice to Subclause 8.1 hereof.

- 9. Joint and Several Liability** 9.1 If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally liable 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. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.
- 10. Project Manager's Decisions** 10.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 11. Delegation** 11.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 12. Communications** 12.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 13. Subcontracting** 13.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 14. Other Contractors** 14.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the **PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 15. Personnel and Equipment** 15.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid to carry out the functions stated in the Schedule or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 15.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within 7 days and has no further connection with the work in the Contract.
- 15.3 If the Employer, Project Manager, or Contractor determines, that any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or other prohibited practices during the execution of the Works, then that employee shall be removed in accordance with Clause 15.2 above.
- 16. Employer's and Contractor's Risks** 16.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

**17. Employer's Risks**

- 17.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 17.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.

**18. Contractor's Risks**

- 18.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks, are Contractor's risks.

**19. Insurance**

- 19.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the **PCC** for the following events, which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 19.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

- 19.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance, which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 19.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 19.5 Both parties shall comply with any conditions of the insurance policies.
- 20. Site Investigation Reports**
- 20.1 The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the **PCC**, supplemented by any information available to the Contractor.
- 21. Contractor to Construct the Works**
- 21.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 22. The Works to Be Completed by the Intended Completion Date**
- 22.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 23. Designs by Contractor and Approval by the Project Manager**
- 23.1 The Contractor shall carry out design to the extent specified in the **PCC**. The Contractor shall promptly submit to the Employer all designs prepared by him. Within 14 days of receipt, the Employer shall notify any comments. The Contractor shall not construct any element of the permanent work designed by him within 14 days after the design has been submitted to the Employer or where the design for that element has been rejected. Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on, taking these comments into account as necessary.
- 23.2 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 23.3 The Contractor shall be responsible for design of Temporary Works.
- 23.4 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 23.5 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 23.6 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 24. Safety**
- 24.1 The Contractor shall be responsible for the safety of all activities on the Site.



- 25. Discoveries** 25.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 26. Possession of the Site** 26.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the **PCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
- 27. Access to the Site** 27.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 28. Instructions, Inspections, and Audits** 28.1 The Contractor shall carry out all instructions of the Project Manager, which comply with the applicable laws where the Site is located.
- 28.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
- 28.3 The Contractor shall permit KfW to inspect the Contractor's accounts, records, and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by KfW. The Contractor shall maintain all documents and records related to the Contract for a period of three (3) years after completion of the Works. The Contractor shall provide any documents necessary for the investigation of allegations of fraud, collusion, coercion, or corruption and require its employees or agents with knowledge of the Contract to respond to questions from KfW.
- 29. Appointment of the Adjudicator** 29.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the **PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 29.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 14 days of receipt of such request.
- 30. Procedure for Disputes** 30.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.

- 30.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 30.3 The Adjudicator shall be paid by the hour at the rate specified in the **PCC**, together with reimbursable expenses of the types specified in the **PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 30.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the **PCC**.

### **B. Staff and Labor**

- 31. Forced Labor** 31.1 The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor—contracting arrangements.
- 32. Child Labor** 32.1 The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, 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. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.
- 33. Workers' Organizations** 33.1 In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with national law. Where national law substantially restricts workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where national law is silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce.
- 34. Nondiscrimination and Equal Opportunity** 34.1 The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training,

promotion, termination of employment or retirement, and discipline. In countries where national law provides for non-discrimination in employment, the Contractor shall comply with national law. When national laws are silent on nondiscrimination in employment, the Contractor shall meet this Subclause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

### C. Time Control

#### 35. Program

- 35.1 Within the time stated in the **PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 35.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 35.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the **PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the **PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 35.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

#### 36. Extension of the Intended Completion Date

- 36.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 36.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

#### 37. Acceleration

- 37.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the

Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.

- 37.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 38. Delays Ordered by the Project Manager**
- 38.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 39. Management Meetings**
- 39.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 39.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 40. Early Warning**
- 40.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 40.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

#### D. Quality Control

- 41. Identifying Defects**
- 41.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 42. Tests**
- 42.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 43. Correction of**
- 43.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at

**Defects** Completion, and is defined in the **PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

43.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

**44. Uncorrected Defects** 44.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

### **E. Cost Control**

**45. Contract Price** 45.1 In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

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

**46. Changes in the Contract Price** 46.1 In the case of an admeasurement contract:

- (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25%, provided the change exceeds 1% of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15%, except with the prior approval of the Employer.
- (c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

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

**47. Variations** 47.1 All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

47.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall

be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

- 47.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 47.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 47.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 47.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC46.1 [Changes in the Contract Price] or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

#### **48. Cash Flow Forecasts**

- 48.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

#### **49. Payment Certificates**

- 49.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 49.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 49.3 The value of work executed shall be determined by the Project Manager.
- 49.4 The value of work executed shall comprise,
- (a) in the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or
  - (b) in the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.

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

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

## **50. Payments**

50.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

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

50.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

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

## **51. Compensation Events**

51.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC 26.1 [Possession of the Site].
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly

and from a visual inspection of the Site.

- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

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

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

## 52. Tax

52.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 54.1 [Price Adjustment].

## 53. Currencies

53.1 Where payments are made in currencies other than the currency of the Employer's country specified in the **PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

## 54. Price Adjustment

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



payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \cdot I_{mc}/I_{oc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency "c."

$A_c$  and  $B_c$  are coefficients<sup>1</sup> specified in the **PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

$I_{mc}$  is a consolidated index prevailing at the end of the month being invoiced and  $I_{oc}$  is the same consolidated index prevailing 28 days before Bid opening for inputs payable; both in the specific currency "c."

54.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

## 55. Retention

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

55.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 69.1 [Completion], half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" bank guarantee.

## 56. Liquidated Damages

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

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

<sup>1</sup> The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulas for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.10 ~ 0.20) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the Contract Price.

rates specified in GCC 50.1 [Payments].

#### 57. Bonus

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

#### 58. Advance Payment

58.1 The Employer shall make advance payment to the Contractor of the amounts stated in the **PCC** by the date stated in the **PCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

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

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

#### 59. Securities

59.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the **PCC**, by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a bank guarantee.

#### 60. Dayworks

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

60.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within 2 days of the work being done.

60.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

- 61. Cost of Repairs** 61.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

#### F. Force Majeure

- 62. Definition of Force Majeure** 62.1 In this Clause, "Force Majeure" means an exceptional event or circumstance,
- (a) which is beyond a Party's control;
  - (b) which such Party could not reasonably have provided against before entering into the Contract;
  - (c) which, having arisen, such Party could not reasonably have avoided or overcome; and
  - (d) which is not substantially attributable to the other Party.
- 62.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
  - (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;
  - (c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;
  - (d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
  - (e) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.
- 63. Notice of Force Majeure** 63.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 63.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 63.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the

other Party under the Contract.

- 64. Duty to Minimize Delay**
- 64.1 Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.
- 64.2 A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.
- 65. Consequences of Force Majeure**
- 65.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GCC Subclause 63 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to GCC Subclause 30.1 [Procedure for Disputes] to
- (a) an extension of time for any such delay, if completion is or will be delayed, under GCC Subclause 36 [Extension of the Intended Completion Date]; and
  - (b) if the event or circumstance is of the kind described in subparagraphs (a) to (d) of GCC Subclause 62.2 [Definition of Force Majeure] and, in the case of subparagraphs (b) to (d), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destructed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Subclause 19 [Insurance].
- 65.2 After receiving this notice, the Project Manager shall proceed in accordance with GCC Subclause 10 [Project Manager's Decisions] to agree or determine these matters.
- 66. Force Majeure Affecting Subcontractor**
- 66.1 If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader Force Majeure events or circumstances shall not excuse the Contractor's nonperformance or entitle him to relief under this Clause.
- 67. Optional Termination, Payment and Release**
- 67.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GCC Subclause 63 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with GCC Subclause 73.5 [Termination].
- 67.2 Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate, which shall include
- (a) the amounts payable for any work carried out for which a price is stated in the Contract;

- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery; this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.

#### **68. Release from Performance**

68.1 Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises, which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance,

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under GCC Subclause 67 [Optional Termination, Payment and Release] if the Contract had been terminated under GCC Subclause 67.

### **G. Finishing the Contract**

#### **69. Completion**

69.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the work is completed.

#### **70. Taking Over**

70.1 The Employer shall take over the Site and the Works within 7 days of the Project Manager's issuing a certificate of Completion.

#### **71. Final Account**

71.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted,

the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

## 72. Operating and Maintenance Manuals

72.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **PCC**.

72.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **PCC** pursuant to GCC 72.1, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the **PCC** from payments due to the Contractor.

## 73. Termination

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

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

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager’s certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Project Manager gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with GCC Subclause 22.1 [The Works to be Completed by the Intended Completion Date] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Project Manager;
- (g) the Contractor does not maintain a Security, which is required;
- (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 **PCC**; and
- (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 74.1 [Fraud and Corruption].

73.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 73.2 above, the Project Manager shall decide whether the breach is

fundamental or not.

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

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

#### **74. Fraud and Corruption**

74.1 KFW's Anticorruption Policy requires Borrowers (including beneficiaries of KFW-financed activity), as well as Contractors, Subcontractors, Manufacturers, and Consultants under KFW-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the KFW

(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;
- (v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an KFW investigation; (b) making false statements to investigators in order to materially impede an KFW investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) 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 (e) materially impeding KFW's contractual rights of audit or access to information; and
- (vi) "integrity violation" is any act which violates KFW's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of KFW sanctions, retaliation against whistleblowers or witnesses, and other violations of KFW's Anticorruption Policy, including failure to adhere to the highest ethical standard.

- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
- (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of KFW-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to KFW to remedy the situation; and
- (d) will impose remedial actions on a firm or an individual, at any time, in accordance with KFW's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>2</sup> in KFW-financed, -administered, or -supported activities or to benefit from an KFW-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.

