

BIDDING DOCUMENT
for
THE PROCUREMENT OF

Upgrading of Dipeni Marga, Damak, Jhapa

National Competitive Bidding (NCB)
Single Stage Two Envelope

Contract ID: DMO/JHAPA/ROAD/DM/073-74

Issued on: 14-04-2017 17:00

IFB No: DMO/JHAPA/ROAD/DM

Employer: District Development Committee (DDC), Jhapa

Country: Nepal

Abbreviations

BD	Bidding Document
BDF	Bidding Forms
BDS	Bid Data Sheet
BOQ	Bill of Quantities
COF	Contract Forms
DP	Development Partners
DoLIDAR	Department of Local Infrastructure Development and Agricultural Roads
ELI	Eligibility
EQC	Evaluation and Qualification Criteria
EXP	Experience
FIN	Financial
GCC	General Conditions of Contract
GoN	Government of Nepal
ICC	International Chamber of Commerce
IFB	Invitation for Bids
ITB	Instructions to Bidders
JV	Joint Venture
LIT	Litigation
NCB	National Competitive Bidding
PAN	Permanent Account Number
PPA	Public Procurement Act
PPMO	Public Procurement Monitoring Office
PPR	Public Procurement Regulations
PL	Profit & Loss
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
TS	Technical Specifications
VAT	Value Added Tax
WRQ	Works Requirements

Table of Contents

Section 1.	Instruction to Bidders	6
Section 2.	Bid Data Sheet	28
Section 3.	Evaluation Criteria	32
Section 4.	Bidding Forms	36
Section 5.	Eligible Countries	68
Section 6.	Employer's Requirements	70
Section 7.	General Conditions of Contract	76
Section 8.	Special Conditions of Contract	106
Section 9.	Contract Forms	110
Section 10.	Additional Document	117
Section 11.	Annexure 1	118

Invitation for Bids

Damak Municipality

Damak, Jhapa

Invitation for Bids for the Upgrading of Dipeni Marga

Contract Identification No: DMO/JHAPA/ROAD/DM/001/073-74

Date of publication: 13th April 2017 (31st Chaitra 2073)

1. The Government of Nepal **[GoN]** has allocated funds towards the cost of **Upgrading of Dipeni Marga** and intends to apply part of the funds to cover eligible payments under the Contract for **Upgrading of Dipeni Marga** Contract Identification No: DMO/JHAPA/ROAD/DM/001/073-74. Bidding is open to all eligible Nepalese and Foreign Bidders.
2. Damak Municipality, Damak, Jhapa invites sealed bids or electronic bids from eligible bidders for the sub base works, base works, asphalt concreting works, drain, footpath and street light works etc of Dipeni Marga under National Competitive Bidding – Two Envelope Bidding procedures.
Only eligible bidders with the following key qualifications should participate in this bidding:
Minimum Average Annual Construction Turnover of the best 3 years within the last 10 years:
NRs 62000000.00
Minimum Work experience of similar size and nature:
at least 1 similar black top road project having minimum project cost of NRs 62000000.00 completed.
3. Eligible Bidders may obtain further information and inspect the Bidding Documents at the office of Damak Municipality, Damak, Jhapa
Tel: 023-580502
Fax: 023-580502
E-mail: damakmun@gmail.com
or may visit PPMO website www.bolpatra.gov.np/egp.
4. A complete set of Bidding Documents may be purchased from the office of Damak Municipality, Damak, Jhapa by eligible Bidders on the submission of a written application, along with the copy of company/ firm registration certificate, and upon payment of a non-refundable fee of NRs **5000.00** till **12th May 2017 (29th Baisakh 2074)**. If so requested, the Bidding Documents can also be sent by post/courier services upon payment of additional cost of NRs. **1000.00** for each package. However, the Employer will not be responsible for delay or non-delivery of the documents so sent.

Or

Bidder who chooses to submit their bid electronically may purchase the hard copy of the bidding documents as mentioned above or may download the bidding documents for e-submission from PPMO's Web Site www.bolpatra.gov.np. Bidders, submitting their bid electronically, should deposit the cost (as specified above) of bidding document in the Project's Rajaswa (revenue) account as specified below and the scanned copy (pdf format) of the Bank deposit voucher shall be uploaded by the bidder at the time of electronic submission of the bids. Information to deposit the cost of bidding document in Bank:

Name of the Bank: Rastriya Banijya Bank, Damak, Jhapa

Name of Office: Damak Municipality, Damak, Jhapa

Rajaswa (revenue) Shirshak no. : 2140304018102 Rajaswa (Revenue)

5. Pre-bid meeting shall be held at DMO Jhapa on 02nd May 2017 (19th Baisakh 2074).The bidder or his authorized representative is encouraged to attend the pre-bid meeting.
 6. Sealed or electronic bids must be submitted to the office of Damak Municipality, Jhapa by hand/courier or through PPMO website www.bolpatra.gov.np/egp on or before **12:00** on **14th May 2017(31st Baisakh 2074)**. Bids received after this deadline will be rejected.
 7. The bids will be opened in the presence of Bidders' representatives who choose to attend at **14:00hrs** on **14th May 2017(31st Baisakh 2074)** at the office of Damak Municipality, Damak, Jhapa . Bids must be valid for a period of 90 days after bid opening and must be accompanied by a bid security or scanned copy of the bid security in pdf format in case of e-bid, amounting to a minimum of NRs 15,50,500.00. which shall be valid for 30 days beyond the validity period of the bid (*i.e 10th September 2017*).
 8. If the last date of purchasing and /or submission falls on a government holiday, then the next working day shall be considered as the last date. In such case the validity period of the bid security shall remain the same as specified for the original last date of bid submission.
 9. Other mandatory information as per PPA and PPR^I.
-

Section 1

Instruction to Bidders

Section 1 - Instructions to Bidders

Table of Contents

A. General.....	1-3
1. Scope of Bid.....	1-3
2. Source of Funds.....	1-3
3. Fraud and Corruption.....	1-3
4. Eligible Bidders	1-5
5. Eligible Materials, Equipment, and Services	1-6
B. Contents of Bidding Document	1-6
6. Sections of Bidding Document	1-6
7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting.....	1-7
8. Amendment of Bidding Document	1-8
C. Preparation of Bids.....	1-8
9. Cost of Bidding.....	1-8
10. Language of Bid	1-8
11. Documents Comprising the Bid	1-8
12. Letters of Bid and Schedules	1-9
13. Alternative Bids	1-9
14. Bid Prices and Discounts.....	1-10
15. Currencies of Bid and Payment	1-10
16. Documents Comprising the Technical Proposal	1-11
17. Documents Establishing the Qualifications of the Bidder.....	1-11
18. Period of Validity of Bids.....	1-11
19. Bid Security/Bid-Securing Declaration	1-11
20. Format and Signing of Bid	1-12
D. Submission and Opening of Bids.....	1-13
21. Sealing and Marking of Bids	1-13
22. Deadline for Submission of Bids	1-14
23. Late Bids.....	1-14
24. Withdrawal, Substitution, and Modification of Bids	1-14
25. Bid Opening	1-14
E. Evaluation and Comparison of Bids.....	1-16
26. Confidentiality	1-16
27. Clarification of Bids.....	1-17
28. Deviations, Reservations, and Omissions.....	1-17
29. Examination of Technical Bids.....	1-17
30. Responsiveness of Technical Bid.....	1-17

31. Nonmaterial Nonconformities	1-18
32. Qualification of the Bidder	1-18
33. Correction of Arithmetical Errors.....	1-18
34. Conversion to Single Currency	1-19
35. Margin of Preference.....	1-19
36. Evaluation of Price Bids.....	1-19
37. Comparison of Bids.....	1-20
38. Employer's Right to Accept Any Bid, and to Reject Any or All Bids.....	1-20
F. Award of Contract	1-20
39. Award Criteria	1-20
40. Notification of Award	1-20
41. Signing of Contract.....	1-20
42. Performance Security	1-21

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 Asian Development Bank (hereinafter called "ADB") 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 ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (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 ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB
 - (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 ADB investigation; (b) making false statements to investigators in order to materially impede an ADB 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 ADB's contractual rights of audit or access to information; and
 - (vi) "integrity violation" is any act which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB'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 ADB 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 ADB to remedy the situation;
 - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB'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 participate¹ in ADB-financed, administered, or supported activities or to benefit from an ADB-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; and

¹ 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 that 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.

- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring Bidders, suppliers, and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.2 Furthermore, Bidders shall be aware of the provisions of GCC 28.3 and 73.2 (i).

4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, or government-owned enterprise 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, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed 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 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 A firm shall not be eligible to participate in any procurement activities under an ADB-financed, administered, or supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporary suspended or debarred firm will be rejected.
- 4.5 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.
- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.7 Firms shall be excluded 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 country or any payments to persons or entities in that country.
- 4.8 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)

Annex-1: Provisions Considered for Single-Stage-Two-Envelope-Procedure for Government of Nepal Funded Procurement (between NRs. 20 million to NRs. 1 billion)

6.2 The Invitation for Bids (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 language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Documents

- 11.1 The Bid shall comprise two envelopes submitted simultaneously, one

Comprising the Bid

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 | <p>15.1 The currency(ies) of the Bid and payment shall be as specified in the BDS.</p> <p>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.</p> |
| 16. Documents Comprising the Technical Proposal | <p>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.</p> |
| 17. Documents Establishing the Qualifications of the Bidder | <p>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).</p> <p>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.</p> |
| 18. Period of Validity of Bids | <p>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.</p> <p>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.</p> |
| 19. Bid Security/Bid-Securing Declaration | <p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> (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. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid. 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.

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 Daywork 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 | <p>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.</p> <p>40.2 At the same time, the Employer shall also notify all other Bidders of the results of the bidding. 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.</p> <p>40.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.</p> |
| 41. Signing of | 41.1 Promptly after notification, the Employer shall send the successful |

Contract

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.

43. Provision of PPA and PPR (Applicable in case of GoN funded projects)

- 43.1 If any provision of this document are inconsistent with Public Procurement Act (PPA), 2063 or Public Procurement Regulations (PPR), 2064, and their amendments, the provision of this documents shall be void to the extent of such inconsistency and the provision of PPA and PPR shall prevail.

Section 2
Bid Data Sheet

A. General

ITB 1.1	The number of the Invitation for Bids is: DMO/JHAPA/ROAD/DM
ITB 1.1	The employer is: District Development Committee (DDC), Jhapa
ITB 1.1	The name of the bidding process is: Works NCB Single Stage Two Envelope
	The identification number of the bidding process is: DMO/JHAPA/ROAD/DM
ITB 2.2	The borrower is: Nepal
	The name of the project is: Upgrading of Dipeni Marga, Damak, Jhapa

B. Contents of Bidding Documents

ITB 7.1	<p>For clarification purposes only, the Employer's address is:</p> <p>Attention: Vivek Sigdel</p> <p>Address: Bhadrapur283</p> <p>Telephone: 9852655776</p> <p>Fax:</p> <p>Email Address: info@ddcjhapa.gov.np</p> <p>Requests for clarification should be received by the Employer no later than:</p>
ITB 7.4	<p>A Pre-bid meeting shall take place.</p> <p>Date and Time: 02-05-2017 13:00</p> <p>Place: Damak Municipality Damak, Jhapa</p>
ITB 7.4	A site visit shall not be organized by the employer.

C. Preparation of Bids

ITB 10.1	The language of the bid is English	
ITB 11.2 (g)	The Bidder shall submit with its Technical Bid the following additional documents:	
	SL No	Document Name
	1	1.Letter of Technical Bid; 2. Bid Security 3.Up to date Firm/Company Registration Certificate 4.Business Registration License 5.VAT and PAN Registration Certificates 6.Tax Clearance Certificate up to Fiscal year 2072/073. 7.Joint Venture Authorization/ Agreement (if any) 8.Power of Attorney
ITB 11.3 (b)	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:	
	SL No	Document Name
	1	Not Applicable

ITB 11.3 (d)	The Bidder shall submit with its Price Bid the following additional documents:	
	SL No	Document Name
	1	Letter of Price Bid
ITB 12.1	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 non-responsive.	
ITB 13.1	Alternative bids are not permitted.	
ITB 13.2	Alternative times for completion are not permitted.	
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: None.	
ITB 14.5	The prices quoted by the Bidder shall not be subject to adjustment during the performance of the Contract.	
ITB 15.1	The prices shall be quoted by the bidder and shall be paid in: Nepali Rupees	
ITB 18.1	The bid validity period shall be 90 days.	
ITB 19.1	The Bidder shall furnish a bid security in the amount of: 1550500.00 NPR or equivalent.	
ITB 19.2	The ineligibility period will be: Not Applicable	
ITB 19.4	Any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive. However, if a bidder submits a bid security that deviates in form, amount and/or period of validity, the Employer shall request the Bidder to submit a compliant bid security within 0 days 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.	
ITB 20.1	In addition to the original Bid, the number of copies is: 0	
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: The written confirmation of authorization to sign on behalf of the Bidder shall consist of: An organizational document, board resolution or its equivalent, or power of attorney specifying the representative's authority to sign the Bid on behalf of, and to legally bind, the Bidder. If the Bidder is an intended or an existing joint venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 11.2."]	
ITB 20.2	The Bidder shall submit an acceptable authorization within 0 days.	
D. Submission and Opening of Bids		
ITB 21.1	Bidders have the option of submitting their Bids electronically.	
ITB 21.1 (b)	If bidders shall have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be: As per Annex 1	
ITB 25.1	The opening of the Technical bid shall take place at: Address: Damak Municipality Damak, Jhapa	

	Date and Time: 15-05-2017 14:00 The specific bid opening procedures shall be: As per Annex 1 included in bid document.
ITB 25.5	The Letter of Technical Bid shall be initialed by 3 representatives of the Employer attending the Bid opening.
ITB 25.10	The Letter of Price Bid and Schedules shall be initialed by 2 representatives of the Employer attending the Bid opening.
E. Evaluation and Comparison of Bids	
ITB 34.1	Not Applicable

Section 3

Evaluation and Qualification Criteria

1. Evaluation Criteria

1.1 Adequacy of Technical Proposal

Sl. No.	Criteria Title	Criteria Description
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).

1.2 Completion Time

Not Applicable

1.3 Technical Alternatives

Not Applicable

1.4 Quantifiable Non-conformities and Omissions

Sl. No.	Criteria Title	Criteria Description
1	Quantifiable Non-conformities and Omissions	The evaluated amount of quantifiable nonconformities, errors and/or omissions shall be determined by ascertaining the price of such effect on an equal basis by adjusting the same to the quoted price of the bid. A bid having minor deviations and having no material deviation to cause any serious effect upon the scope, quality, characteristics, terms and conditions, performance or any other requirements stated in the bidding documents and acceptable to the Employer can be considered to be substantially responsive.

1.5 Domestic Preference

Not Applicable

2. Qualifications Criteria

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

Sl. No.	Criteria Title	Criteria Description
1	Nationality	Nationality in accordance with ITB Subclause 4.2. Single entity must meet requirements. In case of joint ventures, each partner must meet requirement. Document required: Forms ELI 1; ELI 2 with attachments
2	Conflict of Interest	No conflicts of interest in accordance with ITB Subclause 4.3. Single entity must meet requirements. In case of joint ventures, each partner must meet requirement. Document required: Letter of Technical Bid
3	Government-Owned Enterprise	Bidder required to meet conditions of ITB Subclause 4.5. Single entity must meet requirements. In case of joint ventures, each partner must meet requirement. Document required: Forms ELI 1; ELI 2 with attachments

Sl. No.	Criteria Title	Criteria Description
4	United Nations Eligibility	Not having been excluded by an act of compliance with a UN Security Council resolution in accordance with ITB Subclause 4.7. Single entity must meet requirements. In case of joint ventures, each partner must meet requirement. Document required: Letter of Technical Bid

2.2 Pending Litigation and Arbitration

Sl. No.	Criteria Title	Criteria Description
1	Pending Litigation and Arbitration	All pending litigation and arbitration, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than 50 percent of the Bidder's net worth calculated as the difference between total assets and total liabilities. In case of single entities, must meet requirement by itself or as partner to past or existing Joint Venture. In case of joint ventures, each partner must meet requirement by itself or as partner to past or existing Joint Venture. Document required: Form LIT-1

