

Procurement of Works

Small Contract IA [With Provision for e-Submission]

Procurement of

Bankegaira Dullu Aaspatal Pakki Sadak Nirman Dullu

Issued on : 12-01-2017

Invitation for Bid 01/073/074

Project Name : Bankegaira Dullu Aaspatal Pakki Sadak Nirman

Office Name :

Office Address : dullu Municipality Dullu Dailekh, Dailekh

Financing Agency : 1.Government Budget

Loan/Credit/Grant number : N/A

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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



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41/8/17
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दुल्लू नगरपालिका कार्यालय दुल्लू, दैलेख सिलबन्दी बोलपत्र आव्हानको सूचना

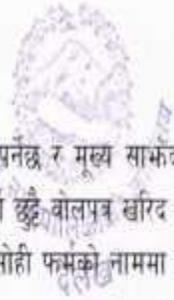
सूचना नं. १/२०७३/०७४

प्रथम पटक प्रकाशित मिति :- २०७३/१०/०१

यस दुल्लू नगरपालिका कार्यालय दुल्लू दैलेखले तपशिल बमोजिमका कामहरू सिलबन्दी बोलपत्रको माध्यमबाट आगामी २०७४ जेष्ठ मसान्त भित्र निर्माण/खरिद गराउनु पर्ने भएको हुँदा नेपाल सरकारबाट इजाजत प्राप्त निर्माण व्यवसायी/सप्लायर्सहरूबाट देहायको शर्तहरूको अधिनमा रही तोकिएको समय भित्र रितपूर्वकको सिलबन्दी बोलपत्र आव्हान गरिएको छ ।

- बोलपत्र प्रथम पटक राजधानी राष्ट्रिय दैनिकमा प्रकाशित मितिले ३० औं दिन भित्र कार्यालय समयमा नविकरण भएको इजाजत पत्र, मूल्य अभिवृद्धि कर दर्ता प्रमाण पत्र, नगरपालिका क्षेत्र भित्रका व्यवसायी भए न पा.मा व्यवसाय दर्ता गरेको प्रमाण पत्र, आ.व.२०७२/०७३ सम्म कर चुक्ता प्रमाण - पत्र अन्य ठेक्का सम्बन्धि कागजात सहितको प्रमाणित प्रतिनिधिहरू संलग्न राखी निवेदनका साथ तपशिलमा उल्लेखित रकम (पछि फिर्ता नहुने गरी) बुझाई यस कार्यालयमा आफै आइ वा आफ्नो आधिकारीक प्रतिनिधि पठाई निवेदन दिई बोलपत्र खरिद गर्न सकिनेछ । विद्युतीय संचारको माध्यमबाट बोलपत्र पेश गर्न चाहने निर्माण व्यवसायी/सप्लायर्सहरूले सार्वजनिक खरिद अनुगमन कार्यालयको [singal portal \(www.ppmo.gov.np\)](http://www.ppmo.gov.np) मा गई थप जानकारी प्राप्त गर्न, बोलपत्र **Download** गर्न र बोलपत्र दाखिला गर्न सकिनेछ ।
- बोलपत्रको प्रत्येक पानामा सहिछाप गरी देहाय बमोजिमको कार्यको लागि नियमानुसारको धरौटी रकम सिलबन्दी बोलपत्र साथ कमिनामा ३ महिना (९० दिन) म्याद भएको जमाना पत्र (विड वण्ड) वा यस कार्यालयको नाममा राष्ट्रिय वाणिज्य बैङ्क दुल्लू शाखामा रहेको ४३४०३०३००३००१ धरौटी खातामा धरौटी वापतको रकम जम्मा गरेको सक्कलै बैङ्क भौचर सिलबन्दी बोलपत्रका साथ संलग्न राखि यस कार्यालयमा दर्ता गर्नु पर्नेछ । विद्युतीय संचार माध्यमबाट बोलपत्र पेश गर्न चाहने इच्छुक निर्माण व्यवसायीहरूलाई सहजीकरणको लागि दुल्लू नगरपालिका कार्यालय योजना शाखामा सम्पर्क गर्नुहुन अनुरोध छ । वेब साइटबाट सिधै डाउनलोड गर्ने कम्पनी वा निर्माण व्यवसायी वा निर्माताका अधिकृत विक्रेताले बोलपत्रसाथ तल तोकिएको बोलपत्र दस्तुर वापतको रकम यस कार्यालयको रा.वा.बैङ्क दुल्लूमा रहेको खाता नं ४३४०३०३००३००१ मा र धरौटी वापतको रकम जम्मा गरेको भौचरको Scan copy समेत पेश गर्नुपर्ने छ । सिलबन्दी बोलपत्र स्वीकृत भएपछि आफूले कबोल गरेको अंकको ५ प्रतिशतले हुने रकम तथा १५ प्रतिशत भन्दा बढि घटेकोमा घटी कबोल अंक को ५० प्रतिशतमा ५ प्रतिशत थप गरी सोही धरौटी खातामा जम्मा गरेको बैङ्क भौचर वा घटीमा ३ महिना (९० दिन) म्याद भएको कार्य सम्पादन बैङ्क जमाना पत्र (परफरमेन्स वण्ड) पेश गर्नु पर्नेछ ।
- प्रथम पटक सूचना प्रकाशित मितिले ३१ औं दिन दिनको १२.०० वजे भित्र यस कार्यालयमा सिलबन्दी बोलपत्र दर्ता गर्नु पर्ने छ । बोलपत्र खरिद तथा दाखिला गर्ने अन्तिम दिन सार्वजनिक विदा पर्ने गएको खण्डमा उक्त दिनको लगत्तै कार्यालय खुलेको दिन सोही समय भित्र खरिद र दाखिला गर्न सकिने छ ।
- दर्ता भएको बोलपत्र ३१ औं दिन दिनको २.०० वजे यस कार्यालयमा बोलपत्र दाता वा निजको प्रतिनिधिको रोहवरमा खोलिने छ । बोलपत्र दाता वा निजको प्रतिनिधि उपस्थित नभए पनि बोलपत्र खोल्न बाधा पर्ने छैन ।
- दररेट पेश गर्दा प्रत्येक आईटममा अंक र अक्षर दुवैमा प्रष्ट लेख्नु पर्नेछ । अंक र अक्षर फरक परेमा अक्षरमा लेखिएकोलाई मान्यता दिइने छ ।
- रित नपुगेका, म्याद नाघि आएको वा अन्य कुनै शर्त राखिएको बोलपत्र उपर कुनै कारवाही गरिने छैन ।
- संयुक्त उपक्रम (Joint Venture) को रूपमा बोलपत्र खरिद वा दाखिला गर्दा बढिमा ३ वटा फर्महरूको एउटा संयुक्त उपक्रम बनाई बोलपत्र खरिद वा दाखिला गर्न सकिने छ । तर यस्तो संयुक्त उपक्रममा सबै फर्महरूको प्रमाण-पत्र सहित शेयर खुलेको संयुक्त लगानी सम्बन्धि सक्कलै सम्झौता बोलपत्र साथ पेश गर्नुपर्नेछ । यसरी संयुक्त उपक्रममा समावेश भएका


कार्यकारी अधिकृत



- साभेदारहरूको हिस्सा कम्तिमा २५ प्रतिशत हुनुपर्नेछ र मुख्य साभेदारको हिस्सा ४० प्रतिशत वा सो भन्दा बढि हुनुपर्नेछ र संयुक्त उपक्रममा समावेश भएका फर्महरूले अर्को छुट्टै बोलपत्र खरिद र दाखिला गर्न पाइने छैन ।
८. जुन फर्मको नामबाट बोलपत्र खरिद गरिएको हो सोही फर्मको नाममा मात्र बोलपत्र दाखिला गर्न पाइने छ ।
९. कुनै बोलपत्रदाताले E- Bidding बाट एक पटक पेश गरेको बोलपत्र फिर्ता लिन वा संशोधन गर्न चाहेमा उक्त कार्य E-bidding प्रक्यावाटै गर्नुपर्ने छ ।
१०. E- Bidding मार्फत बोलपत्र पेश गर्ने बोलपत्रदाताहरूले अनिवार्य रूपमा बोलपत्र खोलिने मितिले सात दिन भित्र आफुले पेश गरेको बोलपत्र सम्बन्धि सम्पूर्ण कागजातको सक्कल प्रिन्टिड **HARD COPY** । यस कार्यालयमा पेश गर्नुपर्ने छ ।
११. बोलपत्र पूर्ण वा आंशिक रूपमा स्वीकृत गर्ने वा नगर्ने सम्पूर्ण अधिकार यस नगरपालिका कार्यालयमा निहित रहनेछ ।
१२. ठेक्का नं. १/२०७३/०७४ मात्र E- Bidding बाट गरीएको छ ।
१३. यसमा भएकोमा यसै बमोजिम र यसमा उल्लेख नभएको हकमा सार्वजनिक खरिद ऐन, २०६३ र सार्वजनिक खरिद नियमावली २०६४, शंसोधन सहित स्थानीय निकाय आर्थिक प्रशासन नियमावली २०६४ र अन्य प्रचलित ऐन कानुन अनुसार हुनेछ ।
१४. अन्य कुरा बुझ्नु परेमा यस नगरपालिका कार्यालयमा कार्यालय समय भित्र सम्पर्क गरी बुझ्न सकिने छ ।

क्र. स.	ठेक्का नं.	कामको विवरण	ल.ई. रकम भ्याट र कन्टिन्जेन्स वाहेक	बोलपत्र फाराम दस्तुर रु.	जमानत रकम	ठेकेदारको बर्ग
१	१/२०७३/०७४	बाँकेगैरा दुल्लू अस्पताल पक्की सडक निर्माण कार्य	७९,८०,०५८।६८	३,०००।-	२,३०,४००	ईजाजत प्राप्त ठेकेदार/ सप्लायर्सहरु

बाँकेगैरा अधीक्षक

कार्यकारी अधिकृत

दुल्लू नगरपालिका कार्यालय, दैलेख

Section II. Instructions to Bidders

Notes on the Instructions to Bidders

This section of the bidding documents should provide the information necessary for Bidders to prepare responsive bids, in accordance with the requirements of the Employer. It should also give information on bid submission, opening and evaluation, and award of Contract.

These Instructions to Bidders shall not be part of the Contract and shall cease to have effect once the Contract is signed.

Instructions to Bidders

A. General

1. **Scope of Works**

The Employer invites bids for the contraction of works as detailed in attached specifications, drawings and the bill of quantities provided herein. The successful Bidder is expected to complete the works as mentioned in the Bidding Data.