## 75. Payment upon Termination

- 75.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the **PCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 75.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

## 76. Property

- 76.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the

<sup>2</sup> Whether as a Contractor, Nominated Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document). A Nominated Subcontractor is one which either has been (i) included by the Bidder in its prequalification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the Bidder's prequalification application or the bid; or (ii) appointed by the Employer.



Contract is terminated because of the Contractor's default.

- 77. Release from Performance**
- 77.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterward to which a commitment was made.
- 78. Suspension of KfW Grant**
- 78.1 In the event that KfW suspends the Grant to the Employer, from which part of the payments to the Contractor are being made,
- (a) the Employer is obligated to notify the Contractor, with copy to the Project Manager, of such suspension within 7 days of having received KfW's suspension notice.
  - (b) if the Contractor has not received sums due it within the 28 days for payment provided for in GCC50.1 [Payments], the Contractor may immediately issue a 14-day termination notice.
- 79. Eligibility**
- 79.1 The Contractor shall have the nationality of an eligible country as specified in Section 5 [Eligible Countries] of the bidding document. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, incorporated, or registered, 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 subcontractors or suppliers for any part of the Contract including related services.
- 79.2 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as specified in Section 5 [Eligible Countries] of the bidding document and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment, and services.
- 79.3 For purposes of GCC 79.2, "origin" means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

## **Section 8 - Particular Conditions of Contract**

## Particular Conditions of Contract

<b>A. General</b>	
<b>GCC 1.1 (d)</b>	The financing institutions is <i>Kreditanstalt für Wiederaufbau (KfW)</i>
<b>GCC 1.1 (r)</b>	The Employer is <i>Nepal Electricity Authority</i>
<b>GCC 1.1 (w)</b>	The Intended Completion Date for the whole of the Works shall be <i>November 2020</i>
<b>GCC 1.1 (cc)</b>	The Project Manager is <i>Mr. Prakash Raut</i>
<b>GCC 1.1 (ff)</b>	The Site is located at <i>Rasuwa &amp; Nuwakot Districts</i> and is defined in drawings No.
<b>GCC 1.1 (ii)</b>	The Start Date shall be <i>September 2019</i>
<b>GCC 1.1 (mm)</b>	The Works consist of <i>Social Infrastructures such as School Building, Community Buildings, Temples, Health Post, Water Supply, Vegetable Collection Centre etc.</i>
<b>GCC 2.2</b>	Sectional Completions are: <i>Not applicable</i>
<b>GCC 2.3(j)</b>	The following documents also form part of the Contract: <i>Additional works asked by the Employer</i>
<b>GCC 3.1</b>	The language of the contract is <i>English</i> The law that applies to the Contract is the law of <i>Nepal</i>
<b>GCC 11.1</b>	The Project Manager <i>can</i> delegate any of his duties and responsibilities.
<b>GCC 14.1</b>	Schedule of other contractors: <i>Not Applicable</i>
<b>GCC 18.1</b>	Consequential Damages <i>will be</i> excluded from the liabilities of the Contractor
<b>GCC 19.1</b>	The minimum insurance amounts and deductibles shall be: <ul style="list-style-type: none"> <li>(a) for loss or damage to the Works, Plant and Materials: <i>110% of the Contract Amount</i></li> <li>(b) for loss or damage to Equipment: <i>110% of the Contract Amount</i></li> <li>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract</li> <li>(d) for personal injury or death: <ul style="list-style-type: none"> <li>(i) of the Contractor's employees: <i>NRS 1,000,000</i></li> <li>(ii) of other people: <i>NRS 1,000,000</i></li> </ul> </li> </ul>
<b>GCC 20.1</b>	Site Investigation Reports are: <i>Location of Project area</i>

<b>GCC 23.1</b>	The following shall be designed by the Contractor: <i>Temporary works, Modifications in the design provided by Employer as per site conditions</i>
<b>GCC 26.1</b>	The Site Possession Date(s) shall be: <i>July 2019</i>
<b>GCC 29.1</b>	Appointing Authority for the Adjudicator: <i>Nepal Council of Arbitration (NEPCA)</i>
<b>GCC 30.3</b>	The Adjudicator shall be paid by the hour at the rate of: <i>As per NEPCA Schedule of Adjudication Fees</i> The reimbursable expenses are: <i>Not Applicable</i>
<b>GCC 30.4</b>	Institution whose arbitration procedures shall be used:  (a) <b>Contracts with domestic contractors:</b>  Arbitration shall be conducted in accordance with the laws of the Employer's country. Any dispute, controversies or claim arising out of or relating to this Contract, or the breach, termination or invalidity thereof, shall be decided by arbitration in accordance with Arbitration Act 2055 B.S. and Arbitration Procedure Rules made under the act. The process of arbitration shall be as prescribed by the Nepal law or as agreed by the Employer & the Contractor.  Place of Arbitration shall be Kathmandu at a place as agreed by the Employer and the Contractor. Kathmandu District Court shall be the court of competent jurisdiction in all matters of this contract.
<b>GCC 34.2</b>	The following sentence shall apply:  <b>Respectful Work Environment</b>  The Contractor shall ensure that its employees and sub-contractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or sub-contractors, including suspension or termination of employment or sub-contract, if any form of unethical or inappropriate behavior is identified.  The Contractor shall conduct training programs for its employees and sub-contractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request.