2.3 Financial Situation

Sl. No.	Criteria Title	Criteria Description
1	Historical Financial Performance	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 3 (Three) years 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. Single entity must meet requirements. Each partner of a joint venture must meet requirements. Document required: Forms FIN 1 with attachments
2	Average Annual Construction Turnover	Minimum average annual construction turnover of NRS. 6,20,00,000.00 , calculated as total certified payments received for contracts in progress or completed, within the last ten years. Single entity must meet requirements. In case of joint venture, all partners must meet requirements and each partner must meet 25% of the requirement and one partner must meet 40% of the requirement. Document required: Forms FIN 2
3	Financial Resources the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet : The following cash-flow requirement NRs. 1,90,00,000.00	The Bidder must demonstrate that it has the financial resources to meet (a) its current contract commitments, as defined in FIN-4 (Total Financial Requirements for Current Contract Commitments), plus. Single entity must meet requirements. In case of joint venture, each partner must meet requirement for its own contractual commitments. Documents required: Form FIN-4 (b) the requirements for the Subject Contract of. Single entity must meet requirements. In case of joint venture, all partners combined must meet requirements; each partner must meet requirements; one partner must meet requirements. Document required: Forms FIN-3 and FIN-4
4	Other Eligibility	Firm Registration Certificate Business Registration Certificate VAT and PAN Registration certificate Tax Clearance Certificate/Tax return submission evidence/evidence of time extension for the F/Y 072/73

2.4 Construction Experience

Sl. No.	Criteria Title	Criteria Description
1	Contracts of Similar Size and Nature	<p>Participation in at least one contracts that have been successfully or substantially completed within the last 10 years and that are similar to the proposed works, where the value of the Bidder's participation exceeds NPR. 6,20,00,000.00. 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> <p>Single entity must meet requirements.</p> <p>In case of joint venture, all partners combined must meet requirement as follows: Either one partner must meet requirement Or any two partners must each demonstrate one (1) successfully or substantially completed contract of similar size and nature.</p> <p>Document required: Form EXP-</p>
2	Construction Experience in Key Activities	<p>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:</p> <p>i) Asphalt Concrete: 365.00 cu.m</p> <p>Single entity must meet requirements.</p> <p>In case of joint venture, all partners combined must meet requirements.</p> <p>Document required: Form EXP-2</p>

Section 4
Bidding Forms

Section 4 - Bidding Forms

Table of Forms

Letter of Technical Bid	4-2
Letter of Price Bid.....	4-4
Bid Security.....	4-6
Bid-Securing Declaration.....	4-7
 Technical Proposal.....	 4-8
Personnel.....	4-8
Form PER – 1: Proposed Personnel	4-8
Form PER – 2: Resume of Proposed Personnel	4-9
Equipment	4-10
Site Organization	4-11
Method Statement.....	4-11
Mobilization Schedule	4-11
Construction Schedule	4-11
 Bidder's Qualification.....	 4-12
Form ELI - 1: Bidder's Information Sheet	4-13
Form ELI - 2: Joint Venture Information Sheet	4-14
Form LIT - 1: Pending Litigation and Arbitration.....	4-15
Form FIN - 1: Historical Financial Performance	4-16
Form FIN - 2: Average Annual Construction Turnover	4-17
Form FIN - 3: Availability of Financial Resources	4-18
Form FIN - 4: Financial Requirement for Current Contract Commitments.....	4-19
Form FIN - 5: Compliance Check of Financial Resources.....	4-20
Form EXP - 1: Contracts of Similar Size and Nature.....	4-21
Form EXP - 2: Construction Experience in Key Activities.....	4-22
 Schedules.....	 4-23
Schedule of Payment Currencies.....	4-23
Tables of Adjustment Data.....	4-24
Activity Schedule	4-25
Bill of Quantities	4-26

Letter of Technical Bid

-Note-

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

Date:

ICB/NCB No.:

Invitation for Bid No.:

To:.....

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
 - (b) We offer to execute in conformity with the Bidding Documents the following Works: _____

 - (c) Our Bid consisting of the Technical Bid and the Price Bid shall be valid for a period of days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
 - (d) Our firm, including any Subcontractors or Suppliers for any part of the Contract, 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 ADB, 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].¹
- (i) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.
- (j) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Employer's Requirements) and our technical proposal, or as otherwise agreed with the Employer.

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

¹ Use one of the two options as appropriate.

Letter of Price Bid

-Note-

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

Date:

ICB/NCB No.:

Invitation for Bid No.:

To:.....

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.

(b) We offer to execute in conformity with the Bidding Documents the following Works: _____

(c) The total price of our Bid, excluding any discounts offered in item (d) below is:

[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 Summary of Bill of Quantities for admeasurement contracts or Activity Schedule for lump sum contracts 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: _____

(e) Our Bid shall be valid for a period of days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

(f) If our Bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents.

-
- (g) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: ¹

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

- (h) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (j) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

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

Bid Security

Bank Guarantee

Bank's name, and address of issuing branch or office¹

Beneficiary: *Name and address of employer*

Date:

Bid Security No.:

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

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Technical Bid and Letter of Price Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB, or (iii) fails or refuses to furnish the domestic preference security, if required.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.²

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

Note

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

¹ All italicized text is for use in preparing this form and shall be deleted from the final document.

² Or 758 as applicable.

Bid-Securing Declaration

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

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

Alternative No.: *[insert identification No if this is a bid for an alternative]*

To: *[insert complete name of employer]*

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of *[insert the number of months or years indicated in ITB 19.2 of the BDS]* starting on the date that we receive a notification from the Employer, if we are in breach of our obligation(s) under the bid conditions, because we

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Technical Bid and Letter of Price Bid; or
- (b) do not accept the correction of errors in accordance with the Instruction to Bidders (hereinafter “the ITB”); or
- (c) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB, or (iii) fail or refuse to furnish the Domestic Preference Security, if required.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) 28 days after the expiration of our Bid.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

Name: *[insert complete name of person signing the Bid-Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of bidder]*

Dated on _____ day of _____, _____

Corporate Seal *[where appropriate]*

– Note –

In case of a joint venture, the Bid-Securing Declaration must be in the name of all partners to the joint venture that submits the bid.

Technical Proposal

Personnel

Form PER – 1: Proposed Personnel

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

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

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

[illegible]

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.

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

Omit the following information for equipment owned by the Bidder.

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

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Bidders Qualification

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

Form ELI - 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
In case of Joint Venture, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following documents. <input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2. <input type="checkbox"/> 2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 20.2. <input type="checkbox"/> 3. In case of Joint Venture, letter of intent to form Joint Venture or Joint Venture agreement, in accordance with ITB 4.1. <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.	

Form ELI - 2: Joint Venture Information Sheet

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

Joint Venture / Specialist Subcontractor Information	
Bidder's legal name	
Joint Venture Partner's or Specialist Subcontractor's legal name	
Joint Venture Partner's or Specialist Subcontractor's country of constitution	
Joint Venture Partner's or Specialist Subcontractor's year of constitution	
Joint Venture Partner's or Specialist Subcontractor's legal address in country of constitution	
Joint Venture Partner's or Specialist Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following documents. <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 20.2. <input type="checkbox"/> 3. In the case of government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.	

Specialist Subcontractor is a specialist enterprise engaged for highly specialized processes that cannot be provided by the main Contractor.

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 joint ventures, each Joint Venture Partner must fill out this form separately, and provide the Joint Venture Partner name below:

Joint Venture Partner: _____

Pending Litigation and Arbitration			
Choose one of the following:			
<input type="checkbox"/> No pending litigation and arbitration.			
<input type="checkbox"/> Below is a description of all pending litigation and arbitration involving the Bidder (or each Joint Venture member if Bidder is a Joint Venture).			
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 joint ventures, each Joint Venture Partner must fill out this form separately, and provide the Joint Venture Partner name below:

Joint Venture Partner: _____

Financial Data for Previous ____ Years [US\$ Equivalent]		
Year 1:	Year 2:	Year ____:

Information from Balance Sheet

Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA – TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA - CL			

Most Recent Working Capital		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

Total Revenues			
Profits Before Taxes			
Profits After Taxes			

- ☐ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last ____ years, as indicated above, complying with the following conditions.
- Unless otherwise required by Section 3 of the Bidding Document, all such documents reflect the financial situation of 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).