2. **Eligible Bidder**

This Invitation for Bids is open to all registered firms or Joint Venture association (JV) of firms with qualifications as described in the Bidding Data. In the case of a JV:

 - i. the maximum number¹⁻¹ of partners in Joint Venture association shall be as specified in the Bidding Data
 - ii. all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and
 - iii. the JV shall nominate a Representative who shall be authorized to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.
 - iv. If a Bidder selected for contract award is a joint venture association then such JV shall register with the Inland Revenue Office for the Permanent Account Number(PAN) and Value Added Tax (VAT)

3. **Qualification of the Bidder**

3.1 All Bidders shall provide Qualification Information in Section III. To qualify for award of the Contract, Bidders shall meet the following minimum qualifying criteria:

 - a. general Work Experience as a sole prime contractor or management contractor or partner of joint venture association or sub contractor as specified in Bidding Data.
 - b. average annual volume of construction work completed as a sole prime contractor or management contractor or partner of joint venture association or sub contractor in the last ten years of at least the amount specified in the Bidding Data;⁵
 - c. successful specific experience as prime contractor or management contractor or partner of joint venture association or sub contractor in the construction of at least the number of works, each with a value as specified in Bidding Data of a nature and complexity equivalent to the Works in the last ten years (to comply with this requirement, works cited shall be at least 80 percent complete);
 - d. liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments

¹⁻¹ To facilitate contract administration the number of JV partners is usually limited to 3.

⁵ This amount is usually not less than 1.5 times the estimated annual cash flow for the Contract.

which may be made under the Contract, of no less than the amount specified in the Bidding Data.⁶

- e. Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as a Contract Manager; and other personnel as specified in the Bidding Data; and
 - f. proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment, in working condition for the contract duration, as listed in the Bidding Data;
- 3.2 The figures of each of the partners of a joint ventures shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of ITB Sub-Clause 3.1 above. However, for a joint venture to qualify, each of it's partners must meet the qualifying criteria of 3.2(a); at least the percentage specified in Bidding Data of minimum criteria Sub – Clause 3.1(b) and (d) for an individual Bidder and the partner in charge at least the percentage specified in the Bidding Data of minimum criteria of Sub – Clause 3.1 (b); 3.1(c) and 3.1 (d) .Failure to comply with this requirement will result in rejection of the joint venture's bid. Subcontractor's experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria, unless otherwise stated in the Bidding Data.
- 3.3 The values of Turnover and Specific work experiences pursuant to Sub-Clause 3.1 (b) and (c) shall be brought to the current value using the annual inflation rate (National Urban Consumer Price Index; Overall Index) published by Nepal Rastra Bank.

4. One Bid per Bidder

Each Bidder shall submit only one bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one bid shall cause all the proposals with the Bidder's participation to be disqualified. A firm may participate in more than one bid only as a subcontractor.

5. Cost of Bidding

The Bidder shall bear all costs associated with the preparation and submission of his bid and the Employer shall in no case be liable for those costs.

6. Site Visit

The Bidder at his own cost, responsibility and risk may visit the site of the works and acquire all necessary information for preparing the bid and entering into a contract for construction of the works.

B. Bidding Documents

7. Content of Bidding Documents

- The Bidding Documents comprise the documents listed below:
- Section
 - I. Invitation for Bids
 - II. Instructions to Bidders
 - III. Sample Forms of Bid, Qualification Information, Letter of Acceptance and Agreement
 - IV. General Conditions of Contract (GCC)
 - V. Special Conditions of Contract (SCC)
 - VI. Technical Specifications
 - VII. Drawings
 - VIII. Bill of Quantities

⁶ Usually the equivalent of the estimated payments flow over 4-6 months at the average (straight line distribution) construction rate. The actual period of reference shall depend on the speed with which the Employer shall pay the Contractor's monthly certificates.

IX. Sample Forms of Securities Sample Forms of Securities

- 8. Clarification of Bidding Documents** A prospective Bidder may request clarification on the bidding documents in writing and the Employer shall respond to such request. Copies of the response shall be forwarded to all the purchasers of the bidding documents.

C. Preparation of Bids

- 9. Language of Bid** All documents relating to the bid shall be in English unless otherwise specified in Bidding Data.

- 10. Documents Comprising Bid** The bid by the Bidder shall comprise the following:

- a. Bid and Qualification/ Eligibility Information
- b. Bid Security
- c. Priced Bill of Quantities
- d. Rate Analysis (optional at request of Employer)

- 11. Bid Prices** The contract shall be for the whole works described in scope of works based on the priced Bill of Quantities submitted by the Bidder. The Bidder shall fill in rates and prices for all items of the works in Nepali Rupees. Items for which no rate or price is entered shall be deemed covered by the other rates and prices in the Bill of Quantities and shall not be paid by the Employer. All duties, taxes and other levies payable by the contractor under the contract shall be included in the rates, prices and total Bid Price submitted by the Bidder.

- 12. Bid Validity** The bid shall remain valid for the period specified in the Bidding Data.

- 13. Bid Security** 13.1 The Bidder shall furnish a Bid Security in Nepali Rupees in the amount specified in the Bidding Data. The Bid Security shall remain valid for a period of 30 days beyond the original validity period for bid and any period of extension subsequently requested by the employer.

13.2 The Bid Security shall be in the form of a bank guarantee from a bank acceptable to the Employer or a cash voucher deposited in the Bank Account of the Employer specified in the Bidding Data.

13.3 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Employer. The bid Security of a joint venture must define as "Bidder" all joint venture partners and list them in the following manner: a joint venture consisting of " _____," " _____" and " _____".

13.4 The Bid Security may be forfeited

- a) if the Bidder withdraws the bid after bid opening during the period of bid validity; or
- b) if the Bidder does not accept the correction of the Bid Price, pursuant to Clause 24.2; or
- c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
 - (i) sign the Agreement; or
 - (ii) furnish the required Performance Security.

- 14. Format and Signing of Bids**
- One original and one duplicate copy of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the Bidding Data 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. Any entries or amendments including alternations, additions or corrections made shall be initialled by the same authorized person.
- D. Submission of Bids**
- 15. Sealing and Marking of Bids**
- The Bidder shall submit one original and a duplicate copy of the bid. These bids shall be placed in sealed envelopes. Both the sealed envelopes shall be placed in an outer envelope which shall also be sealed. The inner envelopes shall duly be marked as 'Original' and 'Copy'. The envelopes shall be addressed to the Employer at the address provided in the Bidding Data and bear the name and identification number of the contract.
- 16. Pre-Bid Meeting**
- A Pre-Bid meeting if provided for in the Bidding Data shall be held at least 10 days before the bid submission date at the place, date and time as mentioned in the Bidding Data. Any amendment to be made in the Bid subsequent to the Pre-bid meeting shall be issued within 5 days of the meeting and the Addendum shall be circulated to all the purchasers of the Bidding Document, The Addendum thus issued shall be a part of the Bidding document.
- 17. Submission of Bids**
- 17.1 Bidders shall submit their bids by hand or when so specified in the Bidding Data, bidders shall have the option of submitting their bids electronically. In case of manual submission of bids, the format, signing, sealing and marking of bids shall be as specified in ITB 14 and ITB 15.
- 17.2 Bidders submitting their bids electronically shall follow the electronic bid submission procedures specified in the Bidding Data and the Employer's address for electronic bid submission shall be as specified in the Bidding Data.
- 18. Deadline for Submission of Bids /Late Bids**
- 18.1 Bids shall be delivered to the Employer at the address no later than the time and date specified in the Bidding Data.
- 18.2 Any bid received by the Employer after the deadline shall not be accepted and shall be returned unopened to the Bidder.
- 18.3 In case of e-submission of bids, the e-procurement system will, automatically, not allow the e-submission of bid after the deadline for submission of bid.
- 19. Modification and Withdrawal of Bids**
- 19.1 Bidders may modify or withdraw their Bids after it has been submitted by giving a written notice, duly signed by an authorized representative and shall include a copy of the authorization in accordance with Clause 14 before the deadline prescribed in Clause 18. The corresponding modification of the bid must accompany the respective written notice.
- 19.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 16 with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as

appropriate.

- 19.3 No bid may be modified after the deadline for submission of Bids.

E.

Bid Opening and Evaluation

20. Bid Opening

- 20.1 The Employer shall open the bids in the presence of the Bidders' representatives who choose to attend at the time and in the place specified in the Bidding Data
- 20.2 First envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next envelopes marked "Modification" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only envelopes that are opened and read out at the bid opening shall be considered further.
- 20.3 The Bidders' names, the Bid Prices, the total amount of each bid, any discounts, bid modifications and withdrawals, the presence or absence of Bid Security, difference of rate in words and figures, quoted price for alternate technical specification if proposed, whether the Bid Form has signature of the bidder or authorized representative, corrections/effacement or obliteration in bidding document, any remarks made by the bidder in the Bid Form, details of rates if requested and such other details as the Employer may consider appropriate shall be announced by the Employer at the opening.
- 20.4 The Employer shall prepare and provide minutes of the bid opening including the information disclosed to those present.

21. Process to be Confidential

Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced.

22. Clarification of Bids and Contacting the Employer

- 22.1 To assist in the examination, evaluation and comparison of Bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by facsimile, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with Clause 24.
- 22.2 Subject to Sub-Clause 22.1, no Bidder shall contact the Employer on any matter relating to his bid from the time of the bid opening to the time the contract is awarded. If the

Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.

22.3 Any efforts by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidder's bid.

23. Examination of Bids and Determination of Responsiveness

23.1 Prior to the detailed evaluation of Bids, the Employer shall determine whether each bid (a) meets the eligibility criteria defined in Clause 2; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the Bidding documents.

23.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the Bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

23.3 If a bid is not substantially responsive, it shall be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

24. Correction of Errors

24.1 Bids determined to be substantially responsive shall be checked by the Employer for any arithmetic errors. Errors shall be corrected by the Employer as follows:

a) where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern; and

b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted shall govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall govern, and the unit rate shall be corrected.

24.2 The amount stated in the bid shall be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the bid shall be rejected and the Bid Security may be forfeited.

25. Evaluation and Comparison of Bids

25.1 The Employer shall evaluate and compare only the Bids determined to be substantially responsive in accordance with Clause 23.