<b>C. Time Control</b>	
<b>GCC 35.1</b>	The Contractor shall submit for approval a Program for the Works within <b>30</b> days from the date of the Letter of Acceptance.
<b>GCC 35.3</b>	The period between Program updates is <b>30</b> days. The amount to be withheld for late submission of an updated Program is <b>5 %</b> .
<b>D. Quality Control</b>	
<b>GCC 43.1</b>	The Defects Liability Period is: <b>365</b> days.
<b>E. Cost Control</b>	
<b>GCC 53.1</b>	The currency of the Employer's country is: <b>Nepalese Rupees</b>
<b>GCC 54.1</b>	The Contract <b>shall</b> subject to price adjustment in accordance with GCC Clause 54, and the following information regarding coefficients <b>shall</b> apply. The coefficients and indexes for adjustment of prices in local and international currencies shall be as specified in the Table(s) of Adjustment Data submitted together with the Letter of Bid.
<b>GCC 55.1</b>	The proportion of payments retained is: <b>5%</b>
<b>GCC 56.1</b>	The liquidated damages for the whole of the Works are <b>0.05% of the Contract Amount</b> per day. The maximum amount of liquidated damages for the whole of the Works is <b>10%</b> of the final Contract Price.
<b>GCC 57.1</b>	The Bonus for the whole of the Works is <b>0.05%</b> per day. The maximum amount of Bonus for the whole of the Works is <b>10%</b> of the final Contract Price.
<b>GCC 58.1</b>	The Advance Payments shall be <b>10%</b> and shall be paid to the Contractor no later than <b>28 days from Signing of Contract against an unconditional bank guarantee equal to the advance payment. The Interim payments shall account for 80% on Monthly basis as per the running bill submitted by the Contractor based on Joint Site Measurement.</b>
<b>GCC 58.3</b>	Repayment of the Advance Payments shall be: <b>25%</b> from each payment certificate.
<b>GCC 59.1</b>	The Performance Security amount is <b>10% of the Contract Amount</b>
<b>G. Finishing the Contract</b>	
<b>GCC 72.1</b>	The date by which operating and maintenance manuals are required is <b>30 days from Completion of Works</b> The date by which "as built" drawings are required is <b>30 days from Completion of</b>

	<i>Works</i>
<b>GCC 72.2</b>	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 72.1 is <i>5% of the Contract Amount</i> .
<b>GCC 73.2 (h)</b>	The maximum number of days is: <i>45 days</i>
<b>GCC 75.1</b>	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is <i>25%</i>

## Section 9 - Contract Forms

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

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<b>Advance Payment Security .....</b>	<b>9-7</b>

# Notification of Award

---- on letterhead paper of the employer ----

## Letter of Acceptance

..... date. ....

To: ..... Name and address of the contractor .....

Subject: ..... Notification of Award Contract No. ....

This is to notify you that your Bid dated . . . . date . . . . for execution of the . . . . .name of the contract and identification number, as given in the Bid Data Sheet . . . . . for the Accepted Contract Amount of the equivalent of . . . . .amount in words and figures and name of currency . . . . ., as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

[Choose one of the following statements:]

We accept that [insert the name of adjudicator proposed by the bidder] be appointed as the Adjudicator.

[or]

We do not accept that [insert the name of the adjudicator proposed by the bidder] be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to [insert name of the appointing authority], the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with GCC 29.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement



## Contract Agreement

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

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

The Employer and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Contract Agreement,
  - (b) the Letter of Acceptance,
  - (c) the Letters of Technical Bid and Price Bid,
  - (d) the Particular Conditions of Contract,
  - (e) the List of Eligible Countries that was specified in Section 5 of the bidding document,
  - (f) the General Conditions of Contract,
  - (g) the Specifications,
  - (h) the Drawings,
  - (i) the Completed Activity Schedules or Bill of Quantities, and
  - (j) any other documents shall be added here.<sup>1</sup>
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

<sup>1</sup> Tables of Adjustment Data may be added if the contract provides for price adjustment (see GCC 54.1).

Signed by .....  
for and on behalf of the Employer

Signed by .....  
for and on behalf the Contractor

in the presence of:

in the presence of:

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

## Appendix 1 - Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 50 (Payments), 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 EURO. The date of the exchange rate will be the date of the direct disbursement of KfW Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

### (A) Terms of Payment

#### Schedule No.2- Materials to be supplied from Employer's Country

In respect of materials supplied from within the Employer's country, the following payments shall be made:

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 materials delivered to the site, as evidenced by delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the site within 45 days after receipt of invoice.

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 issue of the Operational Acceptance Certificate, within 45 days after receipt of invoice.

#### Schedule No. 4 – Construction Charges

In respect of construction services, the following payments shall be made:

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 construction 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 construction services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within 45 days after receipt of invoice.