Form FIN - 2: Average Annual Construction 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, converted to US Dollars at the specified exchange rate.

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

Joint Venture Partner: _____

Annual Turnover Data for the Last ____ Years (Construction only)			
Year	Amount Currency	Exchange Rate	US\$ Equivalent
Average Annual Construction Turnover			

Form FIN – 3: Availability of Financial Resources

Bidder 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 joint ventures, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner name below:

Joint Venture Partner: _____

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

^a To be substantiated by a letter from the bank issuing the line of credit.

Form FIN- 4: Financial Resources Requirement

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 joint ventures, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner name below:

Joint Venture Partner: _____

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

Form FIN - 5: Compliance Check of Financial Resources (Criterion 2.3.3 of Section 3)

Form FIN-5A: For Single Entities

For Single Entities:	Total Available Financial Resources from FIN-3 (C)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN-4 (D)	Available Financial Resources net of CCC (C-D)	\geq	Requirement ^a
_____	_____	_____	_____	\geq	100% of Requirement from Section 3 - 2.3.3(b)
(Name of Bidder)					

Form FIN-5B: For Joint Ventures

For Joint Ventures:	Total Available Financial Resources from FIN-3 (C)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN-4 (D)	Available Financial Resources net of CCC (C-D)	\geq	Requirement ^a
One Partner:					
_____	_____	_____	_____	\geq	B(%) of Requirement
(Name of Partner)					
Each (Other) Partner:					
_____	_____	_____	_____	\geq	A(%) of Requirement
(Name of Partner 1)					
_____	_____	_____	_____	\geq	A(%) of Requirement
(Name of Partner 2)					
_____	_____	_____	_____	\geq	A(%) of Requirement
(Name of Partner 3)					
All partners combined			$\sum (C-D)^b =$	\geq	100% of Requirement from Section 3 - 2.3.3(b)

- Note -

Form FIN - 5 is made available for use by the bidder as a self-assessment tool, and by the employer as evaluation work sheet, to determine compliance with financial resources.

^a Requirement for the subject contract is defined in Criterion 2.3.3(b) of Section 3. Value A is the required percentage of the subject contract, which each partner must meet; and value B is the required percentage of the subject contract, which one partner must meet. A and B values are defined in Criterion 2.3.3 of Section 3 (Evaluation and Qualification Criteria).

^b $\sum (C - D)$ = sum of available financial resources net of current contract commitments (CCC) for all partners.

Form EXP – 1: Contracts of Similar Size and Nature

Fill up one (1) form per contract.

Contract of Similar Size and Nature		
Contract No of	Contract Identification	
Award Date		Completion Date
Total Contract Amount	US\$	
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's Name Address Telephone/Fax Number E-mail		
Description of the similarity in accordance with Criterion 2.4.1 of Section 3		

Form EXP - 2: Construction Experience in Key Activities

Fill up one (1) form per contract.

Contract with Similar Key Activities		
Contract No of	Contract Identification	
Award Date		Completion Date
Total Contract Amount	US\$	
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		

Schedules

Schedule of Payment Currencies

Forinsert name of Section of the Works

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. In such a case, the Employer should prepare separate tables for each Section of the Works.

	A	B	C	D
Name of Payment Currency	Amount of Currency	Rate of Exchange to Local Currency	Local Currency Equivalent $C = A \times B$	Percentage of Net Bid Price (NBP) $\frac{100 \times C}{NBP}$
Local Currency		1.00		
Foreign Currency #1				
Foreign Currency #2				
Foreign Currency #3				
Net Bid Price				100.00
Provisional Sums Expressed in Local Currency		1.00		
BID PRICE				

-- Note --

The rates of exchange shall be the selling rates 28 days prior to the deadline for submission of bids published by the source specified in BDS 15.

Price Adjustment : Table A - Local Currency

NA

Activity Schedule

[Schedules of Prices – Lump Sum Contract]

The Employer shall indicate the list of major activities comprising the works and the number of measurement units consistent with the description of works, drawings, and specifications in Section 6 (Employer's Requirements). Each work item shall be described in sufficient detail to provide clear guidance to Bidders with respect to the type of works, their scope and complexity, and compliance with the required standards.

Bidders are required to enter the prices against each work item on a lump sum basis. Work items against which no lump sum price is entered by the Bidder will not be paid by the Employer when executed and shall be deemed covered by other work items against which the lump sum prices were entered. The sum of prices entered against each work item will represent the total bid price.

The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the Activity Schedule, and where no Items are provided, the cost shall be deemed to be distributed among the Amounts for the related Items of Work.

Bill of Quantities

[Admeasurement Contract]

Bill of Quantities

Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Particular Conditions of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices bid in the priced Bill of Quantities shall, except as otherwise provided under the Contract, include all construction equipment, labor, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of items against which the Contractor has failed to enter a rate or price shall be deemed covered by other rates and prices entered in the Bill of Quantities. The units and rates in figures entered into the Bill of Quantities should be typewritten or if written by hand, must be in print form. Bill of Quantities not presented accordingly may be considered nonresponsive.
5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
6. General directions and descriptions of work and materials are not necessarily repeated or summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.
7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with the Conditions of Contract.
8. The method of measurement of completed work for payment shall be in accordance with [*insert the name of a standard reference guide, or full details of the methods to be used. The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the Civil Engineering Standard Method of Measurement of the Institution of Civil Engineers in the United Kingdom.*]
9. Arithmetic errors will be corrected by the Employer as follows:
 - (a) 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 Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of 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.

10. Rock is defined as all materials that, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake horsepower with a single, rear-mounted, heavy-duty ripper.

Bill of Quantities

1 Provisional Sum						
Procument Item Details						
SL. No	Item Description	Unit	Quantity	Unit Rate(NPR)	Amount(NPR)	
1	Insurance of works, plants, materials, loss and damage to equipments, Contractor's workmen and employees and third party insurance against damage to other persons and property .	ps	1.00	550,000.00	550,000.00	
2	Relocation of the utilities and services as instructed by the Project Manager	ps	1.00	200,000.00	200,000.00	
3	Carry out additional tests for material and works as required and instructed by the Project Manager.	ps	1.00	100,000.00	100,000.00	
4	Supplying and erecting traffic sign & Information Bord in place including 50mm dia. Steel tube, 2mm. thick steel plate, cement concrete, painting, writing and supporting steel angle nut and bolit etc. complete	ls	1.00	50,000.00	50,000.00	
2 Construction work						
2.1 Works for complete or part construction and civil engineering work						
2.1.1 Construction works for plants mining and manufacturing and for buildings relating to the oil and ga						
Procument Item Details						
SL. No	Item Description	Unit	Quantity	Bidder's Rate(NPR)	Bidder's Rate (in words)	Total Amount (NPR)
1	Site Cleance before work start and after work complection including cutting of bamboos, Diversion & Dewatering work all complete.	m2	10582.5			
2	Earthwork in Excavation in foundation with trench filling in all type of soil as per specification and drawing all complete.	m³	2278.35			
3	Providing, laying, hammering and levelling of dry Stone Soling with compaction as per drawing and specification all complete.	m³	560.25			
4	Providing and laying of 1:2:4 PCC Works for foundation as drawing ,specification and engineer's instruction all complete.	m³	373.5			
5	Providing and laying of 1:2:4 Plum concrete Works for Drain wall as drawing ,specification and engineer's instruction all complete.	m³	852.83			
6	Centering levelling & fixing of localhard wood formworks	m2	4731.0			
7	Providing laying bending and binding of Reinforecement Bars fe-415 as per srawing and specification all complete.	kg	62351.58			
8	Providing and laying of PCC 1: 1.5:3 for RCC work as per drawing and specification all complete.	m³	448.25			