25.2 In evaluating the Bids, the Employer shall determine for each bid the evaluated Bid Price by adjusting any corrections for errors pursuant to Clause 24;

- 25.3 Further the employer shall evaluate :
- a) Whether the construction work plan, work performance schedule and mobilization period is consistent with the requirement of the bidding document or not,
 - b) Whether the quoted item unit rates in the Bill of quantities are reliable or not,
 - c) Whether or not the quoted price is unbalanced due to unnaturally high rates quoted by the bidder for work items to be completed in the initial stages of the contract or for work items whose quantities are assumed by the bidder to be underestimated.
- 25.4 If the bid, which results in the lowest Evaluated Bid price, is unbalanced or frontloaded in relation to the Employer's estimate of the items of Work to be performed under the contract pursuant to clause 25.3, the Employer shall ask the bidder to give clarification with detailed rate analysis for any or all items of the Bill of Quantities. If the clarification is found satisfactory then the Employer shall increase at the expense of the bidder the performance security set forth in clause 29 by additional 8% of the quoted amount to protect the Employer against financial loss in the event of default of the successful bidder under the contract and if the clarification is found unsatisfactory then the Employer may reject such bid.
- 25.5 The Employer reserves the right to accept or reject any variation deviation or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in bid evaluation

F.

Award of Contract

26. Selection for Award of Contract

- 26.1 The Employer shall select and award the contract to the Bidder who has offered the lowest evaluated Bid Price, provided that such Bidder has been determined to be eligible in accordance with the provisions of clauses 2.and 3. and no application for review of decision is received from other bidders pursuant Sub-Clause 26.3
- 26.2 The Employer shall notify it's intention to award the Contract to the selected bidder in accordance with Sub-Clause 26.1 within 7 days of selection of his bid. The employer shall also provide information regarding the name, address and the contract amount of the successful bidder to all the bidders who participated in the bid.
- 26.3 Any Bidder who is not satisfied with the procurement process or Employer's decision provided as per Sub - Clause 26.2 and believes that the Employer has committed an error or breach of duty which has or will result in loss to the bidder then the bidder may give an application for review of the decision to the Chief of the Procuring Entity (Employer) with reference to the error or breach of duty committed by the Employer. The review application should be given within 7 days of receipt of information regarding the issue of letter by the Employer notifying it's intention to award the contract to the successful bidder.
- 26.4 If the review application is not received by the Employer as

per clause 26.3 then the bid of the Bidder selected as per Sub-Clause 26.1 shall be accepted by the Employer.

27. Employer's Right to Accept any Bid and to Reject any or all Bids

The Employer reserves the right to accept or reject any bid and to cancel the bidding process and reject all bids, at any time prior to the award of the contract, without assigning any reasons whatsoever and without thereby incurring any liability to the affected Bidder or Bidders.

28. Notification of Award and Signing of Agreement

28.1 The Bidder, whose bid is accepted in accordance with Sub-Clause 26.4, will be notified of the award by the Employer prior to the expiration of the bid validity period. This notification (called the "Letter of Acceptance") shall state the sum that the Employer shall pay the Bidder in consideration of the execution, completion, and maintenance of the works as prescribed by the contract.

28.2 Within 15 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in the amount pursuant to Sub - Clause 29 and sign the Contract Agreement.

28.3 If the successful bidder fails to deliver the Performance Security and sign the Agreement pursuant to Sub-Clause 28.2 and if required an additional amount pursuant to Sub-Clause 25.4 then the Employer shall forfeit the Bid Security of the bidder and accept the bid of immediately next lowest evaluated substantially responsive bidder.

28.4 Upon the furnishing by the successful Bidder of the Performance Security and signing of the Agreement, the Employer shall promptly notify the other Bidders that their Bids have been unsuccessful.

29. Performance Security

Within 15 days after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security in acceptable format to the Employer as specified in Section IX and equal to five percent (5%) of the contract Agreement Amount.

30. Advance Payment

The Employer shall make Advance Payment on the Initial Contract Price as stipulated in the Letter of Acceptance, subject to a maximum amount⁷ as stated in the Bidding Data.

31. Additional Securities

The Contractor shall provide additional Performance Security pursuant to Sub - Clause 25.4

⁷ This amount is normally 20 percent of the Contract Price. The amount should be adequate to minimize the needs of the Contractor to borrow for the Contract. This may be particularly important in terms of foreign currency.

32.Adjudicator

The Employer proposes the person named in the Bidding Data to be appointed as Adjudicator under the Contract, at the hourly fee specified in the Bidding Data, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. 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 SCC at the request of either party.

33.Corrupt Fraudulent Practices

33.1 The Government of Nepal (GoN) requires that the procuring entities as well as bidders, suppliers, and contractors and their sub-contractors under GoN/Development Partner(DP)-financed contracts, shall adhere to the highest standard of ethics during the procurement and execution of such contracts. In this context , the Employer;

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:
 - aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a GoN/DP investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - bb) acts intended to materially impede the exercise of the GoN's/DP's inspection and audit rights provided for under sub-clause 33.5 below.
- a) 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;
 - b) will sanction a firm or individual, including declaring ineligible, for a stated period of time, to be awarded a GoN/DP-financed contract 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

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

- (a) give or propose improper inducement directly or indirectly,
- (b) distortion or misrepresentation of facts,
- (c) engaging in corrupt or fraudulent practice or involving in such act,
- (d) interference in participation of other competing bidders
- (e) 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.
- (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,

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

- (a) if convicted by a court of law in a criminal offence which disqualifies the Bidder from participating in the contract,
- (b) if it is established that the contract agreement signed by the Bidder was based on false or misrepresentation of Bidder's qualification information,

33.4 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.

33.5 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

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

- a) will reject a Bid if it determines that the bidder recommended for award has directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- b) will cancel the portion of the loan/ credit/ grant allocated to a contract if it determines at any time that representative(s) of the GoN or of a beneficiary of the fund engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the GoN having taken timely and appropriate action satisfactory to the DP to address such practices when they occur

34. Complaint and Review

- 34.1 If a review application is received by the Client pursuant to ITB 26.3 then the Chief of the Procuring Entity(Employer) shall within five (5) days after receiving the application, give its decision with reasons, in writing;
- a) Whether to suspend the Procurement proceeding and further procedure to be adopted to proceed with the procurement ; or
 - b) To reject the review application.
- 34.2 The decision of the Chief of Procuring Entity shall be final for the Financial Proposal amount which is less than the value stated in the Bidding Data.
- 34.3 If the Applicant is not satisfied with the decision of the Chief of the Procurement Entity in accordance with ITC 34.1, or the decision is not given by the Chief of the Procurement Entity within five (5) days of receipt of review application pursuant to ITB 26.3, then within seven (7) days of receipt of such decision, file an application to the Public Procurement Review Committee of the GoN, stating the reason of its disagreement on the decision of the Client and furnishing the relevant documents, provided that its Bid amount is more than the value as stated in ITB 34.2 Together with the review application, the applicant shall furnish a guarantee, in the form of cash or Bank guarantee equivalent to zero point five percent (0.5%) amount of its quoted financial proposal amount, with the validity period of at least ninety (90) days from the date of the filing of the application.
- 34.4 Late application filed after the deadline pursuant to ITC 34.3 shall not be processed.
- 34.5 The Public Procurement Review Committee, shall give its decision within 30 days after receiving the review application filed pursuant to ITB 34.3 on the basis of i) the information and comments received from the Client, ii)evidence, documents submitted along with the application by the applicant ,and iii) information received on inquiring both the parties regarding the matter.
- 34.6 If the claim made by the Applicant pursuant to ITC 34.3 is found justified, the Review Committee shall return the guarantee to the applicant within seven (7) days of it's decision pursuant to ITB 34.5. The guarantee shall be forfeited if the decision of the review committee dismisses the review application..

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G. Bidding Data

Instruction to Bidders Clause References

A. General

ITB 1	The Employer is: The Scope of Work: Bankegaira Dullu Aaspatal Pakki Sadak Nirman Dullu The Expected Completion date is: 13-06-2017
ITB 2	Bidder's Eligibility Requirement: a) Up to date Firm/Company Registration Certificate b) Business Registration Licence c) VAT and PAN Registration Certificates d) Tax Clearance Certificate or Submissions of Tax Returns up 2072/73 e) A written declaration made by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence. f) Joint Venture Authorization/ Agreement (if any) g) Power of Attorney h) Other documents as needed Maximum number of members in a Joint venture 3

ITB 3

Bidder's Qualification Requirement:

- a) General Work Experience: Construction experiences for at least the **0** prior to the applications submission deadline.
- b) Minimum average annual turnover for the best 3 years in the last 10 years : **0.00**
- c) Specific Work Experience : **0**

Note: Contracts completed 80% or more shall be

- d) Minimum requirement of liquid asset and/or credit facilities : **0.0 NPR**
- e) Additional Personnel requirement (if any): **0**

- f) Minimum essential equipment : **0**

ITB 13.2	<p>The Bank Account of the Employer: 434030300</p> <p>Name of the Bank : Rastriya Bnijiya Bank</p> <p>Address of the Bank : Dullu Dailkeh</p>
ITB 13.3	<p>In case of e-submission if the scanned copy of an acceptable Bid Security letter is not uploaded with the electronic Bid then Bid shall be rejected..</p>
ITB 13.4	<p>(d) in case of e-submission, If the Bidder does not submit the original Bid security letter and/or respond and/or submit the documents and or clarifications within the specified period, when requested by the Employer as per ITB Clause 22.4.</p> <p>(e) if major discrepancy that would influence the outcome of the bid evaluation is found between submitted bid information and verification documents and or clarifications provided by the Bidder during verification process as per ITB Clause 22.4.</p>
ITB 14	<p>The written confirmation of authorization to sign on behalf of the Bidder shall indicate:</p> <p>(a) Power of Attorney; and</p> <p>(b) In the case of Bids submitted by an existing or intended JV an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the</p>
ITB 15	<p>In case of e-submission of bid, the Bidder shall only submit his bid electronically in PDF files as specified in ITB Clause 17.2, If a Bidder submits both the electronic bid and a bid in hard copy within the bid submission deadline, then the submitted Bids shall be accepted for evaluation provided that the facts and figures in hard copy confirm to those in electronic bid. If there is any discrepancy in fact and figures in the electronic bid and bid in hard copy that will effect the outcome of evaluation then the Bids shall be treated as two separate bids from one Bidder and both the Bids shall be disqualified, as per ITB Clause 4.</p>

D. Submission of Bids

ITB 16	<p>A Pre-Bid meeting shall take place.</p> <p>If a Pre-Bid meeting will take place, it will be at the following date, Date and 08-02-2017 12:00 Place: dullu Municipality Dullu Dailekh, Dailekh</p> <p>In addition to the clarification issues, the purpose of the pre-bid meeting will be to demonstrate the process of e-submission and opening.</p> <p>Note: If the date happens to be a public holiday, then this event will take place at the same time on the next working day.</p>
ITB 17.1	Bidders have the option to submit their bids electronically

ITB 17.2 Electronic Bid Submission Procedure:
 The Bidder shall follow the following Bid submission procedure if the Bidder chooses to submit the Bid electronically (e-bid submission):