## (B) Payment Procedures

When applying for certification and making payments, the procedures shall be as follows:

a. Local Currency

The Employer shall make/arrange payments promptly within forty five (45) days of submission of an invoice/claim by the Contractor, complete in all respects and supported by the requisite documents and fulfillment of stipulated conditions, if any. All the payment shall be released to the Contractor directly by Funding Agency on Direct Disbursement basis based on the certification of the Employer. Necessary details to this effect shall be tied-up with the successful bidder.

Note: Pro-rata shall refer to functionally complete part(s) of the facilities, for which unit rates are identified in the contract.

b. Invoices

The Contractor shall submit the invoices (original) in triplicate to the Project Office whenever an invoice is required to be submitted as per provision of the Contract. Invoices should be duly certified by Project Manager.

c. Documentation Required for Payment

Claims for payment must be supported by the following documentation as specified hereinafter; Requests for reimbursement for the cost of equipment materials, freight, transportation and insurance shall be supported by the documents as specified/ required for supply of materials (each copy to be certified by the Contractor or the Contractor's representative to be a true copy of the document of which it is a copy).

## (C) Reimbursement Clause

Any reimbursements, guarantee or similar claimable payments and any insurance payments shall be made for account of the Borrower (the End-user) to account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00) at KfW, Frankfurt am Main (BIC: KFWIDEFF; BLZ 500 204 00), with KfW crediting such payments to the account of the Borrower (the End-user). If such payments are made in local currency, they shall be remitted to a special account of the Borrower (the End-user) in the country of the Borrower (the End-user), which may be drawn on only with the consent of KfW.

# Performance Security

Address of guarantor bank:

.....  
.....

Address of beneficiary (contracting agency):

.....  
.....

On ..... you concluded with ..... ("Contractor") a contract for ..... (project, object of contract) at a price of .....

In accordance with the provisions of the contract the Contractor is obligated to provide a performance bond for ... % of the contract price.

We, the undersigned ..... (Guarantor), waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently guarantee to pay on your first written demand an amount up to a total of ..... (in words: .....

against your written declaration that the Contractor has failed to duly perform the aforementioned contract.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of ..... (project-executing agency/purchaser).

This guarantee shall expire no later than .....

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of .....

.....  
Place, date

.....  
Guarantor

# Advance Payment Security

Address of guarantor bank:

.....  
.....

Address of beneficiary (contracting agency):

.....  
.....

On ..... you concluded with ..... ("Contractor") a contract for ..... (project, object of contract) at a price of .....

In accordance with the provisions of the contract the Contractor receives an advance payment in the amount of ....., which represents ..... % of the order value.

We, the undersigned ..... (Guarantor), waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently guarantee to pay on your first written demand any amount advanced to the Contractor up to a total of ..... (in words: .....) against your written declaration that the Contractor has failed to duly perform the aforementioned contract.

This guarantee shall come into force and effect as soon as the advance payment has been credited to the account of the Contractor.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of..... (contracting agency/project-executing agency).

This guarantee shall expire no later than .....

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of .....

.....

## Section 4 - Bidding Forms

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

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## 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: .....

NCB 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) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by KfW, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council.

- (h) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].<sup>1</sup>
- (i) 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 .....

---

<sup>1</sup> 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: .....

NCB 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. 6 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 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.
  
- (h) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name .....

In the capacity of .....

Signed .....

Duly authorized to sign the Bid for and on behalf of .....

Date .....

# Price Schedules

## PREAMBLE

### General

1. The Schedules do not generally give a full description of the plant to be supplied and the services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the Bidding Document and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to cover the full scope as aforesaid, including overheads and profit.
2. If Bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with ITB 7 prior to submitting their bid.

### Pricing

3. The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive. Any alterations necessary due to errors, etc., shall be initialed by the Bidder.

As specified in the Bid Data Sheet and Special Conditions of Contract, prices shall be fixed and firm for the duration of the Contract.

4. Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bidding Document.

For each item, Bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.

Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in Section 6 (Employer's Requirements) or elsewhere in the Bidding Document.

5. Payments will be made to the Contractor in the currency or currencies indicated under each respective item.
6. When requested by the Employer for the purposes of making payments or part payments, valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

## Tables of Adjustment Data

*Not Applicable.*

# Bid Security

## Bank Guarantee

Address of guarantor bank:

.....  
.....

Address of beneficiary (contracting agency):

.....  
.....

We, the undersigned ..... (Guarantor), in order to enable ..... to bid for ..... (Project, object of contract), hereby irrevocably and independently guarantee to pay to you an amount up to a total of ..... waiving all objections and defences.

We shall effect payments under this guarantee on your first written demand, which must be accompanied by your confirmation that you have accepted the above-mentioned bid and that the firm ..... is no longer prepared to abide by this bid.

This guarantee shall expire no later than .....

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of .....

.....

Date

.....

Guarantor

**-- Note --**

*In case of a joint venture, the bid security/ Bid Bond must be in the name of all partners to the joint venture that submits the bid.*

## Declaration of Undertaking

We underscore the importance of a free, fair and competitive procurement process that precludes abusive practices. In this respect we have neither offered nor granted directly or indirectly any inadmissible advantages to any public servant or other person nor accepted such advantages in connection with our bid, nor will we offer or grant or accept any such incentives or conditions in the present procurement process or, in the event that we are awarded the contract, in the subsequent execution of the contract. We also declare that no conflict of interest exists in the meaning of the kind described in the corresponding Guidelines<sup>1</sup>.