Procurement Item Details						
SL. No	Item Description	Unit	Quantity	Bidder's Rate(NPR)	Bidder's Rate (in words)	Total Amount (NPR)
9	Preparation of subgrade as mentioned in the specification and directed by the Engineer.	m2	8092.5			
10	Providing, laying, spreading, watering, leveling and compaction of natural sand gravel sub base grading as per table 12.1 of standard specification and lead upto 10m according to the designed camber all complete as mentioned in the specification and directed by the Engineer.	m³	2365.5			
11	Providing, laying, spreading, watering, leveling and compaction of crusher run materials for base course lead up to 10m according to the designed camber all complete as mentioned in the specification and directed by the Engineer.	m³	1213.88			
12	Providing and spraying bituminous prime coat MC30/MC70 including cleaning the road surface using wire, brushes, broom etc before applying prime coat as mentioned in the specification. Spray rate as instructed by engineer	ltr	8092.5			
13	Providing and spraying bituminousTack coat MC30/MC70 including cleaning the road surface using wire, brushes, broom etc before applying prime coat as mentioned in the specification. Spray rate as instructed by engineer	ltr	8092.5			
14	Providing, mixing, laying and compaction of asphalt concrete of 40mm thick all complete as mentioned in the specification and directed by the Engineer.	m³	323.7			
15	Providing & Laying of interlocking type of approved & pattern over 60mm thick stone dust including compaction ,dust laying of interlocking paving blocks with line & level all complete as per draing & instruction Engineer	Sqm	3735.0			
16	Providing & Laying per cast Concrete kerb stone of size 300*300*150 mm1:1:2 ratio all all complete as per draing & instruction Engineer	nos	9130.0			
17	Single Arm Galvanized Pole 9 m	nos	52.0			
18	Battery (12 v), 100 Ah Tubular Gel @C10batteries	nos	52.0			

Procurement Item Details						
SL. No	Item Description	Unit	Quantity	Bidder's Rate(NPR)	Bidder's Rate (in words)	Total Amount (NPR)
19	140 Watt peak Solar Panels	nos	52.0			
20	Street Light poles including battery box, structure for panels, etc.	nos	52.0			
21	Earthing and Protection, All Complete.	nos	52.0			
22	Installation materials, Complete Streetlight project with photoelectric sensors	nos	52.0			
23	PCC in the ratio of 1:1.5:3 for each Pole, Complete for Streetlight project.	nos	52.0			
24	Installation and Logistics, Complete Streetlight project	nos	52.0			
25	Charge Controller With Dusk to Down Function.	nos	52.0			
26	Lamp (LED) 40 Watt	nos	52.0			

Section 5
Eligible Countries

ELIGIBLE COUNTRIES

Nepal.

Section 6
Employer's Requirements

Specifications

All the works need to be completed as per **STANDARD SPECIFICATION OF ROADS AND BRIDGES AND SPECIFICATION OF RURAL ROAD OF DoLIDAR.**

Special Provisions

This Special Provisions are for the details of the Work Items not covered in above mentioned STANDARD SPECIFICATION OF ROADS AND BRIDGES and / or to supplement the requirements stated in the STANDARD SPECIFICATION OF ROADS AND BRIDGES

Drawings

The drawings will be provided in separate volume

SUPPLEMENTARY INFORMATION

NOT APPLICABLE

Personnel Requirements

Equipment Requirements

Section 7

General Conditions of Contract

Section 7 - General Conditions of Contract

[Name of Employer]

[Name of Contract]

Table of Contents

A. General	7-4
1. Definitions	7-4
2. Interpretation	7-6
3. Language and Law	7-7
4. Contract Agreement	7-7
5. Assignment	7-7
6. Care and Supply of Documents	7-7
7. Confidential Details	7-7
8. Compliance with Laws	7-8
9. Joint and Several Liability	7-8
10. Project Manager's Decisions	7-9
11. Delegation	7-9
12. Communications	7-9
13. Subcontracting	7-9
14. Other Contractors	7-9
15. Personnel and Equipment	7-9
16. Employer's and Contractor's Risks	7-9
17. Employer's Risks	7-9
18. Contractor's Risks	7-10
19. Insurance	7-10
20. Site Investigation Reports	7-11
21. Contractor to Construct the Works	7-11
22. The Works to Be Completed by the Intended Completion Date	7-11
23. Designs by Contractor and Approval by the Project Manager	7-11
24. Safety	7-11
25. Discoveries	7-11
26. Possession of the Site	7-11
27. Access to the Site	7-12
28. Instructions, Inspections, and Audits	7-12
29. Appointment of the Adjudicator	7-12
30. Procedure for Disputes	7-12
B. Staff and Labor	7-13
31. Forced Labor	7-13
32. Child Labor	7-13
33. Workers' Organizations	7-13
34. Nondiscrimination and Equal Opportunity	7-13
C. Time Control	7-14
35. Program	7-14
36. Extension of the Intended Completion Date	7-14
37. Acceleration	7-14
38. Delays Ordered by the Project Manager	7-14
39. Management Meetings	7-15
40. Early Warning	7-15

D. Quality Control	7-15
41. Identifying Defects	7-15
42. Tests	7-15
43. Correction of Defects	7-15
44. Uncorrected Defects	7-15
E. Cost Control.....	7-16
45. Contract Price.....	7-16
46. Changes in the Contract Price	7-16
47. Variations	7-16
48. Cash Flow Forecasts	7-17
49. Payment Certificates.....	7-17
50. Payments	7-17
51. Compensation Events.....	7-18
52. Tax	7-19
53. Currencies	7-19
54. Price Adjustment	7-19
55. Retention	7-20
56. Liquidated Damages.....	7-20
57. Bonus	7-20
58. Advance Payment.....	7-20
59. Securities.....	7-21
60. Dayworks.....	7-21
61. Cost of Repairs.....	7-21
F. Force Majeure	7-21
62. Definition of Force Majeure	7-21
63. Notice of Force Majeure.....	7-22
64. Duty to Minimize Delay	7-22
65. Consequences of Force Majeure	7-22
66. Force Majeure Affecting Subcontractor.....	7-23
67. Optional Termination, Payment, and Release.....	7-23
68. Release from Performance	7-23
G. Finishing the Contract.....	7-24
69. Completion	7-24
70. Taking Over	7-24
71. Final Account.....	7-24
72. Operating and Maintenance Manuals	7-24
73. Termination.....	7-24
74. Fraud and Corruption.....	7-25
75. Payment upon Termination.....	7-27
76. Property	7-27
77. Release from Performance	7-27
78. Suspension of ADB Loan or Credit	7-27
79. Eligibility.....	7-

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 subconsultants 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 ADB 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 ADB. 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 ADB.
- 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 Defects**
- 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 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 GCC 46.1 [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:

$$P_c = A_c + B_c \text{ Imc/loc}$$

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 coefficients¹ specified in the **PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency "c;" and

¹ 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_c , 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.

Imc is a consolidated index prevailing at the end of the month being invoiced and loc 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 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 destroyed 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 | <p>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.</p> <p>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.</p> |
| 73. Termination | <p>73.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.</p> <p>73.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:</p> <ul style="list-style-type: none"> (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 ADB's Anticorruption Policy requires that Borrowers (including beneficiaries of ADB-financed activity), as well as Contractors, Subcontractors, Manufacturers, and Consultants under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB

- (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 ADB investigation; (b) making false statements to investigators in order to materially impede an ADB 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 ADB’s contractual rights of audit or access to information; and
 - (vi) “integrity violation” is any act which violates ADB’s Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’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 ADB-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 ADB to remedy the situation; and
 - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’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 participate² in ADB-financed, administered, or supported activities or to benefit from an ADB-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 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 ADB Loan or Credit

78.1 In the event that ADB suspends the Loan or Credit 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 ADB's suspension notice.
- (b) if the Contractor has not received sums due it within the 28 days for payment provided for in GCC 50.1 [Payments], the Contractor may immediately issue a 14-day termination notice.

² 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.