- a) Interested bidders may either purchase the Bidding documents from the Employer's office as specified in the invitation for Bid (IFB) or choose to download the necessary part of bidding documents from E-procurement section of PPMO's Web Site <http://www.ppmo.gov.np>. In case, the Bidder chooses to download the bidding documents, prepare his bids on downloaded documents, and submit his bid electronically, the Bidder shall be required to deposit the cost of bidding document as specified in IFB. In addition, electronic scanned copy (pdf format) of the Bank deposit voucher shall also be submitted along with the electronic bid files.
- b) The Bidder shall prepare his Bid in the necessary part of bidding documents either downloaded from E-procurement section of PPMO's Web Site <http://www.ppmo.gov.np>. or issued from Employer's office as specified in the Invitation to Bid.
- c) The Bidder shall fill the following documents and forms in hard copy of the issued bid documents or down loaded bid documents for the specific bid, The completed documents and forms shall be signed by the authorised representative of the Bidder with seal of the company
 - i) Bill of Quantity (BOQ) with rate, amount
 - ii) Forms of Bid, Qualification and Eligibility Information as of section -III
- d) The Bidder shall then scan the completed original documents, forms in PDF files with appropriate filename as mentioned in the table below. PDF (Adobe acrobat) version must

S. No.	Documents	PDF File name	Requirement	Remarks
1	Form of Bid as of Section III	Bid form -1	Mandatory	
2	Bid Security (Bank Guarantee) as of Section IX	Bid security-2	Mandatory	
3	Company registration	Company	Mandatory	By all firms in case of a JV
4	VAT registration,	VAT Registration-4	For National firms	By all firms in case of a JV
5	Tax clearances	Tax - 5	For National firms	By all firms in case of JV
6	Power of Attorney of Bid signatory	Power of Attorney - 6	Mandatory	
7	Joint Venture agreement	JV doc -7	Mandatory	JV Bidders only
8	Qualification Information as	Qualifications-8	Mandatory	
9	BOQ with rate, amount and total amount	BOQ-9	Mandatory	

Note;

- Mandatory means the mentioned files must be included in e-submission and non submission of such file shall be considered as non-responsive bid
- In case, the Bidder choose to download the bidding documents and deposit the cost of bidding document as specified in the "Invitation for Bid" then an electronic scanned copy (pdf format) of the Bank deposit voucher should also be submitted along with the electronic bid files as mandatory additional document.

e) For e-submission of Bid, the Bidder shall first register in the e-procurement section of PPMO's Web site <http://www.ppmo.gov.np>

f) The Bidder shall then prepare all the required bidding documents in PDF scan files as specified in (b) and (c), and shall upload the PDF bid files and submit his complete bid online through e-procurement section of PPMO's website <http://www.ppmo.gov.np> within the specified date and time.

g) The Bidder / Bid shall meet the following requirements and conditions for e-submission of bids;

h) The e-submitted bids must be readable through open standards interfaces. Unreadable and or partially submitted bid files (not complying as per ITB Clause 17.2) shall be considered incomplete and rejected for further bid evaluation.

i) In addition to electronically submitted PDF files, the Bidder shall be required to submit original Bid security letter/ documents and clarifications as specified in ITB Clause 22.4. Non submission of original Bid security letter, documents and or clarifications by the Bidder within specified time may cause forfeiture of Bid Security as specified in ITB Clause 13.4 (d).

j) In case of major discrepancy found between electronically submitted PDF bid files and documents/ clarifications provided by the Bidder as per ITB Clause 22.4, the bid shall not be considered for further evaluation and ITB Clause 13.4 (e) shall be applicable.

k) Proposed facility for submission of bid electronically through e-submission is to increase transparency, non-discrimination, equality of access, and open competition. The Bidders are fully responsible to use the e-submission facility properly in e-procurement section of PPMO's website <http://www.ppmo.gov.np> as per specified procedures and in no case the Employer shall be held liable for Bidder's inability to use this facility.

l) When a Bidder submits electronic bid by downloading the bidding documents from the PPMO's webpage it is assumed that the Bidder has prepared his bid by studying and examining the complete set of Bidding documents including specifications, drawings and conditions of contract.

m) Bidders who submit their electronic bid by down loading the Bidding Documents should upload the scanned copy of the Bank Deposit Voucher towards the cost of the documents as mentioned in the "invitation to Bid". The deposited amount shall be verified by the Employer during the bid evaluation process. The submitted Bid shall be non-responsive and shall not be evaluated if the specified cost for bidding document is not deposited in the specified Rajaswa (revenue) account of the Project.

ITB 18 The Employer's address for bid submission purposes is: **Dullu Municipality Office Dullu Dailekh**

The deadline for bid submission is: **14-02-2017 12:00**

For e-submitted bids:

i) The standard time for e-submission is Nepalese Standard Time as set out in the server of PPMO.

ii) The e-procurement system will accept the e-submission of bid from the date after publishing of notice and will automatically not allow the e-submission of bid after the deadline for submission of bid, as specified above for Sealed hard copy Bids.

ITB 19	<p>Add a new sub-clause 19.4 as follows:</p> <p>Modification and Withdrawal of the bid shall be accompanied by a written Power of Attorney of the signatory for Modification and Withdrawal of the bid, duly signed by authorised representative/s of the Firm / all authorised Joint Venture Partners.</p> <p>When a bidder submits his bid in hard copy the e-procurement section does not allow the bidder to submit his Substitution or Modification or Withdrawal through e-procurement section of PPMO's Web site</p> <p>In case of e-submitted bid;</p> <p>i) Bidders may submit his Modification or Withdrawal either in hard copy or through e-submission.</p> <p>ii) For Modification or Withdrawal of bid the Bidder is required to submit PDF scan copy of their Modification or Withdrawal letter and a written Power of Attorney of the signatory for Modification/ Withdrawal, duly signed by Authorise Representative/s of the Firm / all authorised Joint Venture partners.</p>
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E. Bid Opening and Evaluation

ITB 20	<p>The bid opening shall take place at: Dullu Municipality Office Dullu Dailekh</p> <p>Date and Time 14-02-2017 14:00</p> <p>Add the following text as continuation of the paragraph 20.1 :</p> <p>In case of e-submitted bid;</p> <p>i) Electronically submitted bid shall be opened at first in the same time and date as specified above.</p> <p>ii) The e-procurement system allows the Employer to download the e-submitted bid files from the Bidders only after the time for opening the bids.</p> <p>iii) The e-submitted bids must be readable through open standards interfaces. Unreadable and or partially submitted bid files shall be considered incomplete and rejected for further bid evaluation.</p> <p>iv) After opening of e-submitted bids files, all files shall be printed and recorded at the time of bid opening.</p>
ITB 22	<p>22.4 In case of e-submission of bid, upon notification from the Employer the Bidder shall submit the original Bid Security letter, completed Bid, 2a. Qualification Information and other clarifications for verification purpose.</p>
ITB 25	<p>25.6 In case of e-submission bids, the Employer evaluates the bid on the basis of the information in the electronically submitted bid files. For clarification/ verification purpose, the Employer may request the Bidder to submit original Bid security letter, documents/ clarifications as specified in ITB Clause 22.4. In case, if the Bidder cannot substantiate or provide evidence to establish the information provided in e-submitted bid through documents/ clarifications as per ITB Clause 22.4, the bid shall not be considered for further evaluation and ITB Clause 13.4 (e) shall be applicable.</p>

F. Award of Contract

ITB 30	The Advance Payment amount shall be: 0.0
ITB 32	The Adjudicator proposed by the Employer is: Address: The hourly fee for this proposed Adjudicator shall be (NPR): 0.0 Brief biographical data of the proposed Adjudicator is as follows:
ITB 34.2	The decision of the Chief of Procuring Entity shall be final for the Bid amount up to value of Rupees Twenty Million (Rs.20, 000,000.00).

In ITB the phrase 'Govt of Nepal' to be read as the name of Dullu Municipality Office, Dullu Dailekh

1. Bid

We have examined the documents and offer to execute the Works in conformity with the Contract for the sum of (in words)(in figures) or such other sum as may be ascertained under the contract.

This bid is submitted in one original and one duplicate copy.

We accept the appointment of [***name proposed in Bidding Data***] as the Adjudicator

[or]

We do not accept the appointment of [***name proposed in Bidding Data***] as the Adjudicator, and propose instead that [name] be appointed as Adjudicator, whose daily fees and biographical data are attached.

This bid shall remain binding until [*date*]. This bid and your written acceptance of it shall constitute a binding contract between us.

We understand that the Employer is not bound to accept the lowest or any offer received for the Works.

Signature _____ Date: _____

Name : _____

Designation: _____

Authorised to sign on behalf of (organisation name): _____

Office Stamp of the Organisation: _____

2.Qualification Information

Notes to Bidders

*The information to be filled in by Bidders in the following pages shall be used for purposes of post qualification as provided for in **Clause 3** of the Instructions to Bidders. This information shall not be incorporated in the Contract. Attach additional pages as necessary.*

1. Individual Bidder or Individual Members of Joint Ventures Association

1.1 Constitution or legal status of Bidder: *[attach copy]*

All Bidders shall submit following documents as pre- requisites for eligibility:

- a) Registration Certificate *[attach copy]*
- b) Place of Registration *[insert]*
- c) Principal place of Business *[insert address]*
- d) Business Registration Licence *[attach copy]*
- e) VAT and PAN Registration Certificates *[attach copy]*
- f) Tax Clearance Certificate or Submissions of Tax Returns as specified in Bidding Data *[attach copies]*
- g) A written declaration made by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence.
- h) Joint Venture Authorization/ Agreement (if any)
- i) Power of Attorney

1.2 Total annual volume of construction work performed in the past ten years (enter fiscal year..... to fiscal year.....), in NRs. Attach copy of Audited Balance sheet as documentary evidence.

Annual turnover data (construction only)	
Year	Turnover in NRs.
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

1.3 Work performed as prime contractor on works of a similar nature and volume over the last ten years. Also list details of work under way or committed, including expected completion date. Attach documentary evidence of the information provided.

Project Name	Name of Employer and contact person	Type of work performed and year of completion	Total Value of Contract	Value of remaining work
1.				
2.				

- 1.4 Major items of contractor's Equipment proposed for carrying out the Works. List all information requested below. Attach documentary evidence of ownership, lease agreement or proposed equipment purchase.

Item of equipment	Description, make, and age (years)	Owned, leased (from whom?), or to be purchased (from whom?)
1. <i>[Employer to specify equipment requirements]</i>		
2.		

- 1.5 Qualifications and experience of Contract Manager and other personnel if specified in the Bidding Data proposed for administration and execution of the Contract. Attach signed bio-data.

Name	Years of experience (general)	Years of experience in proposed position
1.		
2.		