We also underscore the importance of adhering to environmental and social standards in the implementation of the project. We undertake to comply with applicable labour laws and the Core Labour Standards of the International Labour Organization (ILO) as well as national and applicable international standards of environmental protection and health and safety standards.

We will inform our staff about their respective obligations and about their obligation to fulfill this declaration of undertaking and to obey the laws of the country of @ (name of country).

We also declare that our company/all members of the consortium has/have not been included in the list of sanctions of the United Nations, nor of the EU, nor of the German Government, nor in any other list of sanctions and affirm that our company/all members of the consortium will immediately inform the client and KfW if this situation should occur at a later stage.

We acknowledge that, in the event that our company (or a member of the consortium) is added to a list of sanctions that is legally binding on the client and/or KfW, the client is entitled to exclude our company/the consortium from the procurement procedure and, if the contract is awarded to our company/the consortium, to terminate the contract immediately if the statements made in the Declaration of Undertaking were objectively false or the reason for exclusion occurs after the Declaration of Undertaking has been issued.

.....

(Place)

.....

(Date)

.....

(Name of company)

.....

(Signature(s))

<sup>1</sup> See "Guidelines for the Assignment of Consultants in Financial Cooperation with Partner Countries" and "Guidelines for Procurement of Goods, Works and associated Services in Financial Cooperation with Partner Countries"



## Covenant of Integrity

*to the Promoter from a Tenderer, Contractor, Supplier or Consultant to be attached to its Tender (or to the Contract in the case of a negotiated procedure)*

I [Name], in my function as [function/position held] in [name of the company] and duly authorized representative for the signature of the contract to be signed for [title of the call for tender or the contract] hereby declare that we observe the highest standards of ethics during the procurement and, if we are successful in our tender, the performance of the contract and have not engaged nor will engage in, or have been convicted of, any fraud, corruption, collusion or other malpractice. Where convictions occurred, details of the conviction and remedial measures are provided. If such events should occur in the future, we hereby undertake to so inform [Promoter and AFD/EIB/KfW (whoever is MRI Lead Financier)] immediately.

Moreover, neither our company<sup>1</sup> nor any entity member of the joint venture or of the consortium or any one acting on our behalf, such as sub-contractors, is the subject of a current exclusion /has been the subject of any debarment, exclusion or other sanctioning decision by any of the Participating MRI Partners on the grounds of corruption, collusion, fraud or other malpractice<sup>2</sup> and we further undertake to immediately inform [Promoter and AFD/EIB/KfW (whoever is MRI Lead Financier)] if this situation was to occur at a later stage.

I also declare that neither our company nor any entity member of the joint venture or of the consortium is currently included /has been included on the list of financial sanctions (including in particular the fight against financing of terrorism) adopted by the United Nations, the EU financial or any national sanction<sup>3</sup> list which is binding for any the MRI Partners and we further undertake to immediately inform [Promoter and AFD/EIB/KfW (whoever is MRI Lead Financier)] if this situation were to occur at a later stage.

We acknowledge that in the event our company or any entity member of the joint venture or of the consortium i/ is, after this Covenant of Integrity or the contract have been signed, added to any financial sanctions list or debarment or sanctioning decision enumerated above or ii/ made a false statement in the Covenant of Integrity, the contract may not be eligible for funding by one or more of the Participating MRI Partners (AFD, EIB, KfW). We commit not to procure goods and services from countries which are under an embargo which is binding upon any of [AFD, EIB, KfW – mention the Participating MRI Partners for the project concerned].

<sup>1</sup> For the purposes of these provisions “company” or “entity” shall include directors, employees, agents.

<sup>2</sup> Corrupt, collusive, fraudulent or coercive or obstructive practice are defined in EIB’s Guide to Procurement; for KfW: See "Guidelines for the Assignment of Consultants in German Financial Cooperation" and "Guidelines for Procurement of Goods, Works and associated Services in Financial Cooperation with Partner Countries "; for AFD, see “ General Policy for combating corruption, fraud, anti-competitive practices, money laundering and terrorist financing” and “Guidelines for the procurement of AFD-financed contracts in foreign countries”.

<sup>3</sup> i.e. French sanction list for AFD, German sanction list for KfW.

We also acknowledge that, in the afore-mentioned events, [Promoter] is entitled to exclude our company/the consortium from the procurement procedure and, if the contract is awarded to our company/the consortium, such events may lead to termination of the contract, in accordance with the terms of the contract.

In the event that we are awarded the contract, we grant the Participating MRI Partners and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right of inspection of our records and those of all our sub-contractors, under the contract, as well as joint venture/consortium partners. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial performance of the contract.

I declare that our company / consortium undertakes to comply with labour laws and national and international standards of environmental protection, health and safety applicable in the jurisdiction / country of implementation of the Project, including those contained in any relevant International Labour Organization (ILO) conventions and international agreements on environmental protection, as well as with mitigation measures of the Environmental and Social Management Plan if applicable.