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, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed 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

A. General

GCC 1.1 (d)	The financing institutions is/are: Asian Development Bank
GCC 1.1 (r)	The employer is: District Development Committee (DDC), Jhapa
GCC 1.1 (w)	The Intended Completion Date for the whole of the Works shall be: 48 months from date of agreement
GCC 1.1 (cc)	The project manager is: Executive Officer
GCC 1.1 (ff)	The site is located at Damak Municipality and is defined in drawings No. NA
GCC 1.1 (ii)	The start date shall be: 21-06-2017
GCC 1.1 (mm)	The Works consist of: construction of sub base works,base works,asphalt concreting works,footpath, drain and cross drainage works etc
GCC 2.2	Sectional Completions are: Not Applicable
GCC 2.3 (j)	<p>The following documents also form part of the Contract:</p> <ol style="list-style-type: none"> 1) 1) Value Added Tax (VAT) certificate - PAN certificate 2) Tax clearance certificate 3) firm registration certificate 4) business registration certificate
GCC 3.1	<p>The language of the contract is: English</p> <p>The law that applies to the Contract is the law of Nepal</p>
GCC 11.1	The Project Manager may not delegate any of his duties and responsibilities.
GCC 14.1	Schedule of other contractors: Not Applicable
GCC 19.1	<p>The minimum insurance amounts and deductibles shall be: The minimum insurance amounts and deductibles shall be:</p> <ol style="list-style-type: none"> 1. The minimum cover for loss of or damage to the Works, Plant and Materials is: 115% of the Contract Amount. 2. The maximum deductible for insurance of the Works and of Plant and Materials is: NRs. 100,000.00 (one hundred thousand) 3. The minimum cover for loss or damage to Equipment is : NRs. 2,000,000.00(two million) 4. The maximum deductible for insurance of Equipment is: NRs. 25000.00 (twenty five thousand) 5. The minimum for insurance of other property is: Nrs. 1,000,000.00 (one hundred thousand) with unlimited number of occurrences 6. The maximum deductible for insurance of other property is: NRs. 25,000.00 twenty five thousand) 7. The minimum cover for personal injury or death insurance <ol style="list-style-type: none"> i. for the Contractor's employees is that specified in the Labor act of Nepal and ii. for other people is: NRs. 500,000.00(five hundred thousand)with an unlimited number of occurrences.
GCC 20.1	Site investigation reports are: Not Applicable
GCC 23.1	The following shall be designed by the Contractor: Not Applicable
GCC 26.1	The site Possession Date(s) shall be: 7 days after signing agreement
GCC 29.1	<p>Appointing Authority for the Adjudicator:</p> <p>None</p>
GCC 30.3	<p>The Adjudicator shall be paid by the hour at the rate of: 0NPR</p> <p>The reimbursable expenses are: None</p>

GCC 30.4	Institution whose arbitration procedures shall be used: The place of arbitration shall be: NEPCA,Kathmandu			
C. Time Control				
GCC 35.1	The Contractor shall submit for approval a Program for the Works within 14 days from the date of the Letter of Acceptance.			
GCC 35.3	The period between Program updates is 60 days. The amount to be withheld for late submission of an updated Program is 50000NPR			
D. Quality Control				
GCC 43.1	The Defects Liability Period is: 365 days.			
E. Cost Control				
GCC 53.1	The currency of the Employer’s country is: NPR			
GCC 54.1	The Contract is not subject to price adjustment in accordance with GCC Clause 54, and the following information regarding coefficients does not 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.			
GCC 55.1	The proportion of payments retained is 5%			
GCC 56.1	The liquidated damages for the whole of the Works are 0.05% per day. The maximum amount of liquidated damages for the whole of the Works is 10% of the final Contract Price.			
GCC 57.1	The Bonus for the whole of the Works is 0 % of the final Contract Price per day. The maximum amount of Bonus for the whole of the Works is 0% of the final Contract Price.			
GCC 58.1	The Advance Payments shall be 20.00% and shall be paid to the Contractor no later than 14. In installment basis after 30 days			
	Sl. No.	Installment	Percentage	Requirement
	1	First	10.0	Submission of APG
	2	Second	10.0	APG,IP,Site Mobilization
GCC 58.3	Repayment of the Advance Payments shall be: 40% from each payment certificate.			
GCC 59.1	The Performance Security amount is :5% of Contract Value for the Bid whose value is lower up to 15% of Estimated Amount. If the bid amount is more than 15% below the estimated amount (Bid amount <85% of estimated amount) then performance security will be as follow: Performance security amount = 0.05*Bid amount + 0.5* (0.85 *estimated amount –Bid Amount).The Bid Price and Cost Estimate shall be inclusive of Value Added Tax NPR NPR			
G. Finishing the Contract				
GCC 72.1	The date by which operating and maintenance manuals are required is one month after the date of work acceptance The date by which “as built” drawings are required is before the final bill payments			
GCC 72.2	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 72.1 is 200000NPR			
GCC 73.2 (h)	The maximum number of days is 200 days			
GCC 75.1	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is 25 %			

Section 9
Contract Forms

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.

Table of Forms

Letter of Acceptance.....

Contract Agreement

Performance Security

Advance Payment Security

Letter of Acceptance

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

..... 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 numbers and words 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 theday 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 Specification,
 - (h) the Drawings,
 - (i) the Completed Activity Schedules or Bill of Quantities, and
 - (j) any other documents shall be added here.¹
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.

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

Signed by
by
for and on behalf of the Employer

Signed
for and on behalf the Contractor

in the presence of:

in the presence of:

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

Performance Security

*Bank's name, and address of issuing branch or office*¹

Beneficiary: *Name and address of employer*

Date:.....

Performance Guarantee No.:

We have been informed that *name of the contractor*. (hereinafter called "the Contractor") has entered into Contract No. *reference number of the contract*. datedwith you, for the execution of *name of contract and brief description of works*. (hereinafter called "the Contract").

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

At the request of the Contractor, we *name of the bank*. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *name of the currency and amount in figures* ². (*amount in words*.) such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of, ³, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded. ⁴

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

-- Note to Bidder --

If the institution issuing the performance security is located outside the country of the employer, it shall have a correspondent financial institution located in the country of the employer to make it enforceable.

¹ All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

² The guarantor shall insert an amount representing the percentage of the contract price specified in the contract and denominated either in the currency(ies) of the contract or a freely convertible currency acceptable to the employer. If the bank issuing the performance security is located outside the country of the employer, it shall have a correspondent financial institution located in the country of the employer.

³ Insert the date 28 days after the expected completion date. The employer should note that in the event of an extension of the time for completion of the contract, the employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months][1 year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

⁴ Or the same or similar to this clause specified in the Uniform Rules for Demand Guarantees, ICC Publication No. 758 where applicable.

Advance Payment Security

Bank's name, and address of issuing branch or office¹

Beneficiary: *Name and address of employer*

Date:

Advance Payment Guarantee No.:

We have been informed that *name of the contractor*. (hereinafter called "the Contractor") has entered into Contract No. *reference number of the contract*. datedwith you, for the execution of *name of contract and brief description of works*. (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum *name of the currency and amount in figures*². (..... *amount in words*.) is to be made against an advance payment guarantee.

At the request of the Contractor, we *name of the bank*. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *name of the currency and amount in figures*³. (..... *amount in words*.) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number *contractor's account number*. at *name and address of the bank*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty percent (80%) of the Contract Price has been certified for payment, or on the ... day of⁴, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 (*or ICC Publication No. 758 as applicable*).

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

-- Note to Bidder --

If the institution issuing the advance payment security is located outside the country of the employer, it shall have a correspondent financial institution located in the country of the employer to make it enforceable.

¹ All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

² The guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the employer.

³ Footnote 2.

⁴ Insert the expected expiration date of the time for completion. The employer should note that in the event of an extension of the time for completion of the contract, the employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months][1 year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Annex-1

Annex-1: Provisions Considered for Single-Stage-Two-Envelope-Procedure for Government of Nepal Funded Procurement (between NRs. 20 million to NRs. 1 billion)

Section 1- Instructions to Bidders

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1.	ITB 2.1	The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the Asian Development Bank (hereinafter called "ADB") 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.	GoN Funded: In accordance with its annual program and budget, approved by the GoN, the implementing agency indicated in the BDS plans to apply a portion of the allocated budget to eligible payments under the contract(s) for which this Bidding Document is issued. Or Public Entities' own Resource Funded: In accordance with its annual program and budget, approved by the public entity, the implementing agency indicated in the BDS plans to apply a portion of the allocated budget to eligible payments under the contract(s) for which this Bidding Document is issued. Or DP Funded: The GoN has applied for or received financing (hereinafter called "funds") from the Development Partner (hereinafter called "the DP") indicated in the BDS toward the cost of the project named in the BDS. The GoN intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
2.	ITB 2.2	Payments by ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (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.	Applicable for DP Funded Project Only DP Funded: Payment by the DP will be made only at the request of the GoN and upon approval by the DP in accordance with the terms and conditions of the financing agreement between the GoN and the DP (hereinafter called the "Loan/Grant Agreement"), and will be subject in all respects to the terms and conditions of that Loan/Grant Agreement. No party other than the GoN shall derive any rights from the Loan Agreement or have any claim to the funds.
3.	ITB 3	ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB (v) "obstructive practice" means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to	Replace By: 3.1 The Government of Nepal (GoN) requires that the Procuring Entities as well as bidders, suppliers and contractors and their sub-contractors under GoN/DP-financed contracts, shall adhere to the highest standard of ethics during the procurement and execution of such contracts. In this context, the Employer; (a) defines, for the purposes of this provision, the terms set forth below as follows: (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party; (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or