- 1.6 Information asd per audited Financial reports for the last Ten years:

Financial information in NRs.	Actual: Previous Ten years									
	10	9	8	7	6	5	4	3	2	1
1. Total assets										
2. Current assets										
3. Total liabilities										
4. Current liabilities										
5. Profit before taxes										
6. Profit after taxes										

- 1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

Source of financing	Amount in NRs
1.	
2.	
3.	

- 1.8 Name, address, telephone and facsimile numbers of the banks that may provide references if contacted by the Employer.

Name	Address	Telephone/Fax number
1.		
2.		
3.		

- 1.9 A written declaration by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence.

2. Joint Ventures

- 2.1 The information listed in 1.1 to 1.3 and 1.6 to 1.9 above shall be provided for each partner of the joint venture.
- 2.2 Attach the power of attorney of the signatory (ies) of the bid authorising signature of the bid on behalf of the joint venture.
- 2.3 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
 - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

2a. Qualification Information [For e-Submission purpose]

Notes to Bidders

The information to be filled in by Bidders in the following pages will be used for purposes of post-qualification or for verification of pre-qualification as provided for in Clause 3 of the Instructions to Bidders. This information will not be incorporated in the Contract. Attach additional pages as necessary.

The Bidders are required to scan the documents r3equired as per paragraph 1.1, scan the prepared information in the tabular form for paragraph 1.2 to paragraph 1.9 and paragraph 2 then upload scanned documents for participating in bidding through e-Submission.

1. Individual Bidders or Individual Members of Joint Ventures

1.1 Constitution or legal status of Bidder:

All Bidders shall submit following documents as pre- requisites for eligibility:

- a) Registration Certificate
- b) Place of Registration
- c) Principal place of Business
- d) Business Registration License
- e) VAT and PAN Registration Certificates
- f) Tax Clearance Certificate or Submissions of
Tax Returns as specified in Bidding Data
- g) A written declaration made by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence.
- h) Joint Venture Authorization/ Agreement (if any)
- i) Power of Attorney

Note:- In case of Joint Venture, the information listed above shall be provided for each partner of the Joint Venture

1.2 Annual volume of construction works performed during the last Ten years, in Nepalese Rupees.

Position	Name	Years of experience (general)	Years of experience in proposed position

1.6 Financial reports for the last Ten years:

Financial information in NRs.	Actual: Previous Ten years									
	10	9	8	7	6	5	4	3	2	1
1. Total assets										
2. Current assets										
3. Total liabilities										
4. Current liabilities										
5. Profit before taxes										
6. Profit after taxes										

Note:- In case of Joint Venture, the information listed above shall be provided for each partner of the Joint Venture

1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below:

Source of financing	Amount in NRs.
1.	
2.	
3.	
4.	

Note:- In case of Joint Venture, the information listed above shall be provided for each partner of the Joint Venture

1.8 Name, address, telephone and facsimile numbers of banks that may provide references if contacted by the Employer.

Name	Address	Telephone/fax number	E-mail address
1.			
2.			

Note:- In case of Joint Venture, the information listed above shall be provided for each partner of the Joint Venture

- 1.9 A written declaration by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence.

2. Joint Ventures

- 2.1 The information listed in 1.1 to 1.3 and 1.6 to 1.9 above shall be provided for each partner of the joint venture.
- 2.2 Attach the power of attorney of the signatory (ies) of the bid authorising signature of the bid on behalf of the joint venture.
- 2.3 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
 - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
 - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

Letter of Intention to Award

[This letter should be in the letterhead paper of the Employer]

Notes on Letter of Intention to Award

The issue of Letter of Intention to Award will be the basis acceptance of bid by the Employer for issue of letter of Acceptance to the lowest evaluated Bidder 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 Intention to Award should be filled in and sent to the successful Bidder only after evaluation of Bids has been completed but before final acceptance of the Bid.

Date:

To: *[name and address of the Contractor]*

This is to notify you in accordance with the Instruction to Bidders that it is our intention to award the contract *[name of the Contract and identification number, as given in the Contract Data and/or SCC]* to you as your Bid price of the equivalent,¹⁰ of *[amount in numbers and words in Nepalese Rupees]*, as corrected and modified¹¹ in accordance with the Instructions to Bidders, is determined to be substantially responsive and lowest evaluated Bid price.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

¹⁰ Delete "of the equivalent" if the Contract Price is expressed wholly in one currency.

¹¹ Delete "corrected and" or "and modified" if not applicable. See Note on Agreement, next page.

Letter of Acceptance

[Letterhead of the Employer]

Date: _____

To: *[name and address of the contractor]*

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 Invitation to Bid]* for the Contract Price of *[insert the amount in Nepalese Rupees in numbers and words]* as corrected and modified¹² in accordance with the Instructions to *Bidders* is hereby accepted by our Agency.

You are hereby instructed to contact our office *[Office address]* to sign the formal agreement on *[date]* at *[time]*. As per the *Instructions to Bidders* you are also required to submit Performance Security, as specified in the SCC, consisting of a Bank Guarantee in an approved format or cash deposit voucher in favour of the Employer in the Employer's Bank account as specified in the SCC.

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

Please convey your unconditional acceptance by signing on the original of this letter and submit the required Performance Security, at the time of formal agreement.

Authorised Signature: _____

Name: _____

Designation: _____

¹² Delete "corrected and" or "and modified" if not applicable. See Notes on Standard Form of Agreement, next page.

Agreement

This Agreement, made the [day] day of [month], [year] between [name and address of Employer] (hereinafter called "the Employer") and [name and address of contractor] (hereinafter called "the contractor") of the other part.

Whereas the Employer is desirous that the contractor execute [name and identification number of contract] (hereinafter called "the Works") and the Employer has accepted the bid for _____ [insert the amount in Nepalese Rupees in numbers and words] by the contractor for the execution and completion of such Works and the remedying of any defects therein.

Now this Agreement witnesseth as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the contractor as hereinafter mentioned, the contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the contractor in consideration of the execution and completion of the Works and the remedying of defects wherein, 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 thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of _____
was hereunto affixed in the presence of: _____

Signed, Sealed, and Delivered by the said _____
in the presence of: _____

Binding Signature of Employer _____

Binding Signature of Contractor _____

[Addendum showing the corrections if any made during the bid evaluation should be attached with this agreement]

Section IV. General Conditions of Contract (GCC)

1. General Provisions

1.1 Definitions

In the Contract as defined below, the words and expressions defined shall have the following meanings assigned to them, except where the context requires otherwise:

The Contract

1.1.1 “**Contract**” means the Agreement signed between the Employer and the contractor and the other documents listed in the Special Conditions of Contract (SCC).

1.1.2 “**Specification**” means the document as listed in the SCC, including Employer’s requirements in respect of design to be carried out by the contractor, if any, and any variation to such document.

1.1.3 “**Drawings**” means the Employer’s drawings of the Works as listed in the SCC, and any variation to such drawings.

1.1.4 “**Bill of Quantities**” means the priced and completed bill of quantities forming part of the Tender.

1.1.5 “**Bid or Tender**” means the contractor’s priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.

1.1.6 “**Letter of Acceptance**” means the formal acceptance by the Employer of the **bid** or Tender.

Persons

1.1.7 “**Employer**” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the contractor) any assignee.

1.1.8 “**Contractor**” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Employer) any assignee.

1.1.9 “**Party**” means either Employer or the contractor.

Date, Times and Periods

1.1.10 “**Commencement Date**” means the date 14 days after the date the Agreement comes into effect or any other date agreed between the Parties.

1.1.11 “**Day**” means a calendar day.

1.1.12 “**Time for Completion**” means the time for completing the Works as stated in the SCC (or as extended under Sub-Clause 7.3), calculated from the Commencement Date.

Money and Payments

1.1.13 “**Cost**” means all expenditure properly incurred (or to be incurred) by the contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.

1.1.14 “**Contract Price**” is the price stated in the letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Other Definitions

- 1.1.15 "**Retention Money**" means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 11.3.
- 1.1.16 "**Contractor's Equipment**" means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant.
- 1.1.17 "**Country**" means Nepal.
- 1.1.18 "**Employer's Liabilities**" means those matters listed in Sub-Clause 6.1.
- 1.1.19 "**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.
- 1.1.20 "**Materials**" means things of all kinds (other than Plant) intended to form or forming part of the permanent work.
- 1.1.21 "**Plant**" means the machinery and apparatus intended to form or forming part of the Permanent Works.
- 1.1.22 "**Site**" means the places provided by the Employer where the Works are to be executed, and any other places specified in the Contract as forming part of the Site.
- 1.1.23 "**Variation**" is an instruction given by the Employer which varies the Works pursuant to Sub-Clause 10.1
- 1.1.24 "**Works**" means all the work and design (if any) to be performed by the contractor including temporary work and any Variation.
- 1.1.25 "**Permanent Works**" means the permanent works to be executed (Including Plant) in accordance with the Contract.
- 1.1.26 "**Temporary Works**" means all temporary works of every kind (other than contractor's Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
- 1.1.27 "**Adjudication**" means the procedure to be adopted by the contractor and the Employer in solving the dispute if it is not solved amicably pursuant to Sub-Clause 15.1.

1.2 Interpretation

Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires.

1.3 Priority of Documents

The documents forming the Contract shall to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary instructions to the contractor, and the priority of the documents shall be in accordance with the order as listed in the SCC.

- 1.4 Law** The law of the Contract is stated in the SCC.
- 1.5 Communications** Where provision is made for the giving or issue of any notice, instruction, or other communication by any person, unless otherwise specified such communication shall be written in the language stated in the SCC as shall not be unreasonably withheld or delayed.
If a notice given pursuant to Sub-Clause 1.5 fails to be delivered due to failure to trace the address of the party then the notice shall be published as public notice in a National daily newspaper and when the notice is so published then the notice shall be considered to be delivered to the concerned party.
- 1.6 Statutory Obligations** The contractor shall comply with the laws of the countries where activities are performed. The contractor shall give all notices and pay all fees and other charges in respect of the Works.

2. The Employer

- 2.1 Provision of Site** The Employer shall provide the Site and right of access thereto at the times stated in the SCC.
- 2.2 Permits and Licenses** The Employer shall, if requested by the contractor, assist him in applying for permits, licences or approvals which are required for the Works.
- 2.3 Employer's Instructions**
- 2.3.1 The contractor shall comply with all instructions given by the Employer in respect of the Works including the suspension of all or part of the Works.
- 2.3.2 The Contractor shall permit the Donor Agency to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by the auditors appointed by the Donor Agency, if so required by the Donor Agency.
- 2.4 Approvals** No approval or consent or absence of comment by the Employer or the Employer's representative shall affect the contractor's obligations.

3. Employer's Representatives

- 3.1 Authorised Person** One of the Employer's personnel shall have authority to act for him. This authorised person shall be as stated in the SCC, or as otherwise notified by the Employer to the contractor.
- 3.2 Employer's Representative** The Employer may also appoint a firm or individual to carry out certain duties. The appointee may be named in the SCC, or notified by the Employer to the contractor from time to time. The Employer shall notify the contractor of the delegated duties and authority of this Employer's representative.

4. The Contractor

- 4.1 General Obligations** The contractor shall carry out the Works properly and in accordance with the Contract. The contractor shall provide all supervision, labour, Materials, Plant and contractor's Equipment which may be required. All Materials and Plant on Site shall be deemed to be the property of the Employer.

During continuance of the of the contract, the contractor and his

sub-contractors shall abide at all times by all labour laws, including child labour related enactments, and rules made there under.

A child who has not attained the age of fourteen (14) years shall not be employed in any work as a labourer.

- 4.2 Contractor's Representative** The contractor shall submit to the Employer for consent the name and particulars of the person authorised to receive instructions on behalf of the contractor.
- 4.3 Subcontracting** The contractor shall not subcontract the whole of the Works. The contractor shall not subcontract any part of the Works without the consent of the Employer.
- 4.4 Performance Security** As stated in the SCC, the Contractor shall deliver to the Employer no later than the date specified in the Letter of Acceptance.

5. Design by Contractor

- 5.1 Contractor's Design** The contractor shall carry out design to the extent specified, as referred to in the SCC. The contractor shall promptly submit to the Employer all designs prepared by him. Within 15 days of receipt, the Employer shall notify any comments or, if the design submitted is not in accordance with the Contract, shall reject it stating the reasons. The contractor shall not construct any element of the permanent work designed by him within 15 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.
- 5.2 Responsibility for Design** The contractor shall remain responsible for his tendered design and the design under this Clause, both of which shall be fit for the intended purposes defined in the Contract and he shall also remain responsible for any infringement of any patent or copyright in respect of the same. The Employer shall be responsible for the Specification and Drawings.

6. Employer's Liabilities

- 6.1 Employer's Liabilities** In this Contract, Employer's Liabilities mean:
- a. war, hostilities (whether war be declared or not), invasion, act of foreign enemies, within the Country,
 - b. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
 - c. riot, commotion or disorder by persons other than the contractor's personnel and other employees, affecting the Site and/or the Works,
 - d. ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the contractor may be responsible for the use of any radio-active material,
 - e. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,

- f. use or occupation by the Employer of any part of the Works, except as may be specified in the Contract,
- g. design of any part of the Works by the Employer's personnel or by others for whom the Employer is responsible,
- h. any operation of the forces of nature affecting the Site and/or the Works, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions,
- i. Force Majeure,
- j. a suspension under Sub-Clause 2.3 unless it is attributable to the contractor's failure,
- k. any failure of the Employer,
- l. physical obstructions or physical conditions, other than climatic conditions, encountered on the Site during the performance of the Works, which obstructions or conditions were not reasonably foreseeable by an experienced contractor and which the contractor immediately notified to the Employer,
- m. any delay or disruption caused by any Variation,
- n. any change to the law of the Contract after the date of the contractor's offer as stated in the Agreement,
- o. losses arising out of the Employer's right to have the permanent work executed on, over, under, in or through any land, and to occupy this land for the permanent work, and
- p. damage which is an unavoidable result of the contractor's obligations to execute the Works and to remedy any defects.

7. Time for Completion

- | | |
|---|---|
| 7.1 Execution of the Works | The contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion. |
| 7.2 Programme | The contractor shall submit to the Employer a programme for the Works within the time stated in the SCC |
| 7.3 Extension of Time | <p>Subject to Sub-Clause 10.3, the contractor shall be entitled to an extension to the Time for Completion if he is or shall be delayed by any of the Employer's Liabilities.</p> <p>The contractor shall submit an application to the Employer for extension of time, stating the causes for delay, 7 days before the expiry of the Contract completion date. On receipt of an application from the contractor, the Employer shall consider all supporting details provided by the contractor and shall extend the Time for Completion as appropriate.</p> |
| 7.4 Liquidated Damages for Delay | If the contractor fails to complete the Works within the Time for Completion, the contractor's only liability to the Employer for such failure shall be to pay the amount stated in the SCC for each day for which he fails to complete the Works. The total amount of Liquidated damages shall not exceed the amount stated in the SCC. |
| 7.5 Bonus | The Contractor shall be paid a Bonus calculated at the rate per |

calendar day stated in the SCC for each day that the Completion is earlier than the date for Time of Completion. The Employer shall certify that the Works are complete, although they may not be due to be complete. The total amount of Bonus shall not exceed the amount stated in the SCC.

8. Taking-Over

8.1 Completion The contractor may notify the Employer when he considers that the Works are complete.

8.2 Taking-Over Notice The Employer shall notify the contractor when he considers that the contractor has completed the Works stating the date accordingly. Alternatively, the Employer may notify the contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly.

The Employer shall take over the Works upon the issue of this notice. The contractor shall promptly complete any outstanding work and, subject to Clause 9, clear the Site.

9. Remedying Defects

9.1 Remedying Defects The Employer may at any time prior to the expiry of the period stated in the SCC, notify the contractor of any defects or outstanding work. The contractor shall remedy at no cost to the Employer any defects due to the contractor's design, materials, plant or workmanship not being in accordance with the Contract.

The cost of remedying defects attributable to any other cause shall be valued as a Variation. Failure to remedy any defects or complete outstanding work within a reasonable time of the Employer's notice shall entitle the Employer to carry out all necessary work at the contractor's cost.

9.2 Uncovering and Testing The Employer may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the contractor's design, materials, plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 10.2.

10. Variations and Claims

10.1 Right to Vary The Employer may instruct Variations to increase or decrease the quantity of work or addition of new items or substitution of items included in the contract, if determined necessary due to technical reason during implementation of the contract.

10.2 Valuation of Variations Variations shall be valued as follows:

- a. where appropriate, at rates in the Contract, or
- b. in the absence of appropriate rates, the rates in the Contract shall be used as the basis for valuation,
- c. at appropriate new rates, as may be agreed or which the Employer considers appropriate, or
- d. if the Employer so instructs, at day work rates set out in the SCC for which the contractor shall keep records of hours of labour and contractor's Equipment, and of Materials used.

- 10.3 Early Warning** A Party shall notify the other as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The contractor shall take all reasonable steps to minimise these effects.
- The contractor's entitlement to extension to Time for Completion or additional payment shall be limited to the time and payment which would have been due if he had given prompt notice and has taken all reasonable steps.
- 10.4 Right to Claim** If the contractor incurs cost as a result of any of the Employer's Liabilities, the contractor shall be entitled to the amount of such cost. If as a result of any of the Employer's Liabilities, it is necessary to change the Works, this shall be dealt with as a Variation.
- 10.5 Variation and Claim Procedure** The contractor shall submit the Employer an itemised make-up of the value of Variations and claims within 30 days of the instruction or of the event giving rise to the claim. The Employer shall check and if possible agree the value. In the absence of agreement, the Employer shall determine the value.

11. Contract Price and Payment

- 11.1 Valuation of the Works** The Works shall be valued as provided for in the SCC, subject to Clause 10.
- 11.2 Monthly Statements** The contractor shall be entitled to be paid at monthly intervals:
- the value of the Works executed,
 - the percentage stated in the SCC of the value of Materials and Plant delivered to the Site at a reasonable time,
- subject to any additions or deductions which may be due.
- The contractor shall submit each month to the Employer a statement showing the amounts to which he considers himself entitled.
- 11.3 Interim Payments** Within 30 days of acceptance of each statement, the Employer shall pay to the contractor the amount shown in the contractor's statement less retention at the rate stated in the SCC, and less any amount for which the Employer has specified his reasons for disagreement. The Employer shall not be bound by any sum previously considered by him to be due to the contractor.
- 11.4 Payment of First Half of Retention** One half of the retention shall be repaid by the Employer to the contractor within 15 days upon expiry of Defects Liability Period 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-
- 11.5 Payment of Second Half of Retention** The remainder of the retention shall be paid by the Employer to the contractor within 15 days after submission of evidence document from the concerned Internal Revenue Office that the contractor has submitted his Income Returns.
- 11.6 Final Payment** Within 45 days of the latest of the expiry of the defects liability period, the contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value.

Within 30 days after the submission of this final account, the Employer shall pay to the contractor any amount due. If the Employer disagrees with any part of the contractor's final account, he shall specify his reasons for disagreement when making payment

11.7 Currency

Payment shall be in the currency stated in the SCC.

11.8 Delayed Payment

The contractor shall be entitled to interest at the rate stated in the SCC for each day the Employer fails to pay beyond the prescribed payment period.

11.9 Advance Payment

(a) The Employer shall make advance payment to the contractor of the amounts stated in the SCC within 15 days, 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.

(b) 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 Employer/ Engineer.

(c) Unless otherwise stated in the SCC, the advance payment shall be repaid through percentage deductions from the monthly certified statements in accordance with this clause. Deductions shall commence in the next monthly statement in which the value of work executed exceeds thirty (30%) percent of the initial Contract Amount less provisional sums, day works and VAT. Deduction shall be made at the amortization rate of thirty (30%) percent of the amount of each monthly statement until such time as the advance payment has been repaid completely, provided that the advance payment shall be completely repaid prior to the end of 90 % of the approved contract period.

11.10.Price Adjustment

(a) Prices shall be adjusted for fluctuations in the cost of inputs in accordance with this clause only if provided for in the Special Conditions of Contract (SCC). If so provided, the amounts certified in each payment certificate, after 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 payment price:

$$P = A + B \text{ Im/lo}$$

where:

P is the adjustment factor for the portion of the Contract Price payable in each payment certificate.

“A” and “B” are coefficients¹³ specified in the SCC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency; and

“Im” is the index prevailing at the end of the month being invoiced and “Io” is the index prevailing 30 days before bid submission for inputs payable.

- (b) If the value of 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
- (c) If, price adjustment provision is not specified pursuant to Sub-clause 11.10(a) then the Contract is subject to price adjustment only for construction material in accordance with this clause. If the Contract Agreement is concluded following the Invitation for National Level Bidding and after the signing of the Contract Agreement if the price of the construction materials stated in the SCC increase or decrease in an unexpected manner in excess of ten (10%) percent in comparison to the base price stated in the SCC, then the price adjustment for the increase or decrease of price of the construction material beyond 10% shall be made by applying the following formulas:

For unexpected increase in price

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

For unexpected decrease in price

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

Where:

“ P ” is price adjustment amount

“ R1 ” is the present price of the construction material

“ R0 ” is the base price of the construction material

“ Q ” is quantity of the construction material consumed in construction during the period of price adjustment consideration

- (d) The Price Adjustment amount will be limited to a maximum of 25% of the initial Contract Amount unless otherwise is specified in the SCC.
- (e) The Price Adjustment provision shall not be applicable if the contract is not completed in time due to the delay caused by the contractor or the contract is a Lump sum Contract or a Fixed Budget Contract.

11.11 Local Taxation & Value Added Tax

- a. The prices tendered by the Contractor shall include all taxes that may be levied in accordance to the laws and regulations in being in Nepal on the date 30 days prior to the closing date for submissions of Bids on the Contractor’s equipment, plant and materials acquired for

¹³ The sum of the two coefficients A and B should be 1 (one) in the formula. Normally, both coefficients may be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the payment price.

the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in Nepal on profits made by him in respect of the Contract.

- b. The Contract is not exempted from value added tax. An amount specified in the schedule of taxes shall be paid by the Contractor in the concerned VAT office within time frame specified in VAT regulation.

12. Termination of Contract

12.1 Default by Contractor

If the contractor abandons the Works, refuses or fails to comply with a valid instruction of the Employer or fails to proceed expeditiously and without delay or is, despite a written complaint, in breach of the Contract, the Employer may give notice referring to this Sub-Clause and stating the default.

If the contractor has not taken all practicable steps to remedy the default within 15 days after the contractor's receipt of the Employer's notice, the Employer may, by a second notice given within a further 22 days, terminate the Contract. The Contractor shall then demobilize from the Site leaving behind Materials and Plant and any contractor's Equipment which the Employer instructs in the second notice to be used until the completion of the Works.

12.2 Default by Employer

If the Employer fails to pay in accordance with the Contract, or is, despite a written complaint, in breach of the Contract, the contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within 7 days after the Employer's receipt of this notice, the contractor may suspend the execution of all or parts of the Works.

If the default is not remedied within 30 days after the Employer's receipt of the contractor's notice, the contractor may, by a second notice given within a further 22 days, terminate the Contract. The contractor shall then demobilise from the Site.

12.3 Insolvency

If a Party is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately. The contractor shall then demobilise from the Site leaving behind, in the case of the contractor's insolvency, any contractor's Equipment which the Employer instructs in the notice is to be used until the completion of the Works.

12.4 Termination by Convenience

Notwithstanding the above, the Employer shall be entitled to terminate the Contract in public interest, at any time at the Employer's convenience, by giving notice of such termination to the contractor.

12.5 Payment upon Termination

After termination, the contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a. any sums to which the contractor is entitled under Sub-Clause 10.4,
- b. any sums to which the Employer is entitled,

- c. if the Employer has terminated under Sub-Clause 12.1 or 12.3, the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination,
- d. if the contractor has terminated under Sub-Clause 12.2 or 12.3, the contractor shall be entitled to the Cost of his suspension and demobilisation together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination

The net balance due shall be paid or repaid within 30 days of the notice of termination.

13. Risk and Responsibility

13.1 Contractor's Care of the Works

The contractor shall take full responsibility for the care of the Works from the Commencement Date until the date of the Employer's notice under Sub-Clause 8.2. Responsibility shall then pass to the Employer. If any loss or damage occurs to the Works during the above period, the contractor shall rectify such loss or damage so that the Works conform to the Contract.

Unless the loss or damage occurs as a result of an Employer's Liability, the contractor shall indemnify the Employer, the Employer's contractors, agents and employees against all loss or damage happening to the Works and against all claims or expense arising out of the Works caused by a breach of the Contract, by negligence or by other default of the contractor, his agents or employees.

13.2 Force Majeure

If a Party is or shall be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the contractor shall suspend the execution of the Works and, to the extent agreed with the Employer, demobilise the contractor's Equipment.

If the event continues for a period of 90 days, either Party may then give notice of termination which shall take effect 30 days after the giving of the notice.

After termination, the contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a. any sums to which the contractor is entitled under Sub-Clause 10.4,
- b. the Cost of his suspension and demobilisation,
- c. any sums to which the Employer is entitled.

The net balance due shall be paid or repaid within 30 days of the notice of termination.

14. Insurance

14.1 Extent of Cover

The contractor shall, prior to commencing the Works, effect and thereafter maintain insurances in the joint names of the Parties:

- a. for loss and damage to the Works, Materials, Plant and the contractor's Equipment,
- b. for liability of both Parties for loss, damage, death or injury to

third parties or their property arising out of the contractor's performance of the Contract, including the contractor's liability for damage to the Employer's property other than the Works, and

- c. for liability of both Parties and of any Employer's representative for death or injury to the contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their employees.

14.2 Arrangements

All insurances shall conform with any requirements detailed in the SCC. The policies shall be issued by insurers and in terms approved by the Employer. The contractor shall provide the Employer with evidence that any required policy is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

14.3 Failure to Insure

If the contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the contractor.

15. Resolution of Disputes

15.1 Adjudication

If any dispute shall arise out of or in connection with the Contract, including any valuation or other decision of the Employer, then the parties shall attempt to settle such dispute amicably within 15 days of the notification of the Employer's decision. However if the dispute is not settled amicably or no attempt is made to settle the dispute amicably then the dispute shall be referred by either Party to adjudication in accordance with the attached Rules of Adjudication ("The Rules"). The adjudicator shall be any person agreed by the Parties. In the event of disagreement, the adjudicator shall be appointed in accordance with the Rules.

15.2 Notice of Dissatisfaction

If a Party is dissatisfied with the decision of the adjudicator or if no decision is given within the time set out in the Rules, the Party may give notice of dissatisfaction referring to this Sub-Clause within 30 days of receipt of the decision or the expiry of the time for the decision. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties.

15.3 Arbitration

A dispute which has been the subject of a notice of dissatisfaction, as per sub clause 15.2 shall be referred to a single arbitrator under the rules specified in the SCC. In the absence of agreement, the arbitrator shall be designated by the appointing authority specified in the SCC. Any hearing shall be held at the place specified in the SCC and in the language referred to in Sub-Clause 1.5.

16. Fraud and Corruption

16.1 If the Employer determines that the Bidder 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 Bidder, terminate the Bidder's employment under the Contract and the provisions of Clause 12 shall apply.

16.2 Without prejudice to any other rights of the Employer under this Contract, on the recommendation of Employer, Public Procurement Monitoring Office may blacklist the Bidder for its conduct up to three (3) years including on the following grounds and seriousness of the act committed by the Bidder:

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

For the purposes of this Sub-Clause:

- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"¹⁴ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice"¹⁵ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "coercive practice"¹⁶ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a GoN/DP investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the GoN/DP's inspection and audit rights provided for under ITB Clause 34.5 and GCC Clause 2.3.2

16.3 Without prejudice to any other rights of the Employer under this Contract, on the recommendation of the Employer, Public Procurement Monitoring Office may **blacklist** a Bidder for its conduct for a period of one (1) to three (3) years including on the following grounds and seriousness of the act committed by the bidder:

- a) if it is established later that the Bidder has

¹⁴ a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

¹⁵ "parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

¹⁶ a "party" refers to a participant in the procurement process or contract execution.

committed substantial defect in implementation of the contract or has not substantially fulfilled its obligations under the contract or the completed work is not of the specified quality as per the contract.

Special Conditions of Contract (SCC)

This SCC forms part of the Agreement

Item	Clause	Data
Documents forming the Contract listed in the order of priority	1.1.1	

Item	Clause	Data
Time for Completion	1.1.12	<p>13-06-2017 03:50</p> <p>Milestone No. % of contract Duration Target Date</p>
Law of Contract	1.4	Applicable Law of Nepal
Language	1.5	1.English Or Nepali
Provision of Site	2.1	On the commencement date 07-03-2017 02:17
Authorised person	3.1	
Name and address of Employer's representative (if known)	3.2	

Item	Clause	Data
Performance security : AmountForm	4.4	0.0% Attached in section X
Requirements for contractor's design (if any)	5.1	
Time for the submission of programme	7.2	within days of the Commencement Date

Item	Clause	Data
Percentage of value of Materials and Plant	11.2 (b)	<p>0.0%</p> <p style="text-align: center;">and</p> <p>0.0%</p>
Percentage of retention	11.3	5% of each Payment made to the Contractor
Currency of payment	11.7	USD
Rate of interest	11.8	0.0%
Advance Payment (NPR)	11.9	0.0%
Price Adjustment	11.10(a)	<p>The Contract is not subject to price adjustment in accordance with Clause 11.10 (a) [if the contract period is less than 15 months]</p> <p style="text-align: center;">or</p> <p>The Contract is subject to price adjustment in accordance with Clause 11.10 (a) [if the contract period is more than 15 months} and the coefficients for adjustment of prices are: Nonadjustable element (coefficient A). : [15 percent] Adjustable element (coefficient B). : [85 percent]</p>

Item	Clause	Data							
	11.10. (c)	<p>If the contract is not subject to Price Adjustment pursuant to Sub-Clause 11.10 (a).</p> <table border="1" data-bbox="794 365 1517 439"> <thead> <tr> <th data-bbox="794 365 1090 439"><u>Construction Material(factory)</u></th> <th data-bbox="1090 365 1313 439"><u>Base Price(Ex-factory)</u></th> <th data-bbox="1313 365 1517 439"><u>Unit</u></th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		<u>Construction Material(factory)</u>	<u>Base Price(Ex-factory)</u>	<u>Unit</u>			
<u>Construction Material(factory)</u>	<u>Base Price(Ex-factory)</u>	<u>Unit</u>							
Insurances	14.2	<p><u>Type of Cover</u></p> <p>The Works, Material, Plant And Fees</p> <p>Contractor's Equipment</p> <p>Third Party injury to persons and damage to property</p> <p>Workers</p>	<p><u>Amount to Cover</u></p> <p>The Sum stated in the Agreement plus 15%</p> <p>Full Replacement Cost</p> <p>Insert amount per person, number of persons and number of occurrences</p> <p>As per Labour Act of Nepal</p>						
Adjudication	15.1	Appointing Authority: Nepal Council of Arbitration (NEPCA)							

Item	Clause	Data
Arbitration	15.3	<p data-bbox="836 203 1485 264">Arbitration Rules : Nepal Council of Arbitration (NEPCA)</p> <p data-bbox="820 297 1513 358">Appointing Authority: Nepal Council of Arbitration (NEPCA)</p> <p data-bbox="786 387 898 416">Place of</p> <p data-bbox="786 517 1267 546">Language: Nepali ,English</p>

In ITB the phrase 'Govt of Nepal' to be read as the name of Dullu Municipality Office, Dullu Dailekh

Specifications

Notes on the Specifications

A set of precise and clear specifications is a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their Bids. The specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency and fairness in procurement be realized, responsiveness of Bids be ensured, and the subsequent task of bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of specifications from previous similar projects are useful in this respect. The use of metric units is encouraged by the Funding Agency in case of funding assisted projects. Most specifications are normally written specially by the Employer or Project Manager to suit the Contract Works in hand. The available standard specification of works of Ministry of Physical Infrastructure and Transport, DoLIDAR and Other line Ministries can be adopted for respective civil construction works.

There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, however it may not necessarily be adequate to be used in a particular Works Contract and may necessitate preparation of Particular (Special) Specifications to amend and or supplement the provision of the General Specifications to meet the requirement of the particular Works.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of Nepal or other standards, the specifications should state that goods, materials, and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable.

Employers should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in the Procurement Documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential bidders. For example:

The Employer should provide a description of the selected parts of the Works with appropriate references to Drawings, Specifications, Bill of Quantities, and Design or Performance criteria, stating that the alternative solutions if applicable shall be at least structurally and functionally equivalent to the basic design parameters and specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details.

Sample Clause: Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified will be accepted subject to the Project Manager's prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the Project Manager at least 30 days prior to the date when the Contractor desires the Project Manager's consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.

These Notes for Preparing Specifications are intended only as information for the Employer or the person drafting the Procurement Documents. They should not be included in the final documents.

[Insert Specifications]

**Not
Drawing**

Bill Of Quantities

Item No.	Description	Unit	Quantity	Rate in	Rate in words
1	Site clearence before and after construction	LS	1		
2	Laying Sub base course of sand mix gravel of 10cm solid thickness	M2	2268		
3	Laying base course(W.B.M) with clay and water mix in propotion	M2	2268		
4	Cleaning top surface by tar brush	M2	2268		
5	Applying priming coat on the base course	M2	2268		
6	Applying tack coat on the base course	M2	2268		
7	Preparing of 40mm thick premix(caarpeting) with proper camber and compaction	M2	2268		
8	Applying seal coat of course sand including compaction	M2	2268		
9	E/w in Excavation for Grade Adjustment, Side Cutting of Rural Road in Hard Soil	M3	4383.0375		
10					
11					
12					
13					
14					
15					
16					
17					

Bid Security (Bank Guarantee)

Whereas, *[name of Bidder]* (hereinafter called "the Bidder") has submitted his bid dated *[date]* for the construction of *[name of Contract]* (hereinafter called "the bid").

Know all people by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called "the Bank") are bound unto *[name of Employer]* (hereinafter called "the Employer") in the sum of *[amount]*¹ for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

The conditions of this obligation are:

- (1) If, after bid opening, the Bidder withdraws his bid during the period of bid validity specified in the Form of Bid; or
- (2) If the Bidder having been notified of the acceptance of his bid by the Employer during the period of bid validity:
 - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders; or
 - (c) does not accept the correction of the bid,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer's having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date *[number]* days² after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date _____ Signature of the Bank _____

Witness _____ Seal _____

[signature, name, and address]

¹ The Bidder should insert the amount of the Guarantee in words and figures denominated in Nepali Rupees. This figure should be the same as shown in Clause 13 of the Instructions to Bidders.

² Usually 30 days after the end of the validity period of the bid. The date should be inserted by the Employer before the bidding documents are issued.

Performance Bank Guarantee

To: *[name and address of Employer]*

Whereas *[name and address of contractor]* (hereinafter called "the contractor") has undertaken, in pursuance of Contract No. *[number]* dated *[date]* to execute *[name of Contract and brief description of Works]* (hereinafter called "the Contract");

And whereas it has been stipulated by you in the said Contract that the contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

And whereas we have agreed to give the contractor such a Bank Guarantee;

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the contractor, up to a total of *[amount of Guarantee]* *[amount in words]*³ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of *[amount of Guarantee]*⁴ as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between you and the contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall be valid for at least 30 days beyond the date of issue of Defects Liability Certificate.

Signature and seal of the Guarantor _____

Name of Bank _____

Address _____

Date _____

³ An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated in Nepalese Rupees.

⁴ The Unconditional (or "On-Demand") Bank Guarantee has the merit of simplicity and of being universally known and accepted by commercial banks. The contracting community, however, strongly objects to this type of Security because the Guarantee can be called (or threatened to be called) by Employers without justification. Employers should recognize the contractual conditions governing non-performance by the Contractor and should normally act only on the advice of the Project Manager in calling a Performance Guarantee.

Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

[name of Contract]

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub clause 11.9("Advance Payment") of the above-mentioned Contract, *[name and address of contractor]* (hereinafter called "the contractor") shall deposit with *[name of Employer]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee] [amount in words]*⁵

We, the *[Bank or Financial Institution]*, as instructed by the contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the contractor, in the amount not exceeding *[amount of Guarantee] [amount in words]*⁶

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed there under or of any of the Contract documents which may be made between *[name of Employer]* and the contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

The validity period of the guarantee shall be 30 days beyond the period scheduled for repayment of the advance payment and the guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until the *[name of Employer]* receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: _____

Name of Bank/Financial Institution: _____

Address: _____

Date: _____

⁵ An amount is to be inserted by the Bank or Financial Institution representing the amount of the Advance Payment, and denominated in Nepali Rupees of the Advance Payment as specified in the Contract.

⁶ An amount is to be inserted by the Bank or Financial Institution representing the amount of the Advance Payment, and denominated in Nepali Rupees.

Section X. Rules for Adjudication

Referred to in GCC Sub-Clause 15.1

General

1. Any reference in the Conditions of Contract to the Rules for Adjudication shall be deemed to be a reference to these Rules.
2. Definitions in the Contract shall apply in these Rules.

Appointment of Adjudicator

3. The Parties shall jointly ensure the appointment of the Adjudicator. The Adjudicator shall be a suitably qualified person.
4. If for any reason the appointment of the Adjudicator is not agreed at the latest within 15 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Contract or, if none, to the President of Nepal Council of Arbitration (NEPCA) or his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive.
5. The Adjudicator's appointment may be terminated by mutual agreement of the Parties. The Adjudicator's appointment shall expire when the Works have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Appointment

6. The Adjudicator is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.
7. The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Works form part other than in accordance with these Rules.
8. The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Contract.
9. The Adjudicator shall treat the details of the Contract and all activities and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.
10. The Adjudicator may resign by giving 30 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under these Rules, the Parties shall agree upon a replacement Adjudicator within 15 days or Rule 4 shall apply.
11. The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to

have been in bad faith.

12. If the Adjudicator shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

Payment

13. The Adjudicator shall be paid the fees and expenses set out in the Adjudicator's Agreement.
14. The retainer fee, if applicable, shall be payment in full for:
 - (a) being available, on 28 days' notice, for all hearings and Site visits;
 - (b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;
 - (c) all services performed hereunder except those performed during the days referred to in Rule 15.
15. The daily fee shall be payable for each working day preparing for or attending Site visits or hearings or preparing decisions including any associated travelling time.
16. The retainer and daily fees shall remain fixed for the period of tenure of the Adjudicator.
17. All payments to the Adjudicator shall be made by the *contractor* who will be entitled to be reimbursed half by the Employer. The *contractor* shall pay invoices addressed to him within 30 days of receipt. The Adjudicator's invoices for any monthly retainer shall be submitted quarterly in advance and invoices for daily fees and expenses shall be submitted following the conclusion of a Site visit or hearing. All invoices shall contain a brief description of the activities performed during the relevant period. The Adjudicator may suspend work if any invoice remains unpaid at the expiry of the period for payment, provided that 7 days prior notice has been given to both Parties.
18. If the *contractor* fails to pay an invoice addressed to it, the Employer shall be entitled to pay the sum due to the Adjudicator and recover the sum paid from the *contractor*.

Procedure for Obtaining Adjudicator's Decision

19. A dispute between the Parties may be referred in writing by either Party to the Adjudicator for his decision, with a copy to the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and refer to these Rules.
20. The Adjudicator may decide to visit the Site. The Adjudicator may decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him prior to, at

or after the hearing. The Parties shall promptly provide the Adjudicator with sufficient copies of any documentation and information relevant to the Contract that he may request.

21. The Adjudicator shall act as an impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he thinks fit, not being bound by any rules or procedures other than those set out herein. Without limiting the foregoing, the Adjudicator shall have power to:
 - (a) decide upon the Adjudicator's own jurisdiction, and as to the scope of any dispute referred to him,
 - (b) make use of his own specialist knowledge, if any,
 - (c) adopt an inquisitorial procedure,
 - (d) decide upon the payment of interest in accordance with the Contract,
 - (e) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,
 - (f) refuse admission to hearings to any persons other than the Employer, the contractor and their respective representatives, and to proceed in the absence of any Party who the Adjudicator is satisfied received notice of the hearing.
22. All communications between either of the Parties and the Adjudicator and all hearings shall be in the language of the Adjudicator's Agreement. All such communications shall be copied to the other Party.
23. No later than the sixty day after the day on which the Adjudicator received a reference or, if later, the day on which the Adjudicator's Agreement came into effect, the Adjudicator shall give written notice of his decision to the Parties. Such decision shall include reasons and state that it is given under these Rules.

Adjudicator's Agreement

Identification of Project:

(the "Project")

Name and address of the Employer:

(the "Employer")

Name and address of *contractor*:

(the "*contractor*")

Name and address of Adjudicator:

(the "Adjudicator")

Whereas the Employer and the *contractor* have entered into a contract ("the Contract") for the execution of the Project and wish to appoint the Adjudicator to act as adjudicator in accordance with the Rules for Adjudication ["the Rules"].

The Employer, Contractor and Adjudicator agree as follows:

1. The Rules and the dispute provisions of the Contract shall form part of this Agreement.
2. The Adjudicator shall be paid:
A retainer fee of _____ per calendar month
(where applicable)
A daily fee of _____

Expenses (including the cost of telephone calls, courier charges, faxes and telexes incurred in connection with his duties; all reasonable and necessary travel expenses, hotel accommodation and subsistence and other direct travel expenses).

Receipts will be required for all expenses.

3. The Adjudicator agrees to act as adjudicator in accordance with the Rules and has disclosed to the Parties any previous or existing relationship with the Parties or others concerned with the Project.
4. This Agreement shall be governed by the law of Nepal.

5. The language of this Agreement shall be English [*or in Nepali if both parties agrees*].

SIGNED BY _____

for and on behalf of the Employer in the presence of

Witness _____

Name _____

Address _____

Date _____

SIGNED BY _____

for and on behalf of the *contractor* in the presence of

Witness _____

Name _____

Address _____

Date _____

SIGNED BY _____

for and on behalf of the Adjudicator in the presence of

Witness _____

Name _____

Address _____

Date _____