.

.....

**(Place)**

**(Date)**

**(Signature)**

# Technical Proposal

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Construction Schedule**

**Personnel**

**Equipment**

**Time Schedule**

**Form - Deviation & Exceptions to the Provisions**

## Site Organization

## Method Statement

## Mobilization Schedule

---

## Construction Schedule

## Personnel

### Form PER – 1: Proposed Personnel

Bidders should provide the details of proposed personnel and their experience record in the relevant Information Forms below for each of the candidate.

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

-- Note --

\* As listed in Section 6 (Employer's Requirements).



### Form PER – 2: Resume of Proposed Personnel

The Bidder shall provide all the information requested below. Use one form for each position.

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

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company/Project/Position/Relevant Technical and Management Experience

## Equipment

### Form EQU: Equipment

The Bidder shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in Section 6 (Employer's Requirements), using the Forms below. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

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

Omit the following information for equipment owned by the Bidder.

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



## Time Schedule

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

## 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. If the bidding was preceded by a prequalification process then the forms included in this section and used earlier during the prequalification process need to be completed only if the information submitted at the time of prequalification requires updating.

**Form ELI - 1: Bidder's Information Sheet**

<b>Bidder's Information</b>	
<b>Bidder's legal name</b>	
<b>In case of a Joint Venture, legal name of each partner</b>	
<b>Bidder's country of constitution</b>	
<b>Bidder's year of constitution</b>	
<b>Bidder's legal address in country of constitution</b>	
<b>Bidder's authorized representative</b> (name, address, telephone number(s), fax number(s), e-mail address)	
<p><b>Attached are copies of the following documents:.</b></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.

<b>Joint Venture Information</b>	
<b>Bidder's legal name</b>	
<b>Joint Venture Partner's or Subcontractor's legal name</b>	
<b>Joint Venture Partner's or Subcontractor's country of constitution</b>	
<b>Joint Venture Partner's or Subcontractor's year of constitution</b>	
<b>Joint Venture Partner's or Subcontractor's legal address in country of constitution</b>	
<b>Joint Venture Partner's or Subcontractor's authorized representative information</b> (name, address, telephone number(s), fax number(s), e-mail address)	
<b>Attached are copies of the following documents:</b>	
<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 and Arbitration**

Each Bidder must fill out this form if so required under Criterion 2.2 of Section 3 (Evaluation and Qualification Criteria) to describe any pending litigation or arbitration formally commenced against it.

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: \_\_\_\_\_

Pending Litigation and Arbitration			
<p><b>Choose one of the following:</b></p> <p><input type="checkbox"/> No pending litigation and arbitration.</p> <p><input type="checkbox"/> Below is a description of all pending litigation and arbitration against the Bidder (or each Joint Venture member if Bidder is a Joint Venture).</p>			
Year	Matter in Dispute	Value of Pending Claim in US\$ Equivalent	Value of Pending Claim as a Percentage of Net Worth

**- Note -**  
*This form shall only be included if Criterion 2.2 of Section 3 (Evaluation and Qualification Criteria) is applicable.*



**Form FIN - 1: Historical Financial Performance**

Each Bidder must fill out this form.

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: \_\_\_\_\_

<b>Financial Data for Previous 3 Years [US\$ Equivalent*]</b>		
<b>Year 1:</b>	<b>Year 2:</b>	<b>Year 3:</b>

**Information from Balance Sheet**

<b>Total Assets (TA)</b>			
<b>Total Liabilities (TL)</b>			
<b>Net Worth = TA-TL</b>			
<b>Current Assets (CA)</b>			
<b>Current Liabilities (CL)</b>			
<b>Working Capital = CA - CL</b>			

<b>Most Recent Working Capital</b>		To be obtained for most recent year and carried forward to FIN - 3 Line 1; in case of Joint Ventures, to the corresponding Joint Venture Partner's FIN - 3.
------------------------------------	--	---

**Information from Income Statement**

<b>Total Revenues</b>			
<b>Profits Before Taxes</b>			
<b>Profits After Taxes</b>			

- Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last \_\_\_\_ years, as indicated above, complying with the following conditions.
- Unless otherwise required by Section 3 of the Bidding Documents, all such documents reflect the financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries or affiliates.
  - Historical financial statements must be audited by a certified accountant.
  - Historical financial statements must be complete, including all notes to the financial statements.
  - Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

*\* converted to equivalent US\$ considering the rate of exchange (Selling) published by Nepal Rashtira Bank (Central bank of Nepal) at the end of the period reported above.*

**Form FIN - 2: Average Annual Turnover**

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each member of a Joint Venture in terms of the amounts billed to clients for each year for work in progress or completed.

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: \_\_\_\_\_

<b>Annual Turnover Data for the Last 3 Years</b>			
<b>Year</b>	<b>Amount Currency</b>	<b>Exchange Rate*</b>	<b>US\$ Equivalent</b>
<b>Average Annual Turnover</b>			

*\* converted to equivalent US\$ considering the rate of exchange (Selling) published by Nepal Rastra Bank (Central bank of Nepal) at the end of the period reported above.*

**Form FIN – 3: Availability of Financial Resources**

Bidders must demonstrate sufficient financial resources, usually comprising of Working Capital supplemented by credit line statements or overdraft facilities and others to meet the Bidder's financial requirements for

- (a) its current contract commitments, and
- (b) the subject contract.

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: \_\_\_\_\_

<b>Financial Resources</b>		
No.	Source of financing	Amount (US\$ equivalent)
1	Working Capital (to be taken from FIN - 1)	
2	Credit Line <sup>a</sup>	
3	Other Financial Resources	
Total Available Financial Resources		

<sup>a</sup> To be substantiated by a letter from the bank issuing the line of credit.

**Form FIN- 4: Financial Requirements for Current Contract Commitments**

Bidders (or each Joint Venture partner) 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: \_\_\_\_\_

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

<sup>a</sup> 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).

<sup>b</sup> 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 ≥ 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	Σ D = Sum of available financial resources net of current contract commitments for all partners		Σ 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: 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 2.4.1 of Section 3 (Evaluation and Qualification Criteria)		

**Form EXP - 2: Experience in Key Activities**

Fill out one (1) form per contract.

Contract with Similar Key Activities		
Contract No . . . . . of . . . . .	Contract Identification	
Award Date	Completion Date	
Role in Contract	<input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor	
Total Contract Amount	\$	
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**

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"/> 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 Major Items in Accordance with Criterion 2.5 of Section 3 (Evaluation and Qualification Criteria)		





**Form (JV): Power of Attorney for Joint Venture**

**(On Non-judicial Stamp Paper of Appropriate value, if required as per laws of the country of the bidder, to be purchased in the Name of Joint Venture)**

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 "Authorised Representative" or "Partner In-charge") to exercise all or any of the powers for and on behalf of the Joint Venture in regard to Specification No..... Package ..... the bids for which have been invited by [Nepal Electricity Authority](#) incorporated under the laws of Nepal and having its [Central Office at Durbar Marg, Kathmandu, Nepal](#) (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/Authorised 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 .....

### Form (JV): Undertaking by the Joint Venture Partners

**(On Non-Judicial Stamp Paper of Appropriate Value, if required as per laws of the country of the bidder, to be purchased in the Name of Joint Venture)**

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 Specification No.....for \_\_\_\_\_ (Package) \_\_\_\_\_ associated with \_\_\_\_\_ of Nepal Electricity Authority, a Company incorporated under the Laws of Nepal and having its Central Office at Durbar Marg, Kathmandu, Nepal (hereinafter called the "Employer").

WHEREAS the Party No.1, 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 of Equipment Materials stipulated in the bidding documents under \_\_\_\_\_ (Package) \_\_\_\_\_ 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 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) do 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 arising 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 alongwith 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 authorised representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

Common Seal of .....  
has been affixed in my/ our  
presence pursuant to Board of  
Director's Resolution dated .....

For Lead Partner (Party No.-1)  
For and on behalf of M/s  
.....

Name .....

Designation .....

Signature .....

(Signature of the authorized representative)

WITNESS :

I. ....

II. ....

Common Seal of .....  
has been affixed in my/ our  
presence pursuant to Board of  
Director's Resolution dated .....

For Party No.-2  
For and on behalf of M/s.....

Name .....

(Signature of the authorized representative)

Designation .....

Signature .....

WITNESS :

I. ....

II. ....

Common Seal of .....  
has been affixed in my/ our  
presence pursuant to Board of  
Director's Resolution dated .....

For Party No.-3  
For and on behalf of M/s.  
.....

Name .....

Designation .....

Signature .....

(Signature of the authorized representative)

WITNESS :

I. ....

II. ....

### Form (JV): Letter of Intent by JV Partners to enter Into JV Agreement

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 Specification No.....for (Package) ..... associated with ..... of Nepal Electricity Authority, a Company incorporated under the Laws of Nepal and having its Central Office at Durbar Marg, Kathmandu, Nepal (hereinafter called the "**Employer**").

WHEREAS the Party No.1, 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 ..... (Package) ..... 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 fulfill 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 proforma 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 arising 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 alongwith 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 authorised representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

Common Seal of .....  
has been affixed in my/ our

For Lead Partner (Party No.-1)  
For and on behalf of M/s



presence pursuant to Board of Director's Resolution dated .....

Name .....  
Designation .....

Signature ..... (Signature of the authorized representative)

WITNESS :

I. ....

II. ....

Common Seal of .....  
has been affixed in my/ our presence pursuant to Board of Director's Resolution dated .....

For Party No.-2  
For and on behalf of M/s.....

Name .....

(Signature of the authorized representative)

Designation .....

Signature .....

WITNESS :

I. ....

II. ....

Common Seal of .....  
has been affixed in my/ our presence pursuant to Board of Director's Resolution dated .....

For Party No.-3  
For and on behalf of M/s.  
.....

Name .....

Designation .....

Signature ..... (Signature of the authorized representative)

WITNESS :

I. ....

II. ....