		<p>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 ADB's contractual rights of audit or access to information; and</p> <p>(vi) "integrity violation" is any act which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: abuse, conflict of interest, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.</p> <p>(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 ADB 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 ADB to remedy the situation;</p> <p>(d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB'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 participate¹ in ADB-financed, administered, or supported activities or to benefit from an ADB-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</p>	<p>attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</p> <p>(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;</p> <p>(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.</p> <p>(iv) "obstructive practice" means:</p> <p>(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a GoN/DP investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or</p> <p>(bb) acts intended to materially impede the exercise of the GoN's/DP's inspection and audit rights provided for under sub-clause 3.5 below.</p> <p>(b) will reject bid(s) if it determines that the bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;</p> <p>3.2 The Bidder shall not carry out or cause to carry out the following acts with an intention to influence the implementation of the procurement process or the procurement agreement :</p> <p>(a) give or propose improper inducement directly or indirectly,</p> <p>(b) distortion or misrepresentation of facts,</p> <p>(c) engaging in corrupt or fraudulent practice or involving in such act,</p> <p>(d) interference in participation of other competing bidders,</p> <p>(e) coercion or threatening directly or indirectly to cause harm to the person or the property of any person to be involved in the procurement proceedings,</p> <p>(f) collusive practice among bidders before or after submission of bids for distribution of works among bidders or fixing artificial/uncompetitive bid price with an intention to deprive the Employer the benefit of open competitive bid price,</p>
--	--	--	---

		<p>practices or other integrity violations; and</p> <p>(e) will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring Bidders, suppliers, and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.</p>	<p>(g) contacting the Employer with an intention to influence the Employer with regards to the bids or interference of any kind in examination and evaluation of the bids during the period from the time of opening of the bids until the notification of award of contract.</p> <p>3.3 PPMO, on the recommendation of the Procuring Entity may blacklist a Bidder for a period of one (1) to three (3) years for its conduct including on the following grounds and seriousness of the act committed by the bidder:</p> <p>(a) if convicted by a court of law in a criminal offence which disqualifies the Bidder from participating in the contract,</p> <p>(b) if it is established that the contract agreement signed by the Bidder was based on false or misrepresentation of Bidder's qualification information,</p> <p>(c) if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for, or in executing, a GoN/DP-financed contract.</p> <p>(d) if the Successful Bidder fails to sign the Contract..</p> <p>3.4 A bidder declared blacklisted and ineligible by the GoN, Public Procurement Monitoring Office (PPMO) and/or the DP in case of DP funded project, shall be ineligible to bid for a contract during the period of time determined by the GoN, PPMO and/or the DP.</p> <p>3.5 The Contractor shall permit the GoN/DP to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the GoN/DP, if so required by the GoN/DP.</p> <p>3.6 DP Funded: In pursuance of the fraud and corruption policy, the DP.</p> <p>(a) will reject a proposal if it determines that the bidder recommended for award has directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;</p> <p>(b) will cancel the portion of the loan/ credit/ grant allocated to a contract if it determines at any time that representative(s) of the GoN or of a beneficiary of the fund engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the GoN having taken timely and appropriate action</p>
--	--	--	--

			satisfactory to the DP to remedy the situation.
4.	ITB 4.3	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, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.	In case of GoN Funded Project : Eligible country is Nepal.
5.	ITB 4.4	A firm shall not be eligible to participate in any procurement activities under an ADB-financed, administered, or supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporary suspended or debarred firm will be rejected.	4.4 A firm that is under a declaration of ineligibility by the GoN/DP in accordance with ITB 3, at the date of the deadline for bid submission or thereafter, shall be disqualified.
6.	ITB 4.7	Firms shall be excluded 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 country or any payments to persons or entities in that country.	<p>Replace By</p> <p>Firms shall be excluded in any of the cases, if</p> <p>(a) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Nepal prohibits any import of goods or Contracting of works or services from that country or any payments to persons or entities in that country.</p> <p>(b) DP Funded: as a matter of law or official regulation, Nepal prohibits Commercial relations with that country, provided that the DP is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required;</p> <p>(c) DP Funded: a firm has been determined to be ineligible by the DP in relation to their guidelines or appropriate provisions on preventing and combating fraud and corruption in projects financed by them.</p>
7.	ITB 7.5	The Bidder is requested to submit any questions in writing, to reach the Employer not later than 1 week before the meeting.	The Bidder is requested to submit any questions in writing, to reach the Employer not later than 10 days before the meeting.
8.	ITB 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	The price to be quoted in the Letter of Price Bid shall be the total price of the Bid, excluding any discounts offered.

		Letter of Price Bid may result in the rejection of the Bid.	
9.	ITB14.7	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.	The word "28 days" is replaced by "30 days".
10.	ITB 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.	In case of GoN Funded project: Foreign Currency is not applicable.
11.	ITB 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.	The word "28 days" is replaced by "30 days".
12.	ITB19.1	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.	In case of GoN funded project, word "Bid Securing Declaration" is removed.
13.	ITB19.2	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.	Not applicable for GoN funded projects.
14.	ITB 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	Replace "all from a reputable bank from an eligible countries" by "A Class commercial bank of Nepal".

		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.	
15.	ITB19.4	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.	In case of GoN funded project, word "Bid Securing Declaration" is removed.
16.	ITB19.8	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.	In case of GoN funded project, word "Bid Securing Declaration" is removed.
17.	ITB 20.2	The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid. 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.	The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid.
18.	ITB24.1	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	24.1 A Bidder may withdraw, or modify its bid after it has been submitted through e-submission. Procedures for withdrawal or modification of submitted bids are as follows: (i) E-submitted bids. a) Bidder may submit modification or withdrawal prior to the deadline prescribed for submission of bid through e-GP system by using the forms and instructions provided by the system. Once a Bid is

		<p>(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</p> <p>(b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.</p> <p>24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.</p> <p>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.</p>	<p>withdrawn, bidder will not be able to submit another bid response for the same bid.</p> <p>24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders after completion of the bid opening.</p> <p>24.3 Bidder may submit request for withdrawal or modification only one time.</p> <p>24.4 No bid may be withdrawn if the bid has already been modified.</p> <p>24.5 Request for withdrawal or modification must be made through the same medium of submission. Request for withdrawal or modifications through different medium shall not be considered.</p> <p>24.6 The following provisions apply for withdrawal or modification of the Bids:</p> <p>(i) In case of bids submitted in hard copy no bid shall be withdrawn or modified in the interval between 24 hours prior to the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.</p> <p>(ii) In case of e-submitted bids no bids shall be withdrawn or modified in the interval between deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.</p>
19.	ITB25.3	<p>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.</p>	<p>Not applicable for GoN funded projects.</p>
20.	ITB25.6	<p>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-</p>	<p>The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, or modification; alternative proposals; and the presence or absence of a bid security or a if one was required. The Bidders' representatives who are</p>

		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.	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.
21.	ITB25.10	(b)whether there is a modification or substitution 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.	In case of GoN funded project, word "Substitution" is removed.
22.	ITB29.2(c)	Bid Security or Bid-Securing Declaration, if applicable; and	In case of GoN funded project, word "Bid Securing Declaration" is removed.
23.	ITB34.1	For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.	Not applicable for GoN funded projects.
24.	ITB 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.	If the bid for an Unit Rate Contract, which results in the lowest Evaluated Bid Price is seriously unbalanced or front loaded or substantially below updated estimates in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analysis, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder by 8% to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.
25.	ITB41.2	Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.	The Employer and the successful Bidder shall sign the Contract Agreement within the period 15 days of the receipt of LOA from the employer.
26.	ITB42.1	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	Within Fifteen (15) days of the receipt of Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, as specified below from A class Commercial Bank using Sample Form for the Performance Security included in

		Section 9 (Contract Forms), or another form acceptable to the Employer.	Section IX (Contract Forms), or another form acceptable to the Employer. The performance security issued by any foreign Bank outside Nepal must be counter guaranteed by an "A" class commercial Bank in Nepal. i) If bid price of the bidder selected for acceptance is up to 15 (fifteen) percent below the approved cost estimate, the performance security amount shall be 5 (five) percent of the bid price. ii) For the bid price of the bidder selected for acceptance is more than 15 (fifteen) percent below of the cost estimate, the performance security amount shall be determined as follows: Performance Security Amount = [(0.85 x Cost Estimate – Bid Price) x 0.5] + 5% of Bid Price. The Bid Price and Cost Estimate shall be inclusive of Value Added Tax.
27.	ITB42.2	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.	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 and on the recommendation of procuring entity, PPMO may blacklist a Bidder for its conduct for a period of one (1) to three (3) years. 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.

Section 2- Bid Data Sheet (BDS)

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1	ITB 2.1	The Borrower is: -----	"The Borrower" is Replaced by "Employer"
3	ITB19.4	Any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive. However, if a bidder submits a bid security that deviates in form, amount and/or period of validity, the Employer shall request the Bidder to submit a compliant bid security within days 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.	Any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive.
4	ITB20.2	The Bidder shall submit an acceptable authorization within _____ days.	Not applicable for GoN funded projects.

Section 3- Evaluation and Qualification Criteria (EQC)

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1	2.1.3 ADB Eligibility	Not having been declared ineligible by ADB, as described in ITB Subclause 4.4.	Not applicable for GoN funded projects.
2	2.4 Construction Experience	General Experience is not found	Add General Experience Form as follows:

For General Experience

Criteria		Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
2.4.1 General Construction Experience					
Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last (1)..... years prior to the applications submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP - 1

Section 4- Bidding Forms

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1	Letter of Technical Bid	(g) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by ADB, under the Employer's country laws or official regulations or by an act of compliance with a decision of the United Nations Security Council. (i) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.	(g) In case of GoN fund projects remove word " by ADB" (i) In case of GoN fund projects replace "ADB" by "Employer/DP"
2	Letter of Price Bid	(j) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.	In case of GoN fund projects replace "ADB" by "Employer/DP"
3	Bid Security Declaration	Additional template for bid security declaration	Not applicable for GoN funded projects.
4	Form FIN-5	Additional Compliance Check of Financial Resources is available	Not applicable for GoN funded projects.
5	Form Exp-1	No General Experience Form found	Add "General Experience Form" as follows if General Experience is asked.

Form EXP - 1: General Construction Experience

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

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

6	Schedules	Schedule of Payments found which is applicable for ICB only	Not applicable for GoN funded projects.
7	Personnel and equipment	Personnel and equipment section missing	Add Personnel and Equipment forms as follows:

Personnel

Form PER - 1: Proposed Personnel

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

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

Form PER - 2: Resume of Proposed Personnel

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

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

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

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

Equipment

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

For the equipment under Bidder's ownership

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

For the Equipment to be leased/hired

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

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

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

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

Section 6- Employer's Requirement

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1	Personnel and Equipment	Additional section for Personnel and equipment found	Not applicable for GoN funded projects.(Already incorporated in Section 4)

Section 7- General Condition of Contract (GCC)

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1	GCC 3.2 Language and Law	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.	Not Applicable for GoN Funded Projects.
2	GCC 4.1 Contract Agreement	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	As per ITB 41.2
3	GCC 28.3 Instructions, Inspections, and Audits	The Contractor shall permit ADB 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 ADB. 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 ADB.	The word "ADB" replaced by "GoN/DP and/or persons appointed by GoN/DP"
4	GCC 29.1 and 29. 2 Appointment of the Adjudicator	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. 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	Not applicable for GoN funded projects.

		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.	
5	GCC 30 Procedure for Disputes	<p>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.</p> <p>30.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.</p> <p>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.</p>	<p>30.1 The Employer and the Contractor shall attempt to settle amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.</p> <p>30.2 Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred to Arbitration within 30 days after the expiration of amicable settlement period.</p> <p>30.4 In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures published by the Nepal Council of Arbitration (NEPCA) at the place given in the SCC.</p>
6	GCC 36.2 Extension of the Intended Completion Date	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.	The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information at least 7 days prior to the intended completion date. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
7	GCC 46.1(a) Changes in the Contract Price	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.	In case of GoN funded projects, the word "1%" has been changed by "2%".
8	GCC 46.1(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.	In case of GoN funded projects, the word "15%" has been changed by "10%"
9	GCC 50.1 Payments	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	In case of GoN funded projects, the word "28 days" is replaced by "30 days".

		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.	
10	GCC 52.1 Tax	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].	Same Can be Apply Current provision of GoN is “30 days”
11	GCC 59.1 Securities	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.	The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC, by a ‘A’ class commercial bank acceptable to the Employer, and denominated in Nepalese Rupees. The Performance Security shall be valid until a date 30 days from the date of issue of the Defect Liability Certificate in the case of a bank guarantee.
12	GCC 71.1 Final Account	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	The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 60 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 60 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
13	GCC 73	Termination	73.1 In no case, the contractor shall terminate the contract unilaterally, without duly notifying the Employer. 73.2 The Employer may terminate the Contract at any time if the contractor : a. does not commence the work as per the Contract, b. abandons the work without

			<p>completing,</p> <p>c. fails to achieve progress as per the Contract.</p> <p>73.3 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.</p> <p>73.4 Fundamental breaches of Contract shall include, but shall not be limited to, the following :</p> <ul style="list-style-type: none"> (a) The Contractor uses the advance payment for matters other than the contractual obligations, (b) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager; (c) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days; (d) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation. (e) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 90 days of the date of the Project Manager's certificate; (f) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager; (g) the Contractor does not maintain a Security, which is required; and (h) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC. (i) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing
--	--	--	--

			<p>the Contract, pursuant to GCC 74.1.</p> <p>73.5 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 73.2 above, the Project Manager shall decide whether the breach is fundamental or not.</p> <p>73.6 Notwithstanding the above, the Employer may terminate the Contract for convenience.</p> <p>73.7 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.</p>
14	GCC 74	Fraud and Corruption	<p>74.1 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 15 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site.</p> <p>74.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 15. For the purposes of this Sub-Clause;</p> <p>(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.</p> <p>(ii) "fraudulent practice"⁵ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</p> <p>(iii) "collusive practice"⁶ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;</p> <p>(iv) "coercive practice"⁷ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to</p>

			<p>influence improperly the actions of a party;</p> <p>(v) "obstructive practice" is</p> <p>(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or</p> <p>(bb) acts intended to materially impede the exercise of the GON's/DP's inspection and audit rights provided.</p>
15	GCC 75	Payment upon Termination	<p>The sub-clause provision has been added:</p> <p>75.3 If the Contract is terminated because of fundamental breach of Contract or for any other fault by the Contractor, the performance security shall be forfeited by the Employer. In such case, amount to complete the remaining works as per the Contract shall be recovered from the Contractor as Government dues.</p>
16	GCC 78.	Suspension of ADB Loan or Credit	Not Applicable for GoN funded project

Section 9- Contract Forms

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
1	LOI	Not in ADB SBD	Following Form is Added

Letter of Intent

[on letterhead paper of the Employer]

Date:

To: *name and address of the Contractor*

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

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

Authorized Signature:

Name:

Title:

CC:

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

[Notes on Letter of Intent

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

SN	Clause No.	Existing Content (ADB's Provision)	Replaced by (GoN Provision)
2	LOA	Different template with GON	Following Form is Added

Letter of Acceptance

[on letterhead paper of the Employer]

Date:

To: *name and address of the Contractor*

Subject: *Notification of Award*

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

You are hereby instructed to contact this office to sign the formal contract agreement within 15 days with Performance Security of NRs. in accordance with the Conditions of Contract consisting of a Bank Guarantee using for that purpose the Performance security Format included in Section 9 (Contract Forms) of this Bidding Document.

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

Authorized Signature:

Name and Title of Signatory: