Nepal Electricity Authority

(A Government of Nepal Undertaking)

Transmission Directorate

Grid Development Department

Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project

Bidding Document

For

"Design, Supply, Construction, Testing and Commissioning of Motipur and Sandikharka 132/33/11 kV, Substation."

International Competitive Bidding (ICB)

(Single Stage, Two Envelope Bidding Procedure)

IFB No: BPTSG-074/75-02

Employer: Nepal Electricity Authority

Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project

VOLUME I OF III

Date: 2017

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

ICB ..... International Competitive Bidding

ICC..... International Chamber of Commerce

ITB ..... Instructions to Bidders

JV …….. Joint Venture

LIT …….. Litigation

NCB ……... National Competitive Bidding

NEA……... Nepal Electricity Authority

PAN …… Permanent Account Number

PPA …….. Public Procurement Act

PPMO …… Public Procurement Monitoring Office

PPR ……... Public Procurement Regulations

PL ..... Profit and Loss

SBD..... Standard Bidding Document

SCC …….. Special Conditions of Contract

TS..... Technical Specifications

VAT …… Value Added Tax

WRQ …….. Works Requirements

BIDDING DOCUMENT

TECHNICAL BID

PROCUREMENT OF WORKS
International Competitive Bidding (ICB)
Single Stage two Envelope Bidding

"Design, Supply, Construction, Testing and Commissioning of Motipur and Sandikharka 132/33/11 kV, Substation. Substation."

Issued on:

Bid Document issued to:

Contract Identification No: BPTSG-074/75-02

Project Name : *Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project*

Office Name : *Nepal Electricity Authority*

Office Address: *Kharipati, Bhaktapur, Nepal*

Financing Agency: Government of Nepal (GoN), Nepal

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Invitation for Bids:

Nepal Electricity Authority
(A government of Nepal undertaking)
Transmission Directorate
Grid Development Department
Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project

Invitation for Bids for the:

Design, Supply, Construction, Testing And Commissioning of Motipur and Sandikharka 132/33/11 kV, Substation.

Contract Identification No: ***BPTSG-074/75-02***
Date of publication: **01/12/2017**

- **Nepal Electricity Authority** (A government of Nepal undertaking) has allocated funds towards the cost of ***Design, Supply, Construction, Testing and Commissioning of Motipur and Sandikharka 132/33/11 kV, Substation*** and intends to apply part of the funds to cover eligible payments under the contract for IFB No.: ***BPTSG-074/75-02***. Bidding is open to all eligible Nepalese and foreign bidders**.**

- Nepal Electricity Authority (NEA), Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project invites sealed bids or electronic bids from eligible bidders for the construction of ***Motipur and Sandhikharka 132/33/11 kV Substation*** under International Competitive Bidding – Two Envelope Bidding procedures.
  Only eligible bidders with the following key qualification should participate in this bidding:
  Minimum average annual turnover of best 3 years within the last 10 years: ***US $ 5.01 Million.***
  Minimum Work experience of similar size and nature: The Bidder as Contractor, management Contractor, or subcontractor, in at least two (2) Contract within the last 10 years, each with a value of at least **USD 2.7 Million** that have been successfully or are substantially completed and that are similar to the proposed works. The Bidder as prime contractor, management contractor, or subcontractor, should have successfully executed: i) At least two (2) Substation contract for design, supply, installation, testing and commissioning of Voltage level 110 kV or above voltage class with the supply and installation of power transformer of capacity not less than 30 MVA.
  Each Partner in JV must have substantially executed at least one step-down substation project with voltage class of 110kV or higher.

- Eligible Bidders may obtain further information and inspect the Bidding Documents at the office of:
  The Project Manager
  Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project
  Grid Development Department
  Transmission Directorate
  Nepal Electricity Authority
  NEA Training Centre, Kharipati, Bhaktapur, Nepal
  Phone: +977 01 6616287
  Email: hapuretlp@nea.org.np
  Or may visit NEA website www.nea.org.np./ www.eproc.nea.org.np

- A complete set of Bidding Documents may be purchased during the office hours from the office of the Project Manager, Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project, Kharipati, Bhaktapur by eligible Bidders on the submission of a written application, along with the notarized copy of company/firm registration certificate and upon payment of a non-refundable fee of **Nrs. 20,000.00** in the account

Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project, Nepal Electricity Authority, Account Number: **012500000233524, Bank of Kathmandu** till 13/01/2018.

Or,

Bidder who chooses to submit their bid electronically may purchase the hard copy of the Bidding documents as mentioned below or may download the bidding documents for e-submission from NEA's web portal www.eproc.nea.org.np.. Bidders, submitting their bid electronically, should deposit the cost (as specified above) of bidding document in the project's Rajaswa (revenue) account as specified below and the scanned copy(pdf format) of the bank deposit voucher shall be uploaded by the bidder at the time of electronic submission of the bids. Information to deposit the cost of the bidding document in bank:

Name of the bank: Bank of Kathmandu, Tripureshwor, Kathmandu.

Name of office: Burtibang-Paudiamrai-Tamghas-Sandhikharka-Gorushinge 132 kV Transmission Line Project.

Office Code no. : 351235

Office account no.: 012500000233524

- Sealed bids must be submitted to the office of the Project Manager, Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project, Kharipati, Bhaktapur by hand or through NEA website mentioned above on or before 12:00 PM on ***14/01/2018***. **Bids received after this deadline will be rejected**.
- The Technical Bid will be opened in the presence of bidder or bidders' representatives who choose to attend at ***14:00 Hrs (NST)*** on the date ***14/01/2018*** at the *Training Center, Nepal Electricity Authority, Kharipati, Bhaktapur.* Bids must be valid for a period of ***120*** days after bid opening and must be accompanied by a bid security or scanned copy of the bid security in pdf format in case of e-bid, amounting to a minimum of ***Nrs. 1.75 Crores*** *or* ***USD 170,000, or INR 1.1 Crores*** which shall be valid for 30 days beyond the validity of the bid.
- If the specified date for last date of bid documents purchasing and bid submission/opening falls on a Government holiday then the same time on the next working day shall be considered for such events. However, the last date for bid submission and opening shall be the next working day after the last date of bid purchasing. In such case the validity of bid security shall be considered from already specified last date for bid submission.
- Bidders may withdraw or modify its bids by sending a written notice in a sealed envelope, duly signed by an authorized representative and shall include a copy of the authorization in accordance with ITB 20.2 before 24 hrs prior to the deadline of submission of bids.
- After the completion of evaluation of Technical Bid which is substantially responsive evaluated bidders, will be invited to attend the opening of Price Bids. The date, time and location of opening of Price Bid shall be notified in writing and/or published in national daily.
- Pre-bid meeting shall not be held.
- NEA reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring any liability to the affected bidder(s) or any obligation to inform the affected bidder(s) of the grounds for NEA's action.
- The address referred to above is:

The Project Manager
Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project
Grid Development Department
Transmission Directorate
Nepal Electricity Authority
Kharipati, Bhaktapur
Phone: +977 01 6616287
Email: hapuretlp@nea.org.np

Section 1 - Instructions to Bidders

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Section 1 – Instruction to Bidders

A. General

1. Scope of Bid

1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of Works as specified in Section 5 (Works Requirements). The name, identification, and number of Contracts of the International Competitive Bidding (ICB) are provided in the BDS.

1.2 Throughout this Bidding Document:

(a) the term "in writing" means communicated in written form and delivered against receipt;

(b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and

(c) "day" means calendar day.

2. Source of Funds

2.1 **GoN Funded:** In accordance with its annual program and budget, approved by the GoN, the implementing agency **indicated in the BDS** plans to apply a portion of the allocated budget toward the cost of the project named in the BDS. The GoN intends to apply a portion of the allocated budget to eligible payments under the contract(s) for which this Bidding Document is issued.

Or

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

Or

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

2.2 DP Funded: Payment by the DP will be made only at the request of the GoN and upon approval by the DP in accordance with the terms and conditions of the financing agreement between the GoN and the DP (hereinafter called the "Loan Agreement"), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party

other than the GoN shall derive any rights from the Loan Agreement or have any claim to the funds.

3. Fraud and Corruption

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

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

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

(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 3.5 below.

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

(c) 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.

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

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

(b) distortion or misrepresentation of facts,

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

(d) interference in participation of other competing bidders,

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

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

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

3.3 PPMO on the recommendation of the 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,

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

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

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

3.5 The Contractor shall permit the GoN/DP to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the GoN/DP, if so required by the GoN/DP.

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

(a) will reject a 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.

4. Eligible Bidders

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

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

(b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during Contract execution.

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of Nepal or any country or eligible countries mentioned in the BDS. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed sub Contractors or suppliers for any part of the Contract including related services.

4.3 A Bidder shall not have a conflict of interest. A Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process, if:

(a) they have controlling partners in common; or

(b) they receive or have received any direct or indirect subsidy from any of them; or

(c) they have the same legal representative for purposes of this bid; or

(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information

about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

(e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which the party is involved. However, this does not limit the inclusion of the same sub Contractor in more than one bid; or

(f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Contract that is the subject of the Bid; or

(g) a Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract.

4.4 A firm that is under a declaration of ineligibility by the GoN/DP in accordance with ITB 3, at the date of the deadline for bid submission or thereafter, shall be disqualified. The list of debarred firm is available at the electronic address specified in the BDS.

4.5 Enterprises owned by GoN shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law, and that they are not a dependent agency of the GoN.

4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.7 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.

4.8 Firms shall be excluded in any of the cases, if

(a) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Employer's country prohibits any import of goods or Contracting of works or services from that country or any payments to persons or entities in that country.

(b) DP Funded: as a matter of law or official regulation, Nepal prohibits commercial relations with that country, provided that the DP is satisfied that such exclusion does not preclude effective competition for the supply of goods or related services required;

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

4.9 Domestic Bidder shall be eligible only if the bidder has obtained Permanent Account Number (PAN) and Value Added Tax (VAT) Registration Certificate(s) and Tax Clearance Certificate or proof of submission of income return as stated in BDS from the Inland Revenue Office. Foreign bidder shall be eligible only if the bidder submits the documents indicated in the BDS at the time of bid submission and a

declaration to submit the document(s) indicated in the BDS at the time of contract agreement.

5. Eligible Materials, Equipment and Services

5.1 The materials, equipment and services to be supplied under the Contract shall have their origin in any source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

6. Sections of Bidding Document

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

PART I Bidding Procedures

Section 1 - Instructions to Bidders (ITB)

Section 2 - Bid Data Sheet (BDS)

Section 3 - Evaluation and Qualification Criteria (EQC)

Section 4 - Bidding Forms (BDF)

PART II Requirements

Section 5 – Works Requirements (WRQ)

Section 6 – Bill of Quantities (BOQ)

PART III Conditions of Contract and Contract Forms

Section 7 - General Conditions of Contract (GCC)

Section 8 - Special Conditions of Contract (SCC)

Section 9 - Contract Forms (COF)

6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document.

6.3 The Employer is not responsible for the completeness of the Bidding Document and their Addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.

7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise any question or curiosity during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer shall be required to make available as soon as possible the answer to such question or curiosity in writing to any request for clarification, provided that such request is received as mentioned in BDS. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.

7.2 The Bidder is encouraged to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the bid and entering into a Contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer as mentioned in BDS.

7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be

made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Non attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2.

C. Preparation of Bids

9. Cost of Bidding

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

10. Language of Bid

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

11. Documents Comprising the Bid

11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.

11.2 The Technical Bid shall comprise the following:

(a) Letter of Technical Bid;

(b) Completed Schedules, in accordance with ITB 12;

(c) Bid Security, in accordance with ITB 19;

(d) Alternative Technical Bids, at Bidder's option and if permissible, in accordance with ITB 13;

(e) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;

(f) Documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the Contract;

(g) Technical Proposal in accordance with ITB 16;

(h) In the case of a bid submitted by a JV, the JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the Works to be executed by the respective partners; and

(i) Any other document required in the BDS.

11.3 The Price Bid shall comprise the following:

(a) (a) Letter of Price Bid;

(b) (b) completed Bill of Quantities, Price Schedules, in accordance with ITB 12 and ITB 14, or as stipulated in the BDS;

(c) alternative price Bids, at Bidder's option and if permissible, in accordance with ITB 13;

(d) Any other document required in the BDS.

11.4 The Bidder is solely responsible for the authenticity of the documents submitted by the Bidder.

12. Letter of Bid and Schedules

12.1 The Letter of Technical Bid and Priced Bid, Schedules, and all documents listed under Clause 11, shall be prepared using the relevant forms in Section 4 (Bidding Forms), if so provided. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 Unless otherwise indicated in the BDS, alternative bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.

13.3 When specified in the BDS pursuant to ITB 13.1, and subject to ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details.

13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section 5 (Employer's

Requirements). The method for their evaluation will be stipulated in Section 3 (Evaluation and Qualification Criteria).

14. Bid Prices and Discounts

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

14.2 The Bidder shall submit a Price bid for the whole of the works described in ITB 1.1 by filling in prices for all items of the Works, as identified in Section 4 (Bidding Forms). In case of Unit Rate Contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

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

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

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

14.6 Unless otherwise provided in the BDS and the Conditions of Contract, the prices quoted by the Bidder shall be fixed. If the prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Table of Adjustment Data in Section 4 (Bidding Forms) and the Employer may require the Bidder to justify its proposed indices and weightings.

14.7 The bidder is subject to local taxes such as VAT, social charges or income taxes on nonresident international personnel, and also duties, fees, levies on amounts payable by the employer under the Contract. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.

15. Currencies of Bid and Payment

15.1 The unit rates and the prices shall be quoted by the bidder entirely in Nepalese currency if not otherwise specified in the BDS.

15.2 Bidders shall indicate the portion of the bid price that corresponds to expenditures incurred in Nepalese currency in the Schedule of Payment Currencies included in Section 4 (Bidding Forms).

15.3 Bidders expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer's country and wishing to be paid accordingly may indicate up to three convertible foreign currencies included in daily publication of Nepal Rastra Bank foreign currency exchange rate in the Schedule of Payment Currencies included in Section 4 (Bidding Forms).

15.4 The rates of exchange to be used by the bidder for currency conversion during bid preparation shall be the selling rates for similar transactions prevailing on the date 30 days prior to the deadline for submission of bids published by Nepal Rastra Bank. Bidders should note that for the purpose of payments, the exchange rates confirmed by Nepal Rastra Bank as the selling rates prevailing 30 days prior to the deadline for submission of bids shall apply for the duration of the Contract so that no currency exchange risk is borne by the bidder.

15.5 Foreign currency requirements indicated by the bidders in the Schedule of Payment Currencies shall include but not limited to the specific requirements for

(a) expatriate staff and labor employed directly on the Works;

(b) social, insurance, medical and other charges relating to such expatriate staff and labor, and foreign travel expenses;

(c) imported materials, both temporary and permanent, including fuels, oil and lubricants required for the Works;

(d) depreciation and usage of imported Plant and Contractor's Equipment, including spare parts, required for the Works;

(e) foreign insurance and freight charges for imported materials, Plant and Contractor's Equipment, including spare parts; and

(f) overhead expenses, fees, profit, and financial charges arising outside the Employer's country in connection with the Works.

15.6 Bidders may be required by the Employer to clarify their foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Payment Currencies are reasonable and responsive to ITB 15.3 above, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Bidder.

15.7 Bidders should note that during the progress of the Works, the foreign currency requirements of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Sub-Clause 14.15 of the Conditions of Contract. Any such adjustment shall be effected by comparing the

percentages quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

16. Documents Comprising the Technical Proposal

16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

17. Documents Establishing the Qualifications of the Bidder

17.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).

17.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 34 if margin of preference for domestic bidders is applicable in accordance with ITB 34.

18. Period of Validity of Bids

18.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as non responsive.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended 30 days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.

19. Bid Security

19.1 The Bidder shall furnish as part of its bid, in original form, a bid security as specified in the BDS. In case of e-submission of bid, the Bidder shall upload scanned copy of Bid security letter at the time of electronic submission of the bid. The Bidder accepts that the scanned copy of the Bid security shall, for all purposes, be equal to the original. The details of original Bid Security and the scanned copy submitted with e-bid should be the same otherwise the bid shall be non-responsive.

19.2 The bid security shall be, at the Bidder's option, in any of the following forms:

(a) an unconditional bank guarantee from "A" class commercial bank or;

(b) a cash deposit voucher in the Employer's Account as specified in BDS.

In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV (Bidding Forms) or in another Form acceptable to the employer. The form must include the complete name of the Bidder. The bid security shall be valid for

minimum thirty (30) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

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

19.4 Any bid not accompanied by an enforceable and substantially compliant bid security, if required in accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive. 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.

19.5 The bid security of unsuccessful Bidders shall be returned within three days, once the successful bidder has furnished the required performance security and signed the Contract Agreement pursuant to ITB 41.1 and ITB 42.1.

19.6 The bid security shall be forfeited if:

(a) a Bidder requests for withdrawal or modification of its bid, except as provided in ITB 18.2:

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

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

(b) a Bidder changes the prices or substance of the bid while providing information pursuant to clause 27.1;

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

(d) the successful Bidder fails to:

(i) furnish a performance security in accordance with ITB 41.1;

(ii) sign the Contract in accordance with ITB 42.1; or

(iii) accept the correction of arithmetical errors pursuant to clause 32 ;

19.7 The Bid Security of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL". Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid in the number specified in the BDS**,** and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

In case of e-submission of bid, the Bidder shall submit his bid electronically in PDF or web forms files as specified in ITB Clause 21.1(b), If a Bidder submits both the electronic bid and a bid in hard copy within the bid submission deadline, then the submitted Bids shall be accepted for evaluation provided that the facts and figures in hard copy confirm to those in electronic bid. If there is any major discrepancy in fact and figures in the electronic bid and bid in hard copy, it shall be treated as two separate bids from one Bidder and both the Bids shall be disqualified, as per ITB Clause 4.3 (e).

20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be signed or initialed by the person signing the bid.

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

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

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

(a) Bidders submitting bids by mail, by hand or by courier

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

ii. The inner and outer envelopes shall:

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

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

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

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

ITB 25.1.

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

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

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

i. For e-submission, the bidder is required to register in the e-GP portal https://www.bolpatra.gov.np. for downloading and submitting the bid electronically.

ii. Interested bidders may either purchase the bidding documents from the employer's office as specified in the invitation for bid (IFB) or bidders registered in the e-GP portal of PPMO may download the bidding document from http://www.bolpatra.gov.np after login. If bidders choose to download the bidding document and submit the bid electronically, then the cost of the bidding document shall be deposited as specified in IFB. In addition, electronic scanned copy (.pdf format) of the bank deposit voucher/cash receipt should also be submitted along with the electronic bid files.

iii. The bidder shall then prepare/fill the documents and forms included in the issued bid documents or the downloaded bid documents from the e-GP portal of PPMO - http://www.bolpatra.gov.np. as applicable. The required documents and forms shall be prepared in PDF form and/or shall be filled in the web forms in the e-GP system as specified below:

Technical Bid:

S. N.	Document	Requirement	Remarks
1	Letter of Technical Bid	Mandatory	PDF/Web Forms
2	Bid Security (Bank Guarantee)	Mandatory	PDF
3	Company/Firm Registration Certificate	Mandatory	PDF
4	VAT registration	Mandatory	PDF
5	Tax clearances certificate or evidence of tax return submission	Mandatory	PDF
6	Power of Attorney of Bid signatory	Mandatory	PDF

7	Business Registration (Licence) Certificate	Mandatory, if Applicable	PDF
8	Bank Voucher for cost of bid document	Mandatory	PDF
9	Joint venture agreement	Mandatory	Mandatory in case of JV Bids Only
10	Qualification Information	Mandatory	Web Forms (Experience, Turnover, etc.)

Price Bid;

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

Note:

a) *The documents specified as "Mandatory" should be included in e-submission and non submission of the documents shall be considered as non-responsive bid.*
b) *Bidders (all partners in case of JV) should verify/update their profile documents as appropriate for the specific bid before submitting their bid electronically.*

iv) The Bidder shall then upload the PDF bid files and submit the complete bid online through e-GP portal of PPMO- http://www.bolpatra.gov.np within the specified date and time.

v) Bidders are advised to download the bid submission report to ensure that all the documents/ files are up to date and complete.

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

aa) The e-submitted bids must be readable through open standards interfaces. Unreadable and or partially submitted bid files shall be considered incomplete and rejected for further bid evaluation.

bb) In addition to electronically submitted PDF files/web forms, the Bidder shall be required to submit original bid security letter/ documents and clarifications as specified in ITB Clause 27. If a bidder does not submit the original Bid security letter and requested documents and or clarifications within the specified time limit then the bid shall not be considered for further evaluation.

cc) If major discrepancy is found between the electronically submitted PDF bid files and the documents/ clarifications provided by the Bidder as per ITB Clause 27, then the bid shall not be considered for further evaluation.

dd) The facility for submission of bid electronically through e-submission is to promote transparency, non-discrimination, equality of access, and open competition in the bidding process. The Bidders are fully responsible to use the e- submission facility properly in e-GP portal of PPMO- http://www.bolpatra.gov.np as per specified procedures and in no case the Employer shall be held liable for Bidder's inability to use this facility.

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

ff) Bidders who submit electronic bid should deposit the bidding document fee as specified in IFB and upload the scan copy (in pdf format) of the deposit voucher at the time of bid submission. 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 cost for bidding document is not deposited as specified in the IFB.

22. Deadline for Submission of Bids

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

In case of e-submission, the standard time for e-submission is Nepal Standard Time as set out in the server. The e-procurement system will accept the e-submission of bid from the date of publishing of notice and will automatically not allow the e-submission of bid after the deadline for submission of bid.

22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and

Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

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

24. Withdrawal, and Modification of Bids

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

(i) Bids submitted in hard Copy

a) Bidders may withdraw or modify its bids by sending a written notice in a sealed envelope, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2 before 24 hours prior to the deadline of submission of bids. The corresponding modification of the bid must accompany the respective written notice. All notices must be:

(aa) prepared and submitted in accordance with ITB 20 and ITB 21,and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL", "MODIFICATION;" and

(bb) received by the Employer twenty four hour prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

(cc) The bidder shall clearly specify on envelope whether "MODIFICATION"' is of Technical Bid or Price Bid.

ii) E-submitted bids.

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

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

24.3 Bidder may submit request for withdrawal or modification only one time.

24.4 No bid may be withdrawn if the bid has already been modified.

24.5 Request for withdrawal or modification must be made through the same medium of submission. Request for withdrawal or modifications through different medium shall not be considered.

24.6 The following provisions apply for withdrawal or modification of the Bids:

(i) In case of bids submitted in hard copy no bid shall be withdrawn or modified in the interval between 24 hours prior to the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

(ii) In case of e-submitted bids no bids shall be withdrawn or modified in the interval between deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

25.1 The Employer shall open the bids in public at the address, date and time specified in the BDS in the presence of Bidders` designated representatives and anyone who choose to attend. Then the Employer shall segregates the Technical Bid and Price Bid separately. The Price Bids will remain unopened and will be held in custody of the Employer until the specified time of their opening. If the Technical Bid and Price Bid are submitted together in one inner envelope, the Employer may reject the entire Bid.

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

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

25.4 Thereafter, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be Permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding bid. No Technical Bid and/or Price Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at bid opening. Only the Technical Bid, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids, both Original and Modification, will remain unopened in accordance with ITB 25.1.

25.5 All other envelopes holding the Technical Bid shall be opened one at a time, reading out: the name of the Bidder; whether there is a modification; the presence of a bid security and any other details as the Employer may consider appropriate. Only Technical Bids read out and recorded at bid opening shall be considered for evaluation. No bid shall be

rejected at opening of Technical Bids except for late bids, in accordance with ITB 23.1.

25.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, or modification; and the presence or absence of a bid security. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record.

25.7 At the end of the evaluation of the Technical Bids, the Employer will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice for the opening of Price Bids.

25.8 The Employer will notify Bidders in writing who have been rejected on the grounds of their Technical Bids being substantially nonresponsive to the requirements of the Bidding Document and return their Price Bids unopened.

25.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders` representatives who choose to attend at the address, on the date, and time specified by the Employer. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance.

25.10 All envelopes containing Price Bids shall be opened one at a time and the following read out and recorded:

a) the name of the Bidder;

b) whether there is a modification;

c) the Bid Prices, including any discounts and alternative offers; and

d) any other details as the Employer may consider appropriate.

Only Price Bids, discounts, modifications, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation.. No Bid shall be rejected at the opening of Price Bids.

25.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum, the name of the Bidder, the Bid Price (per lot if applicable), any discounts, modifications and alternative offers. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record.

E. Evaluation and Comparison of Bids

26. Confidentiality

26.1 Information relating to the examination, evaluation, comparison, and post qualification of bids and recommendation of Contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Price Bids. In case of e-submission of bid, upon notification from the employer, the bidder shall also submit the original of documents comprising the Technical and Price Bid as per ITB 11 for verification of submitted documents for acceptance of the e-submitted bid.

27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.

28. Deviations, Reservations, and Omissions

28.1 During the evaluation of bids, the following definitions apply:

a) "Deviation" is a departure from the requirements specified in the Bidding Document;

b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and

c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

29. Determination of Responsiveness

29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

29.2 A substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

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

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

29.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 5 (Works Requirements) have been met without any material deviation, reservation or omission.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

29.5 In case of e-submission bids, the Employer evaluates the bid on the basis of the information in the electronically submitted bid files. If the Bidder cannot substantiate or provide evidence to establish the information provided in e-submitted bid through documents/ clarifications as per ITB Clause 27, the bid shall not be considered for further evaluation.

30. Nonconformities, Errors, and Omissions

30.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

30.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

30.3 Provided that a Technical bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price may be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the methods indicated in Section 3 (Evaluation and Qualification Criteria).

30.4 If minor discrepancies are found such as in technical specification, description, feature which do not make the bid to be rejected, then the

cost, which is calculated to the extent possible due to such differences shall be included while evaluating the bid.

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

31. Qualification of the Bidder

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

31.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.

31.3 An affirmative determination of qualification shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. A negative determination shall result into the disqualification of the Bid, in which event the Employer shall return the unopened Price Bid to the Bidder.

32. Correction of Arithmetical Errors

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

(a) only for unit price Contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

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

33. Conversion to Single Currency

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

34. Domestic Preference

34.1 Unless otherwise specified in the BDS, a domestic preference shall be a factor in bid evaluation.

35. Subcontractors

35.1 The Employer may permit subcontracting for certain specialized works as indicated in Section 3. When subcontracting is permitted by the Employer, the specialized sub-contractor's experience shall be considered for evaluation. Section 3 describes the qualification criteria for sub-contractors.

Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the BDS.

36. Evaluation of Price Bids

36.1 The Employer shall evaluate Price Bid of each bid for which the Technical Bid has been determined to be substantially responsive. The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

36.2 To evaluate a Price bid, the Employer shall consider the following:

(a) the bid price, excluding Value Added Tax , Provisional Sums, and the provision, if any, for contingencies in the Summary Bill of Quantities**,** for Unit Rate Contracts, or Schedule of Prices for lump sum Contracts, but including Day work items, where priced competitively;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 32;

(c) price adjustment due to discounts offered in accordance with ITB 14.4;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33;

(e) adjustment for nonconformities in accordance with ITB 30.3;

(f) application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria);

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

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

36.5 If the bid for an Unit Rate Contract, which results in the lowest Evaluated Bid Price, is seriously unbalanced, front loaded or substantially below updated estimates in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analysis, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient as mentioned in BDS to protect the Employer against financial loss in the event of

default of the successful Bidder under the Contract. If the clarification given by the Bidder is found unsatisfactory then the Employer may reject such bid.

36.6 In case of e-submission bids, the Employer evaluates the bid on the basis of the information in the electronically submitted bid files. If the Bidder cannot substantiate or provide evidence to establish the information provided in e-submitted bid through documents/ clarifications as per ITB Clause 27, the bid shall not be considered for further evaluation.

37. Comparison of Bids

37.1 The Employer shall compare all substantially responsive bids in accordance with ITB 36.2 to determine the lowest evaluated bid.

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

38.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to Contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

39. Award Criteria

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

40. Letter of Intent to Award the Contract/ Notification of Award

40.1 The Employer shall notify the concerned Bidder whose bid has been selected in accordance with ITB 39.1 within seven days of the selection of the bid, in writing that the Employer has intention to accept its bid and the information regarding the name, address and amount of selected bidder shall be given to all other bidders who submitted the bid.

40.2 If no bidder submits an application within a period of seven days of the notice provided under ITB 40.1, the Employer shall, accept the bid selected in accordance with ITB 39.1 and Letter of Acceptance shall be communicated to the selected bidder prior to the expiration of period of Bid validity, to furnish the performance security and sign the contract within fifteen days.

40.3 At the same time, the Employer shall affix a public notice on the result of the award on its notice board and may make arrangements to post the notice into its website, if it has; and if it does not have, into the website of the Public Procurement Monitoring Office, identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the Contract awarded.

41. Performance Security

41.1 Within Fifteen (15) days of the receipt of Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, as specified below from A class Commercial Bank using Sample Form for the Performance Security included in Section 9 (Contract Forms), or another form acceptable to the Employer. The performance security issued by any foreign Bank outside Nepal must be counter guaranteed by an "A" class commercial Bank in Nepal.

i) If bid price of the bidder selected for acceptance is up to 15 (fifteen) percent below the approved cost estimate, the performance security amount shall be 5 (five) percent of the bid price.

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

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

The Bid Price and Cost Estimate shall be inclusive of Value Added Tax.

41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily. In such case, the award process shall be repeated according to ITB 40.

42. Signing of Contract

42.1 The Employer and the successful Bidder shall sign the Contract Agreement within the period as stated ITB 41.1.

42.2 Within thirty (30) days from the date of issuance of notification pursuant to ITB 40.1 unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who, requests for debriefing.

42.3 If the bidder whose bid has been accepted fails to sign the contract as stated ITB 42.1, the Public Procurement Monitoring Office shall blacklist the bidder on recommendation of the Public Entity.

43. Complain and Review

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

Public Entity, for review of the proceedings stating the factual and legal grounds.

43.2 Late application filed after the deadline pursuant to ITB 43.1 shall not be processed.

43.3 The chief of Public Entity(Employer) shall, within five (5) days after receiving the application, give its decision with reasons, in writing pursuant to ITB 43.1:

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

(b) to reject the application.

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

43.4 If the Bidder is not satisfied with the decision given in accordance with ITB 43.3, or the decision is not given within five (5) days of receipt of application pursuant to ITB 43.1, it can, within seven (7) days of receipt of such decision, file an application to the Review Committee of the GoN, stating the reason of its disagreement on the decision and furnishing the relevant supporting documents. The application may be sent by hand, by post, by courier, or by electronic media at the risk of the Bidder itself.

43.5 Late application filed after the deadline pursuant to ITB 43.4 shall not be processed

43.6 Within three (3) days of the receipt of application from the Bidder, pursuant to ITB 43.4, the Review Committee shall notify the concerning Public Entity to furnish its procurement proceedings, pursuant to ITB 43.3.

43.7 Within three (3) days of receipt of the notification pursuant to ITB 43.6, the Public Entity shall furnish the copy of the related documents to the Review Committee.

43.8 The Review Committee, after inquiring from the Bidder and the Public Entity, if needed, shall give its decision within one (1) month of the receipt of the application filed by the Bidder, pursuant to ITB 43.4.

43.9 The Bidder, filing application pursuant to ITB 43.4, shall have to furnish a cash amount or Bank guarantee from "A" class commercial bank equivalent to zero point one five percent (0.15%) of its quoted amount with the validity period of at least ninety (90) days from the date of the filing of application pursuant to ITB 43.4.

43.10 If the claim made by the Bidder pursuant to ITB 43.4 is justified, the Review Committee shall return the security deposit pursuant to ITB 43 to the applicant, within seven (7) days of such decision made.

Section 2 - Bid Data Sheet

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

A. General

ITB 1.1	The number of the Invitation for Bids (IFB) is : **BPTSG-074/75-02**
ITB 1.1	The Employer is: **Nepal Electricity Authority (NEA)**
ITB 1.1	The name of the ICB is: **" Design, Supply, Construction, Testing and Commissioning of Motipur and Sandikharka 132/33/11 kV, Substation "** The identification number of the ICB is**: BPTSG-074/75-02** The number and identification of lots comprising this ICB is: : **None**
ITB 2.1	The name of the Project is: **Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project** The Development Partner(DP) is: **Not Applicable** The implementing agency is: **Nepal Electricity Authority**
ITB 4.1 (a)	Maximum number of partner in a joint venture shall be **: 3 (three)** In case of Foreign Bidder, Joint Venture with Nepalese Bidder is Mandatory.
ITB 4.2	Eligible countries: **All countries as are eligible unless otherwise restriction by the Government of Nepal (GoN)**
ITB 4.4	A list of debarred firms is available at **http:/www.ppmo.gov, official sites government of Nepal and http:/www.nea.org.np, official site of Nepal Electricity Authority.**
ITB 4.9	The domestic bidder shall submit the following documents:

	• Tax Clearance Certificate or Proof of submission of income return for: Last fiscal year 2073/74. The foreign bidder shall declare to submit the following documents at the time of contact agreement • A notarized copy of company and /or business registration certificate of the Bidder's Country and after 45 days of contact agreement • PAN/VAT registration certificate of Nepal • Temporary Construction License But, Resident foreign bidder shall submit PAN/VAT certificate and tax clearance certificate or proof of submission of Income Return last fiscal year.

B. Contents of Bidding Documents

ITB 7.1	For **clarification purposes** only, the Employer's address is: Attention: **The Project Manager** **Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project** **Grid Development Department** **Transmission Directorate** **Nepal Electricity Authority** **Kharipati, Bhaktapur, Nepal** **Telephone: +977 01 616287** **Facsimile number: +977 01 616287** **Electronic mail address: hapuretlp@nea.org.np.**
ITB 7.4	A Pre-Bid meeting: **'shall not'** take place.
ITB 7.5	Time for request: Requests for clarification should be received by the Employer no later than 15 days prior to the deadline for submission of bids.

C. Preparation of Bids

ITB 10.1	The language of the bid is: **(English)**

ITB 11.2 (i)	The Bidder shall submit with its Technical Bid the following additional documents: 1. Business registration certificate of the Bidder and of each joint-venture partners in the case of a joint venture, issued by the government of the country where the bidder or each joint venture partner is registered". If the Bidder fails to submit such registration certificates together with its Bid, the Employer may at the first instance request the Bidder to submit such registration certificates. Failure to submit such registration certificates on Employer's request may be the grounds of Bid rejection.
ITB 11.3 (b)	In accordance with ITB 12 and ITB 14, the following schedules shall be submitted with the bid, including the priced Bill of Quantities for Unit Rate Contracts and Schedule of Prices for lump sum contracts: **None**
ITB 11.3 (d)	The Bidder shall submit with its bid the following additional documents: **None.**
ITB 13.1	Alternative bids "**shall not be**" permitted.
ITB 13.2	Alternative times for completion "**shall not be**" permitted.
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: "**Not Applicable**"
ITB 14.6	The prices quoted by the Bidder "**shall not be**" subject to adjustment.
ITB 15.1	The unit rates and the prices shall be quoted by the bidder entirely in: **Nepalese Rupees (NRs.) or USD/INR** only. It is further instructed, (a) Price Schedule No. 1 (Supply and Delivery of Plant and Equipment Foreign Origin) • The prices shall be quoted either in the currency of Nepalese Rupees (NRs.) or foreign currency (USD or INR) only. (b) Price Schedule No. 2 (Plant including mandatory spare parts supplied from within Employer's country)

	• The prices shall be quoted in Nepalese Rupees (NRs.) only. (c) Price Schedule No 3 (Insurance, Clearing, Forwarding and Transport up to Site including port clearance etc.) • The prices shall be quoted in Nepalese Rupees (NRs.) only. (d) Price Schedule No 4 (Installation Services, Charges and Civil Works) • The prices shall be quoted in Nepalese Rupees (NRs.) only.
ITB 18.1	The bid validity period shall be: **One Hundred Twenty (120) days**.
ITB 19.1	The Bidder shall furnish a bid security, from "A" class commercial bank with a minimum of **Nrs. 1.75 Crores or USD 170,000 or INR. 1.1 Crores,** which shall be valid for 30 days beyond the validity period of the bid.
ITB 19.2(b)	Account Name: **Burtibang-Paudiamrai-Tamghas-Sandhikharka-Gorushinge 132 kV Transmission Line Project.** Bank Name: **Bank of Kathmandu** Bank Address: **Tripureshwor, Kathmandu** Office Code no. : **351235** Account Number: **012500000233524**
ITB 20.1	In addition to the original of the bid, the number of copies is: **2(TWO)**
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall indicate: a) Power of attorney duly notarized in favor of person signing the bid; and (b) In the case of Bids submitted by an existing or intended JV, an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.

D. Submission and Opening of Bids

<table>
<tr><td>ITB 21.1</td><td>Bidders "shall" have the option of submitting their bids electronically.</td></tr>
<tr><td>ITB 21.1(b)</td><td>Delete ITB 21.1(b) and replace by following.

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

iv. Interested bidders may either purchase the bidding documents from the employer's office or may download the bid document from the website http://www.eproc.nea.org.np after login. If bidders choose to download the bidding document and submit the bid electronically, then the cost of the bidding document shall be deposited as specified in IFB. In addition, electronic scanned copy (.pdf format) of the bank deposit voucher/cash receipt should also be submitted along with the electronic bid files.

v. The bidder shall then prepare/fill the documents and forms included in the issued bid documents or the downloaded bid documents from http://eproc.nea.org.np as applicable. The required documents and forms shall be prepared in PDF form and/or shall be filled in the web forms in the e-GP system as specified below:

Technical Bid:

<table>
<tr><th>S. N.</th><th>Document</th><th>Requirement</th><th>Remarks</th></tr>
<tr><td>1</td><td>Letter of Technical Bid</td><td>Mandatory</td><td>PDF/Web Forms</td></tr>
<tr><td>2</td><td>Bid Security (Bank Guarantee)</td><td>Mandatory</td><td>PDF</td></tr>
<tr><td>3</td><td>Company/Firm Registration Certificate</td><td>Mandatory</td><td>PDF</td></tr>
<tr><td>4</td><td>VAT registration</td><td>Mandatory</td><td>PDF</td></tr>
<tr><td>5</td><td>Tax clearances certificate or evidence of tax return submission</td><td>Mandatory</td><td>PDF</td></tr>
<tr><td>6</td><td>Power of Attorney of Bid signatory</td><td>Mandatory</td><td>PDF</td></tr>
<tr><td>7</td><td>Business Registration (Licence) Certificate</td><td>Mandatory, if Applicable</td><td>PDF</td></tr>
</table>
</td></tr>
</table>

8	Bank Voucher for cost of bid document	Mandatory	PDF
9	Joint venture agreement	Mandatory	Mandatory in case of JV Bids Only
10	Qualification Information	Mandatory	Web Forms (Experience, Turnover, etc.)

Price Bid;

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

Note:

c) *The documents specified as "Mandatory" should be included in e-submission and non-submission of the documents shall be considered as non-responsive bid.*

d) *Bidders (all partners in case of JV) should verify/update their profile documents as appropriate for the specific bid before submitting their bid electronically.*

iv) The Bidder shall then upload the PDF bid files and submit the complete bid online through http://www.eproc.nea.org.np within the specified date and time.

vii) Bidders are advised to download the bid submission report to ensure that all the documents/ files are up to date and complete.

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

gg) 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.

hh) In addition to electronically submitted PDF files/web forms, the Bidder shall be required to submit original bid security letter/ documents and clarifications as specified in ITB Clause 27. If a bidder does not submit the original Bid security letter and requested documents and or clarifications within the specified time limit then the bid shall not be considered for further evaluation.

ii) If major discrepancy is found between the electronically submitted PDF bid files and the documents/ clarifications provided by the Bidder as per ITB Clause 27, then the bid shall not be considered for further evaluation.

jj) The facility for submission of bid electronically through e-submission is to promote transparency, non-discrimination, equality of access, and open competition in the bidding process. The Bidders are fully responsible to use the e- submission facility properly in http://www.eproc.nea.org.np as per specified procedures and in no case the Employer shall be held liable for Bidder's inability to use this facility.

kk) When a bidder submits electronic bid through http://www.eproc.nea.org.np, it is assumed that the bidder has prepared the bid by studying and examining the complete set of the Bidding documents including specifications, drawings and conditions of contract.

ll) Bidders who submit electronic bid should deposit the bidding document fee as specified in IFB and upload the scan copy (in pdf format) of the deposit voucher at the time of bid submission. 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 cost for bidding document is not deposited as specified in the IFB.

The Employers address for the purpose of e-submission of bid;

The Employers address for the purpose of electronic Bid submission is e-procurement section of http://www.nea.org.np

In case of e-submission of bid, the bidder shall submit his/her bid electronically in PDF files in the manner as specified above and additional submission of hard copy of "Original plus one copy of bid" is not mandatory.

In case both the electronic bid and original bid in hard copy are submitted to the Employer within the specified time period, the Bidder's electronic bid and original bid in hard copy will be accepted for evaluation provided the Bid price in Bill of Quantity Sheet is same. If there is any discrepancy in Bid price in Bill of Quantity between the electronic and original bid in hard copy it will be treated as two separate bids from one Bidder and hence,

	both the electronic bid and original bid in hard copy shall be disqualified, as per ITB Clause. However, for electronically submitted bid in PDF files, the bidder shall be required to submit documents/clarifications as specified in ITB Clause. **The deadline for e-submission of bids shall be;** i) The e-procurement system will accept the e-submission of bid during office hours from the date after publishing the notice and will automatically not allow the e-submission of bid after the deadline for submission of bid, as specified above. ii) The standard time for e-submission is Nepalese standard time as set out in the server of IT Department of Nepal Electricity Authority. iii) In case of e-submission of bid, the Bidder shall submit his bid electronically in PDF files in the manner as specified in ITB Clause only, and submission of "original plus one copy" shall not be required before deadline for submission time as per ITB Clause. **Provision for Substitution or Modification or Withdrawal of Bid** 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 NEA's Web site. **In case of e-submitted bid;** i) Bidders may submit his Substitution or Modification or Withdrawal either in hard copy or through e-submission. ii) For Substitution of Bid the Bidder shall follow similar steps as specified in ITB Clause with a Substitution letter in PDF file. iii) 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 Authorized Representative/s of the Firm / all authorized Joint Venture partners. **Bid opening for e-submitted bid;** i) Electronically submitted bid shall be opened first at the same time and date as specified in the ITB and IFB notice. ii) The e-procurement system allows the Employer to download and open the e-submitted bid files from bidders only after the time for opening the bids. iii) The e-submitted bids must be readable through open standards interfaces. Unreadable and or partially submitted bid files (not complying the ITB Clauses) shall be considered incomplete and rejected for further bid evaluation. iv) After opening of e-submitted bids files, all files shall be printed and recorded at the time of bid opening. In case of "WITHDRAWAL" or "MODIFICATION" or "SUBSTITUTION" by the Bidder through e-submission, the e-submitted PDF files under "WITHDRAWAL" or "MODIFICATION" or "SUBSTITUTION" shall be opened and read out first. Bids for which acceptable notice of "WITHDRAWAL" or "SUBSTITUTION" has been submitted pursuant to ITB Clause shall not be opened.

Examination of e-submitted Bids and Determination of Responsiveness

For a e-submitted bid to be substantially responsive the requirement as specified in the ITB Clauses shall be fulfilled.

Evaluation and Comparison of e-submitted Bids

1. In case of e-submitted bids, the Employer evaluates the bid based on the information as per electronically submitted bid files. For clarification/ verification purpose, the Employer may request the Bidder to submit documents/ clarifications as specified in ITB Clause.
2. In case, the Bidder could not substantiate or provide evidence to prove the information provided in e-submitted bid through documents/ clarifications as per ITB Clause, the bid shall not be considered for further evaluation and respective ITB Clause for forfeiture of bid security shall be applicable.

Steps to be followed by a Bidder to submit the electronic bid submission

1. Prepare the paper bid document

- Either purchase the Bid Document directly from the Employer office or may download the bid document from the website and deposit the equivalent amount in the Revenue account of the employer as specified in the notice or/and Bid Document.
- Fill the rates and amount in BOQ,
- Prepare the necessary copy of Company registration, VAT/PAN registration , Tax clearance certificate,
- Prepare the necessary specific papers like Power of Attorney for bid signatory, Joint Venture agreement, if bidding in JV,
- Prepare summary of qualification information sheet (Financial turnover, Experience, Manpower, Equipment, Credit line, Litigation etc) in the specified format,
- Prepare the bid guarantee letter for the specified bid security amount and in the specified format,

2. Prepare the Electronic bid files in pdf format

- Once prepared the above paper documents the bidder shall prepare the electronic bid files in pdf format as follows;
- Scan the above documents in pdf format, give the specific file name for each document,
- Prepare all scanned bid files in pdf format and save them in a separate folder in own computer to ease bid uploading process,

3. Electronic bid submission

- Once the electronic bid files are ready the Bidder shall connect to internet,
- Open the NEAs website www.nea.org.np and open E-procurement section, Register in the Bidders name and get User name and Password for Login,

	• Confirm the registration by clicking the specified link in auto generated e-mail from NEAs web site, • After confirmation for bidders registration click Bidder, fill User name, Password and Login, • Choose and click the specific tender notice for which the electronic bid files has been prepared, • Click the Bid now button to submit the electronic bid files, • Upload each specified electronic bid files by clicking the Upload button and select the respective bid files by Browsing, • Once all the electronic bid files are uploaded, click the Submit the Bid button for final e-submission of electronic Bid, • Once the e-submission is successfully completed the Bidder shall receive a auto generated confirmation e-mail from the NEAs website, Bidder to keep the conventional paper bid document , qualification information, and other related documents safe as the Buyer may seek the supporting bid documents and clarifications, as necessary during bid evaluation process.
ITB 22.1	For **bid submission purposes only**, the Employer's address is: Attention: **The Project Manager** **Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project** **Grid Development Department** **Transmission Directorate** **Nepal Electricity Authority** **Kharipati, Bhaktapur, Nepal** **Telephone: +977 01 616287** **Facsimile number: +977 01 616287** **Electronic mail address:** hapuretlp@nea.org.np**.** The deadline for bid submission is: Date: **14/01/2018** Time: **12:00 PM**
ITB 25.1	The bid opening shall take place at: **Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132kv Transmission Line Project** **Grid Development Department** **Transmission Directorate** **Nepal Electricity Authority** **NEA Training Centre, Kharipati, Bhaktapur, Nepal**

	Date: 14/01/2018 **Time: 2:00 PM**

E. Evaluation and Comparison of Bids

ITB 33.1	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices if permitted and expressed in various currencies into a single currency is: The source of exchange rate shall be: **Nepal Rastra Bank** The date for the exchange rate shall be: **30 days prior to the deadline for submission of bids.**
ITB 34.1	A margin of preference "**shall**" apply for domestic bidders. The application methodology shall be as stipulated in Section 3 (Evaluation and Qualification Criteria).
ITB 35.1	Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: *25% of the total Contract amount*
ITB 36.5	The amount of the performance security be increased by Eight (8) percent of the quoted bid price.

Section 3 - Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders if the bidding was preceded by post-qualification exercise. GoN requires bidders to be qualified by meeting predefined, precise minimum requirements. The method sets pass-fail criteria, which, if not met by the bidder, results in disqualification. In accordance with ITB 32 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).

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1. Evaluation

In addition to the criteria listed in ITB 36.2 (a) – (f) the following criteria shall apply:

1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity, to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 5 (Works Requirements).
The Bidder shall give information about his past performance by stating in his Bid the names of the countries in which he has accomplished, within the last ten years, similar Work, by indicating the year, type of Work, quantity and Contract number.
The Bidder shall state in his Bid the full names and addresses, telephone, fax numbers of the Clients and the names of the Contact person.
For the purpose of verifying the information and data submitted by the Bidder, NEA reserves the right to collect necessary information from these Clients.

1.2 Multiple Contracts

Pursuant to Sub-Clause 36.4 of the Instructions to Bidders, if Works are grouped in multiple contracts, evaluation will be as follows:

"Not Applicable"

1.3 Completion Time

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

"Not Applicable"

1.4 Alternative Technical Solution

Alternative technical solutions, if permitted under ITB 13.4, will be evaluated as follows:

"Not Applicable"

1.5 Economic Evaluation

The following factors and methods will apply:

(a) Time Schedule:

The plant and equipment covered by this bidding are required to be shipped, installed and the successful completion of the Facilities shall have to be completed within **24 months** from the effective date of the Contracts. Bidders are required to base their prices on the time schedule given in Appendix 4 to the Form of Contract Agreement (Time Schedule) or, where no time schedule is given in Appendix 4, on the Completion date(s) given above. No credit will be given to earlier completion. **Bids offering completion beyond the named period will be rejected.**

(b) Operating and Maintenance Costs: NA

(c) Functional Guarantees of the facilities:

(i) Guaranteed Transformer losses.

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

a) No load losses: US$ 4684 per kW

b) Load losses: US$ 1180 per kW

c) Losses associated cooling fan load: US$ 393 per kW

Guaranteed values not reached.

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

Performance Guarantee

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

(d) Work, services, facilities, etc., to be provided by the Employer

None

1.6 Domestic Preference

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

(a) The preference margin shall not be applied to the whole facilities but only to the eligible domestically produced Plant and Equipment within the Contract;

(b) Plant and Equipment offered from outside the Employer's country shall be quoted CIP (Section 4, Bidding Forms, Schedule No.1) and Plant and Equipment offered locally shall be quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable) free of sales and similar taxes (Section 4, Bidding Forms, Schedule No.2);

(c) All other cost components for Insurance, Clearing, Forwarding and Transport up to Site (including port clearance etc.) shall be quoted separately (Section 4 Bidding Forms, Schedule No 3)

(d) All other cost components for services and works such as Installation Services, Charges and Civil Works shall be quoted separately (Section 4 Bidding Forms, Schedule No 4).

(e) In the comparison of Bids, only the CIP prices component of each Bid for the Plant and Equipment offered from outside the Employer's country shall be increased by fifteen percent (15%);

(f) No margin of preference shall be applied to any of the services or works included in the contract; and

(g) Bidders shall not be permitted or required to modify the mix of local and foreign plant and Equipment after bid opening.

1.7 Quantifiable Nonconformities, Errors and Omissions

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

2. Qualification

2.1 Eligibility

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

2.1.1 Conflict of Interest

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

2.1.2 Government-owned Entity

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

2.1.3 Development Partner Eligibility ["Not Applicable"]

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

2.1.4 UN Eligibility

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

2.1.5 VAT and PAN Registration

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

2.2 Pending Litigation

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

2.2.1 Pending Litigation

All pending litigation shall be treated as resolved against the Applicant and so shall in total not represent more than 50 percent of the Applicant's net worth.	must meet requirement by itself or as partner to past or existing JV	not applicable	must meet requirement by itself or as partner to past or existing JV	not applicable	Form LIT – 1

2.3 Financial Situation

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

2.3.1 Historical Financial Performance

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

2.3.2 Average Annual Construction Turnover

Minimum average annual construction turnover of **USD 5.01 Million** calculated as total certified payments received for contracts in progress or completed, within best three years out of last ten years.	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 40% of the requirement	Form FIN - 2

2.3.3 Financial Resources

Using Forms FIN – 3 and FIN - 4 in Section 4 (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: ▪ the following cash-flow requirement, **USD 1.2 Million**	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 40% of the requirement	Form FIN – 3 and Form Fin – 4

2.4 Experience

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

2.4.1 General Construction Experience

Experience under construction contracts in the role of contractor, subcontractor, or management contractor for at least the last **Ten (10)** years prior to the applications submission deadline.	must meet requirement	not applicable	must meet requirement	not applicable	Form EXP -1

2.4.2 Specific Construction Experience

(a) Contracts of Similar Size and Nature

Participation as contractor, management contractor, or subcontractor, in at least **two (2)** contracts within the last 10 years, each with a value of at least **USD 2.7 Million** that have been successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section 5, Works Requirements.	must meet requirement	must meet requirement	not applicable	not applicable	Form EXP - 2(a)

(b) Construction Experience in Key Activities

For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum construction experience in the following key activities:	must meet all requirements	must meet all requirements		not applicable	Form EXP-2(b)
i) The Bidder shall have successfully executed as a prime contractor, management contractor, or subcontractor, the substation contracts for design, supply, installation, testing and commissioning, of at least 2 (two) substation contracts of 110 kV or above voltage class with the supply and installation of power transformer of capacity not less than 30 MVA.			Each partner in JV must have substantially executed at least one step-down substation project with voltage class of 110 kV or higher.		

Note: Client Certificates for all the relevant projects undertaken by the bidder and all the partners in JV shall be submitted along the bid to substantiate the work experience.

2.5 Personnel

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

No.	Position	Academic Qualification *[When position demands]*	Total Work Experience [Years]	Experience in Similar Works [years]
1.	**Project Manager**	**Masters**	**10**	**5**
2.	**Electrical Engineer**	**Bachelors in Electrical Engineering**	**8**	**5**
3.	**Civil Engineer**	**Bachelors in Civil Engineering**	**8**	**5**
4.	**Surveyor**	**Diploma in Surveying**	**5**	**5**

In case the bidder proposes to consider Personnel that may be spared from committed/ongoing contracts for evaluation, the bidder shall provide details of personnel which will be spared from such committed/ongoing contracts based on the physical progress at the date of bid submission. The details so submitted by the bidder and the physical progress of the ongoing contracts only the spared personnel shall be taken into the consideration during evaluation.

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

2.6 Equipment

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

No.	Equipment Type and Characteristics	Min. Number Requirement
1.	Theodolite	1 Nos
2.	Concrete Mixture	2 Nos
3.	5 kV Megger	1 Nos
4.	Soil resistivity testing meter	1 Set
5.	Relay Testing kit	1 Set
6.	Vibrator	2 No.
8.	Oil filter machine (≥ 100 kV)	1 Set
9.	Primary injection kit (800 Amp.)And secondary injection kit (10 Amp.)	1 Set
10.	Vibrator with needle and plate both	2 No.

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

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

The Bidder/Lease Owner shall be solely responsible for the data provided. However, this shall not limit the right of employer to verify the authenticity of submitted information.

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

2.7 Subcontractors / Manufacturers

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

Item No.	Description of Item	Minimum Criteria to be met	Documents Submission Requirements
1	Power Transformer	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured, tested and supplied Power Transformer of capacity 30 MVA or above, 132 kV or higher voltage Class, at least twice the bid quantity during the last five (5) years period ending on the last date of bid submission and the same shall have been in satisfactory operation for at least two (2) years as on originally scheduled date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the successfully carried out type test report of equivalent capacity (i.e. 30MVA or higher) of 132 kV or higher voltage class transformer, by reputed independent accredited testing laboratory, carried out within last 10 years period ending on the last date of bid submission. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer. vi) OLTC & its Control equipment must necessarily be only from ***MR Germany*** or ***ABB Sweden.***	Bidder(s) must submit all the necessary documents required to prove the above specified legal status, Valid ISO Certificate, experience eligibility requirements (substantiated by end users certificate) and type test report.
2	SF6 Circuit Breaker	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied SF6 circuit breaker of 132 kV or higher voltage Class, at	

		least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission and same shall have been in satisfactory operation for at least two (2) years as on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory for the size offered. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	
3	132 kV Current Transformer	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied Current Transformer of 132 kV or higher voltage Class, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission. Out of supplied quantity, a minimum of half the bid quantity shall have been in operation satisfactorily to the end users for at least One (1) year on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory for the size offered. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	

4	132 kV Capacitive Voltage Transformer	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied Capacitive Voltage Transformer of 132 kV or higher voltage Class, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission. Out of supplied quantity, a minimum of half the bid quantity shall have been in operation satisfactorily to the end users for at least One (1) year on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	
5	Disconnecting Switch	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied disconnecting switch of 132 kV or higher voltage Class, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission. Out of supplied quantity, a minimum of half the bid quantity shall have been in operation satisfactorily to the end users for at least One (1) year on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's	

		original letterhead with seal and stamp of the manufacturer.	
6	Lightning Arrester	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied Lightning Arrester of 120 kV or higher voltage Class, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission. Out of supplied quantity, a minimum of half the bid quantity shall have been in operation satisfactorily to the end users for at least One (1) year on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	
7	Battery and Battery Charger	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied Battery and Battery Charger, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission. Out of supplied quantity, a minimum of half the bid quantity shall have been in operation satisfactorily to the end users for at least One (1) year on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's	

		certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	
8	XLPE Cable	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured and supplied XPLE Cable of 36 kV or higher Voltage Class, at least twice the bid quantity as a main supplier over last five (5) years period ending on the last date of bid submission. Out of supplied quantity, a minimum of half the bid quantity shall have been in operation satisfactorily to the end users for at least One (1) year on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	
9	Substation Automation System /SCADA Communication manufacturer	i) Must have manufacturing experience of at least 5 (five) years. ii) Must have designed, manufactured, supplied, tested and commissioned twice the bid quantity of substation automation System/SCADA Communication which must be in satisfactory operation on 132 kV system or higher for at least 2 (Two) years as on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's	

		certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	
10	Control & Relay Panel	i) Must have manufacturing experience of at least 10 (ten) years. ii) Must have designed, manufactured, supplied, tested and commissioned twice the bid quantity of substation Control & Relay Panel which must be in satisfactory operation on 132 kV system or higher for at least 2 (Two) years as on the date of bid opening. iii) Must hold a valid ISO 9001:2000 (including design in scope of registration) certifications. iv) Must submit the type test report carried out by reputed independent accredited testing laboratory. v) In case the Bidder is not the manufacturer of Goods offered, the Bidder shall submit manufacturer's certificate authorizing the Bidder to supply the manufacturer's Goods which shall be on manufacturer's original letterhead with seal and stamp of the manufacturer.	

Note:

Following Criteria are essential to satisfy the qualification of above product of bidding:

i. *i) The Bidder must submit evidence (Business registration date, sales/supply record, ISO Certificate, type-test Certificate, end user certificate not more than five (5) years before the last date of bid submission) wherever applicable of the offered manufacturer meeting the above specified product.*
ii. *In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV (Bidding Forms), showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.*

Type test certificate (for 2.7 Subcontractors), if applicable, shall have been issued by a reputed independent laboratory accredited by International Laboratory Accreditation Corporation (ILAC) or International Accreditation Forum (IAF) or other equivalent reputed accreditation agencies (or recognized by NEA) over last 10 years period ending on the last date of bid submission

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

Section 4 - Bidding Forms

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

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Letter of Technical Bid

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

Date: .....

Bidding No.: .....

Invitation for Bid No.: .....

To: .....

We, the undersigned, declare that:

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

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

(c) Our bid shall be valid for a period of . . . .***insert validity period as specified in ITB 18.1***. . . days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(d) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;

(e) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries or any countries **[insert the nationality of the Bidder, including that of all parties that comprise the Bidder if the Bidder is a consortium or association, and the nationality of each Subcontractor and Supplier];**

(f) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;

(g) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;

(h) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by the law of Nepal or official regulations or by Development Partner (if applicable) or by an act of compliance with a decision of the United Nations Security Council;

(i) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;[1]

[1] Use one of the two options as appropriate.

(j) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;

(k) Commissions or gratuities, if any, paid or to be paid by us to agents relating to this bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agents	Amount and currency	Purpose of commission or gratuity
1. 2. [if none, state "none"]		

(l) We declare that, we including any subcontractors or suppliers for any part of the contract do not have any conflict of interest in the proposed procurement proceedings and we have not been blacklisted as per ITB 3.4 and punished for an offense relating to the concerned profession or business.

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

(n) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 3 (Evaluation and Qualification Criteria) and our technical proposal, or as otherwise agreed with the Employer.

Name .....

In the capacity of .....

Signed .....

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

Date .....

Letter of Price Bid

(Please Refer to Price Bid)

Schedules
Bill of Quantities [Unit Rate Contract]
Schedules of Prices[Lump Sum Contract]
(Please Refer to Price Bid)

Tables of Adjustment Data

(Please Refer to Price Bid)

Bid Security
Bank Guarantee

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

Beneficiary: ..... ***name and address of Employer*** …….

Date: ……...

Bid Security No.: .....

We have been informed that . …….. .***[insert name of the Bidder]*** (hereinafter called "the Bidder")

intends to submit its bid (hereinafter called "the Bid") to you for the execution of ……... ***name of Contract*** . …… under Invitation for Bids No. …… ("the IFB").

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

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

(a) has withdrawn or modifies its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or

(b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or

(c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

(d) is involved in fraud and corruption in accordance with the ITB

This guarantee will remain in force up to and including the date ……***number***……days 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 letter than the above date.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

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

Note:

The bid security of ……..……. has been counter guaranteed by the Bank ……..…….. ...…… on

……..…….……. (Applicable for Bid Security of Foreign Banks).

Technical Proposal Format

1. **Personnel**
2. **Equipment**
3. **Site Organization**
4. **Method Statement**
5. **Mobilization Schedule**
6. **Construction Schedule**
7. **Schedule of Sub Contractors**
8. **Others**

1. Personnel

Form PER – 1: Proposed Personnel

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

No.	Name	Position*	Academic Qualification	Total Work Experience [Years]	Experience in Similar Works [years]
1.					
2.					
3.					
4.					
5.					

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

Form PER – 2: Resume of Proposed Personnel

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

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

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

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

Note:

In case of e-submission the Resume of Proposed Personnel shall be submitted on notification by the Employer as per ITB 27.

2.Equipment

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

For the equipment under Bidder's ownership

No.	Equipment Type and Characteristics	Total Nos. of Equipment under Bidder's Ownership	No. of Equipment engaged/proposed for ongoing/committed contracts	Nos. of Equipment proposed for this contract
1.				
2.				
3.				
4.				
5.				

(i) For the Equipment to be leased/hired

No.	Equipment Type and Characteristics	Total Nos. of Equipment under the ownership of lease/hire provider	No. of Equipment engaged/committed for other works	Nos. of Equipment proposed to be leased/hired for this contract
1.				
2.				
3.				
4.				
5.				

Type of Equipment*		
Equipment Information	**Name of manufacturer**	**Model and power rating**
	Capacity*	**Year of manufacture**
Current Status	**Current location**	
	Details of current commitments	
Source	**Indicate source of the equipment** **🗀 Owned 🗀 Rented 🗀 Leased 🗀 Specially manufactured**	

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

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

Note:

In case of e-submission the "Agreements" shall be submitted on notification by the Employer as per ITB 27.1

3. Site Organization

The Bidder shall show here in an Organogram format the organization of his site personnel showing clearly designated duties and responsibilities and the chain of command throughout the structure. Included in the chart shall be the names of respective personnel.

4. Method Statement

The Bidder shall provide here a brief description of how the Works are to be undertaken. The description shall indicate how each activities are to be undertaken.

5. Mobilization Schedule

The Bidder shall provide here a general description of the arrangements and methods which he proposes to adopt for the execution of the Works which shall include but not be limited to:-

i) Mobilization period including periods required for establishing the Contractor's offices, workshops etc. and the facilities required for the Engineer and his staff.
ii) Sources of Contractor's equipment and mobilization periods for items of plant.

6. Construction Schedule

The Bidder shall provide here his proposed programme for construction of the Works within the Time for Completion. The programme shall be presented in the form of a bar chart showing main construction activities with **Milestones.** Associated groups of construction equipment shall be listed.

7. Schedule of Subcontractors

The bidder shall enter in the following table a list of the sections and appropriate value of the work for which he proposes to use subcontractors, together with the names and addresses of the proposed subcontractors. The bidder shall also enter a statement of similar works previously executed by the proposed subcontractors, including description, location and value of work, year completed, and name and address of the employer/engineer.

Item Nos.	Description of work	Approximate value (US$ or equivalent)	Name and address of Subcontractor	Statement of similar works executed

Notwithstanding such information the bidder, if awarded the Contract, shall remain entirely and solely responsible for the satisfactory completion of the Works.

8. Others (insert additional requirement if applicable**]**

Bidder's Qualification

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

Form ELI – 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
In case of JV, legal name of each partner	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address in country of constitution	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	

Attached are copies of the following original documents.

1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.
2. Authorization to represent the firm or JV named in above, in accordance with ITB 20.2.
3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.
4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.

Form ELI - 2: JV Information Sheet

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Bidder's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following original documents. 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2. 2. Authorization to represent the firm named above, in accordance with ITB 20.2. 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.	

Form LIT - 1: Pending Litigation

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

Pending Litigation			
❑ **No pending litigation in accordance with Criteria 2.2 of Section 3 (Evaluation and Qualification Criteria)**			
❑ **Pending litigation in accordance with Criteria 2.2 of Section 3 (Evaluation and Qualification Criteria)**			
Year	**Matter in Dispute**	**Value of Pending Claim in US$ Equivalent**	**Value of Pending Claim as a Percentage of Net Worth**

Form FIN - 1: Financial Situation

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

Financial Data for Previous 5 Years [in NRs or Equivalent US$]					
	Year 1	**Year2**	**Year3**	**Year4**	**Year5**

Information from Balance Sheet

Total Assets					
Total Liabilities					
Net Worth					
Current Assets					
Current Liabilities					

Information from Income Statement

Total Revenues					
Profits Before Taxes					
Profits After Taxes					

❑ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last two to five years, as indicated above, complying with the following conditions.

- All such documents reflect the financial situation of the Applicant or partner to a JV, and not sister or parent companies.
- Historic financial statements must be audited by a certified accountant.
- Historic financial statements must be complete, including all notes to the financial statements.
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

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

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

Form FIN - 2: Average Annual Construction Turnover

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

The information supplied should be the Annual Turnover of the Bidder or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed in NRs or in US Dollars in case of foreign bidders at the rate of exchange **at the end of the period reported**.

Annual Turnover Data for the Last 10 Years (Construction only)			
Year	**Amount Currency**	**Exchange Rate**	**US$ Equivalent**
		Average Annual Construction Turnover	

Form FIN – 3: Financial Resources

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

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

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

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

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

Current Contract Commitments

Current Contract Commitments									
No.	**Name of Contract**	**Name of the Contractor/ s**	**Employer's Contact Address, Tel, Fax**	**Contract Amount**	**Contract Date**	**Contract Duration**	**Value of outstanding works [NRS]**	**Estimated Completion Date**	**Average Monthly Invoicing [NRS/month]**
1									
2									
3									
4									
5									
6									

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

Form EXP – 1: General Construction Experience

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

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

Form EXP – 2 (a): Specific Construction Experience

Fill up one (1) form per contract.

Contract of Similar Size and Nature			
Contract No . . . . . of	**Contract Identification**		
Award Date		**Completion Date**	
Role in Contract	❑ **Contractor**	❑ **Management Contractor**	❑ **Subcontractor**
Total Contract Amount	**US$ ……..**		
If partner in a JV or subcontractor, specify participation of total contract amount	**Percent of Total**	**Amount**	
Employer's Name **Address** **Telephone/Fax Number** **E-mail**			
Description of the similarity in accordance with Criteria 2.4.2(a) of Section 3			
Participation as contractor, management contractor, or subcontractor, in at least two (2) contracts within the last 10 years, each with a value of at least USD 2.7 Million that have been successfully or are substantially completed and that are similar to the proposed works. The similarity shall be based on the physical size, complexity, methods, technology or other characteristics as described in Section 5, Works Requirements.			

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

Fill up one (1) form per contract

Contract with Similar Key Activities			
Contract No . . . . . of	**Contract Identification**		
Award Date		**Completion Date**	
Role in Contract	❑ **Contractor**	❑ **Management Contractor**	❑ **Subcontractor**
Total Contract Amount	**US$ …….**		
If partner in a JV or subcontractor, specify participation of total contract amount	**Percent of Total**	**Amount**	
Employer's Name **Address** **Telephone Number** **Fax Number** **E-mail**			
Description of the key activities in accordance with Criteria 2.4.2(b) of Section 3			
i) The Bidder shall have successfully executed as a prime contractor, management contractor, or subcontractor, the substation contracts for design, supply, installation, testing and commissioning, of at least 2 (two) substation contracts of 110 kV or above voltage class with the supply and installation of power transformer of capacity not less than 30 MVA.			

PART II: REQUIREMENTS

Section 5 – Work Requirements

(Please refer to Volume II)

Section 6 – Preamble of Bill of Quantities

(Please refer to Volume III, Price Bid)

PART III: CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section 7 - General Conditions of Contract

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

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General Conditions of Contract

A. Contract and Interpretation

1. Definitions

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

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

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

"GCC" means the General Conditions of Contract.

"SCC" means the Special Conditions of Contract.

"day" means calendar day.

"year" means 365 days.

"month" means calendar month.

"Party" means the Employer or the Contractor, as the context requires.

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

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

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

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

"Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GCC Subclause 17.2.4.

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

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

"The Bank" means the financing institution named in the SCC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Contract Documents

2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

3. Interpretation

3.1 In the Contract, except where the context requires otherwise,

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word "agree," "agreed," or "agreement" require the agreement to be record in writing;

(d) the word "tender" is synonymous with "bid," "tenderer" with "Bidder," and "tender documents" with "Bidding Documents;" and

(e) "written" or "in writing" means handwritten, typewritten, printed or electronically made, and resulting in a permanent record.

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

3.2 Incoterms

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

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

3.3 Entire Agreement

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

3.4 Amendment

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

3.5 Independent Contractor

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

3.6 Non-Waiver

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

3.6.2 Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, must be dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

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

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

4. Communications

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

(a) in writing and delivered against receipt; and

(b) delivered, sent, or transmitted to the address for the recipient's communications as stated in the Contract Agreement.

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

5. Law and Language

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

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

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

6. Fraud and Corruption

6.1 If the Employer determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub-consultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 42 shall apply as if such expulsion had been made under Sub-Clause 42.2.1 (c).

For the purposes of this Sub-Clause,

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or

attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a GoN investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the GoN's inspection and audit rights provided for under Sub-Clause 9.6.

B. Subject Matter of Contract

7. Scope of Facilities

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

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the

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

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to GCC Subclause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix 4 (Time Schedule) to the Contract Agreement.

8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

9. Contractor's Responsibilities

9.1 The Contractor shall design, manufacture, including associated purchases and/or subcontracting, install, and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities, including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date 30 days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

9.3 The Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under GCC Subclause 10.3 hereof and that are necessary for the performance of the Contract.

9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national, or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its

personnel, including the Subcontractors and their personnel, but without prejudice to GCC Subclause 10.1 hereof.

9.5 Any plant and services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any Subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).

9.6 The Contractor shall permit GON/DP to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by GON/DP, if so required by GON/DP.

9.7 If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.

9.8 Protection of the Environment

(a) The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.
(b) The Contractor shall ensure that emissions, surface discharges, and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

10. Employer's Responsibilities

10.1 All information and/or data to be supplied by the Employer as described in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement shall be deemed to be accurate, except when the Employer expressly states otherwise.

10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.

10.3 The Employer shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities, or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the

Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.

10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities, or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning, and Guarantee Tests, all in accordance with the provisions of the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Subclause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.

10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Subclause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Subclause 25.2.

10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, except those incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Subclause 25.2.

10.8 In the event that the Employer shall be in breach of any of his obligations imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

C. Payment

11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.

11.2 Unless an adjustment clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.

11.3 Subject to GCC Subclauses 9.2, 10.1, and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and

sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.

12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.

12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix (Terms and Procedures of Payment) to the Contract Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

13. Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner, and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, within 30 days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies.

13.2.2 The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within 30 days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC.

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

Employer in the SCC, or in another form acceptable to the Employer.

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

14. Taxes and Duties

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

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

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

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date 30 days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Subclause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

D. Intellectual Property

15. License/Use of Technical Information

15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and nontransferable license (without the right to sublicense) to the Employer under the patents, utility models, or other industrial property rights owned by the Contractor or by a third party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a nonexclusive and nontransferable right (without the right to sublicense) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how, or other intellectual property right from the Contractor or any third party to the Employer.

15.2 The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

16. Confidential Information

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

16.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, procurement of Plant, construction, or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under GCC Subclauses 16.1 and 16.2 above, however, shall not apply to that information, which

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

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

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

E. Execution of the Facilities

17. Representatives

17.1 Project Manager

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

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

17.2 Contractor's Representative and Construction Manager

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

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information, and all other communications under the Contract.

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

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the

Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Subclause 17.2.1.

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

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

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

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

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

18. Work Program

18.1 Contractor's Organization

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

18.2 Program of Performance

Within 30 days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract,

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

18.3 Progress Report

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

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

18.4 Progress of Performance

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

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements.

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

19.Subcontracting

19.1 The Appendix 5 (List of Major Items of Plant and Services and List of Approved Subcontractors) to the Contract Agreement specifies major items of plant and services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or

any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract.

19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Subclause 19.1.

19.3 For items or parts of the Facilities not specified in the Appendix (List of Major Items of Plant and Services and List of Approved Subcontractors for Major Items) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.

19.4 Each subcontract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.

19.5 If a Sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

20. Design and Engineering

20.1 Specifications and Drawings

20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors, or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

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

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified

and in accordance with the requirements of GCC Subclause 18.2 (Program of Performance).

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

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

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

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

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

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

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3 hereof. If such dispute or difference is referred to an Dispute Board, the Project Manager shall give instructions as to whether and, if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under Subclause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the

instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

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

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

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

21. Procurement

21.1 Materials

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

21.2 Employer-Supplied Materials

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

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

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect, or default. The Employer shall immediately remedy any shortage, defect, or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect, or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody, and control of the Contractor. The provision of this GCC Subclause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

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

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode

of transport that the Contractor judges most suitable under all the circumstances.

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

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

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

21.4 Customs Clearance

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

22. Installation

22.1 Setting Out/Supervision

22.1.1 Benchmark

(a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks, and lines provided to it in writing by or on behalf of the Employer.

(b) If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level, or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the

Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision

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

22.2 Labor

22.2.1 Engagement of Staff and Labor

(a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding, and transport.

(b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled, and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.

(c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

(d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.2.2 Persons in the Service of Employer

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

22.2.3 Labor Laws

(a) The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration, and emigration, and shall allow them all their legal rights.

(b) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous, or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

(c) The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious, or other customs and all local laws and regulations pertaining to the employment of labor.

22.2.4 Rates of Wages and Conditions of Labor

(a) The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

(b) The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

22.2.5 Working Hours

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

(i) otherwise stated in the Contract;

(ii) the Project Manager gives consent; or

(iii the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

(b) If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

(c) This Subclause shall not apply to any work which is customarily carried out by rotary or double shifts.

22.2.6 Facilities for Staff and Labor

(a) Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

(b) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

22.2.7 Health and Safety

(a) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay, and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

(b) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

(c) The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety, and welfare of persons, and damage to property, as the Project Manager may reasonably require.

22.2.8 Funeral Arrangements

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

22.2.9 Records of Contractor's Personnel

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

Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

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

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

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

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

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

22.2.15 Prohibition of All Forms of Forced or Compulsory Labor

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

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

22.3 Contractor's Equipment
22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all

Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 Site Regulations and Safety

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

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

22.5 Opportunities for Other Contractors

22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

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

22.6 Emergency Work

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

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

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

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

22.7.2 Clearance of Site after Completion

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

22.8 Watching and Lighting

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

23. Test and Inspection

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable

the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Subclause 23.3.

23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3.

23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Subclause 23.4, shall release the Contractor from any other responsibilities under the Contract.

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

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may

from time to time require at the Site, and shall reinstate and make good such part or parts.

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

24. Completion of the Facilities

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

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

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

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

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

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

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

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within 7 days after

receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

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

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

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

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

25. Commissioning and Operational Acceptance

25.1 Commissioning

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

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

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

25.2 Guarantee Test

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

Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

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

25.3 Operational Acceptance

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

(a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or

(b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the SCC, or any other agreed upon period as specified in GCC Subclause 25.2.2 above; or

(c) the Contractor has paid the liquidated damages specified in GCC Subclause 28.3 hereof; and

(d) any minor items mentioned in GCC Subclause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

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

25.3.3 The Project Manager shall, after consultation with the Employer, and within 7 days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

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

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities

individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

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

25.5 Delayed Pre-Commissioning and/or Guarantee Test

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

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

(a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Subclause 26.2;

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

(c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;

(d) the additional charges towards the care of the Facilities pursuant to GCC Subclause 32.1 shall be reimbursed to

the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Subclause 25.5.4 below. The provision of GCC Subclause 33.2 shall apply to the Facilities during the same period.

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

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

F. Guarantees and Liabilities

26. Completion Time Guarantee

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

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

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

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

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

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

27. Defect Liability

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials, and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period shall be 540 days from the date of Completion of the Facilities (or any part thereof) or 1 year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC Subclause 27.10.

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

(a) improper operation or maintenance of the Facilities by the Employer,

(b) operation of the Facilities outside specifications provided in the Contract, or

(c) normal wear and tear.

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to:

(a) any materials that are supplied by the Employer under GCC Subclause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;

(b) any designs, specifications or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or

(c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Subclause 27.7.

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

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

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

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

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

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

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

27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design, or engineering, or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal, or willful action of the Contractor.

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

28. Functional Guarantees

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

28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications, and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the

necessary changes, modifications, and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

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

(a) make such changes, modifications, and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or

(b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix (Functional Guarantees) to the Contract Agreement.

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

29. Patent Indemnity

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

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

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

conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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

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

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

30. Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct,

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

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

G. Risk Distribution

31. Transfer of Ownership

31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.

31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.

31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.

31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.

31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

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

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of

(a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or

(b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or

(c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed, or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed, or

damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Subclause 42.1 hereof.

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

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

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

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

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

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

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

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion, or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

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

(a) Cargo Insurance During Transport

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

(b) Installation All Risks Insurance

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

(c) Third Party Liability Insurance

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

(d) Automobile Liability Insurance

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

(e) Workers' Compensation

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

(f) Employer's Liability

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

(g) Other Insurances

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

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

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

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

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

34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Subclause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer

fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;

(b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;

(c) the extent of the anticipated delay; and

(d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Subclause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the

physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

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

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

36. Change in Laws and Regulations

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

37. Force Majeure

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

(a) war, hostilities, or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;

(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;

(c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;

(d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;

(e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or

other inclement weather condition, nuclear, and pressure waves or other natural or physical disaster; and

(f) shortage of labor, materials, or utilities where caused by circumstances that are themselves Force Majeure.

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

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

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

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

(a) constitute a default or breach of the Contract; or

(b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Subclauses 32.2, 38.3 and 38.4

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

37.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than 60 days or an aggregate period of more than 120 days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Subclause 38.5.

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

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

38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Subclause 37.1 and any explosion or impact of any mine, bomb, shell, grenade, or other projectile, missile, munitions or explosive of war,

occurring or existing in or near the country (or countries) where the Site is located.

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

(a) destruction of or damage to Facilities, Plant, or any part thereof;

(b) destruction of or damage to property of the Employer or any third party; or

(c) injury or loss of life

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

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

(a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Facilities;

(b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged; and

(c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction, or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Subclause 42.1.

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

38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any war risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.

38.5 If during the performance of the Contract any war risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its

and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any war risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.

38.6 In the event of termination pursuant to GCC Subclauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Subclauses 42.1.2 and 42.1.3.

H. Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

39.1.1 Subject to GCC Subclauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in or from the Facilities hereinafter called "Change," provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency, or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

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

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

39.2 Changes Originating from Employer

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

(a) brief description of the Change,

(b) effect on the Time for Completion,

(c) estimated cost of the Change,

(d) effect on Functional Guarantees (if any),

(e) effect on the Facilities, and

(f) effect on any other provisions of the Contract.

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

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

(a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,

(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate

(c) advise the Contractor that the Employer does not intend to proceed with the Change.

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

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

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

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders

herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

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

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

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

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

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

If the parties cannot reach agreement within 60 days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Subclause 45.3.

39.3 Changes Originating from Contractor

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

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Subclauses 39.2.6 and 39.2.7. However, should the Employer choose not to

proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

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

(a) any Change in the Facilities as provided in GCC Clause 39;

(b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Subclause 32.2;

(c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Subclause 41.2; or

(d) any changes in laws and regulations as provided in GCC Clause 36; or

(e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or

(f) any other matter specifically mentioned in the Contract; or

(g) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this Subclause

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

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Subclause 45.3.

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

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

extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

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

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

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

41.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Subclause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Contractor's notice; or

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

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

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

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

42. Termination

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

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

a) does not commence the work as per the Contract,

b) abandons the work without completing,

c) fails to achieve progress as per the Contract.

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

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

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

b) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;

c) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;

d) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.

e) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 90 days of the date of the Project Manager's certificate;

f) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to

correct it within a reasonable period of time determined by the Project Manager;

g) the Contractor does not maintain a Security, which is required; and

h) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC.

i) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 6.1.

42.5 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 42.2 above, the Project Manager shall decide whether the breach is fundamental or not.

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

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

42.8 Payment upon Termination

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

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Claims, Disputes, and Arbitration

44. Contractor's Claims

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

became aware, or should have become aware, of the event or circumstance.

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

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

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

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

(a) this fully detailed claim shall be considered as interim;

(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

(c) the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

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

Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to

substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

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

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

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

45. Disputes and Arbitration

45.1 The Employer and the Contractor shall attempt to settle amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.

45.2 Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred to Arbitration within 30 days after the expiration of amicable settlement period.

45.3 In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures published by the Nepal Council of Arbitration (NEPCA) at the place given in the SCC.

Section 8 - Special Conditions of Contract

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

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1.Definitions	The Employer is: Nepal Electricity Authority Transmission Directorate. Grid Development Department, **Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project.** The Project Manager is: Mr. Manoj Prasad Chaudhary Nepal Electricity Authority Transmission Directorate. Grid Development Department, **Burtibang Paudi-Amarai Tamghas Sandhikharka Gorushinge 132 kV Transmission Line Project.** Address: Kharipati, Bhaktapur Floor/Room number: Ground Floor, NEA Training Center Complex City: Kathmandu Country: Nepal Telephone: +977 01 6616287 , +977 985-1103621 Electronic mail address: hapuretlp@nea.org.np
5.Law and Language	5.1The Contract shall be interpreted in accordance with the laws of: Nepal 5.2The ruling language is: English 5.3The language for communications is: English
7.Scope of Facilities	7.3 The Contractor shall ensure the availability of spare parts for the supplied items for a minimum period of five (05) years from the operational acceptance by the Employer. The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.
8.Time for Commencement and Completion	8.1 The Contractor shall commence work on the Facilities within 15 Days from the Effective Date for determining Time for Completion as specified in the Contract Agreement. 8.2 The Time for Completion of the whole of the Facilities shall be **24 months** from the Effective Date as described in the Contract Agreement

9.Contractor's Responsibility	9.9 Commissioning and pre-commissioning, Add the following new Sub-Clause: The Contractor shall provide sufficient, properly qualified personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature required to properly carry out Pre-commissioning, Commissioning and Guarantee Test all in accordance with the provisions of the Contract.
11.Contract Price	11.2The Contract Price shall be fixed and not adjustable .
13. Securities	13.3.1 The Contractor shall deliver the Performance Security of amount as per ITB 41.1, ITB 36.5 (if any others) of Bidding Document to the Employer within fifteen (15) days after receiving the Letter of Acceptance, and shall, send a copy to the Employer. The Performance Security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. The Contractor shall notify the Project Manager when providing the Performance Security to the Employer.
	13.3.2 The performance security shall be in the form of the Bank Guarantee (Unconditional) attached hereto in Section IX, Contract Forms. The Performance Security shall be issued by any registered "A" class commercial Bank in Nepal , or a foreign bank counter guaranteed by any registered "A" class commercial Bank in Nepal, in complete accordance with the specimen provided herein. The performance security as required by the clause 13.3.1 above, shall be valid for period covering entire contract execution period and any extension thereof, defect liability period plus three month.
	13.3.3 The performance security shall not be reduced on the date of the Operational Acceptance.
	13.3.4 **Add the following new Sub-Clause:** **"**In case of award of the Contract to a Joint Venture, the performance security shall be submitted in the name of the Joint Venture and not in the name of the Lead Partner or any Partner(s) of the Joint Venture alone"
14.Taxes and Duties	**Add the following sub-clause 14.5,** 1. In the country of Origin The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, Materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract. Whatsoever provisions made in the Contract document shall not relieve the Contractor, its suppliers and subcontractors from their

	responsibility to pay income tax that may be levied in the Employer's country on profits made by the Contractor, its suppliers and subcontractors in respect of the Contract. 2. In Nepal General: (a) Unless otherwise specifically declared in the contract documents, the prices bid by the Contractor and its suppliers and subcontractors shall include business taxes and other taxes that may be levied in accordance with the laws and regulations in force or in effect in Nepal as of 28 days prior to the closing date for submission of tenders in the Employer's country on the Equipment, Plant, Materials and Supplies (permanent, temporary and consumables) acquired for the purpose of the Contract and on the services performed under the Contract. Whatsoever provisions made in the Contract document shall not relieve the Contractor, its suppliers and subcontractors from their responsibility to pay income tax that may be levied in the Employer's country on profits made by the Contractor, its suppliers and subcontractors in respect of the Contract. (b) Value Added Tax (VAT): if not included in the costs while submitting bids by the Contractor, sub-contractor or its nominated sub-contractor, shall be eligible for refund on all imported equipment and materials to be supplied and delivered exclusively for use in the Project. <u>Staff Income Tax:</u> The Contractor's staff, personnel and labourers, and those of its subcontractors, will be liable to pay personal income taxes in the Employer's country, irrespective of whether they are local or foreign nationals on income earned including salaries and wages as applicable under the laws and regulations of Nepal. The Contractor shall perform such duties in regard to Tax Deduction at Source (TDS) thereof as may be applicable by such laws and regulations. <u>Import License:</u> The Contractor shall inform the Employer and the Project Manager in writing the details of the equipment and materials to be imported into Nepal for use on the Works at least 56 days prior to arrival of shipment at disembarkation port, and shall submit a formal written request for assistance from the Employer for importation processing. The Employer will assist the Contractor to obtain necessary permits for import of such equipment and materials into Nepal. Import license fees or any other charges shall be at the cost of the Contractor. The Contractor shall be responsible for transport from the Port of disembarkation to the Site or location of the Works. The Contractor shall be fully responsible to determine these rates and the amount payable at the time of preparing tender document and include such

	costs in its bids. In failing to do so, the Employer shall not be liable to pay such costs and the Contractor shall pay such charges as local or any customs authorities en-route may impose, which will not be an eligible item for refund from the Employer. Duties on Equipment, Plant, Materials and Supplies: (a) Notwithstanding the provisions of this document, the Contractor's Plant and Equipment, including essential tools thereof, imported for the sole purpose of executing the Contract on condition of re-export upon completion of the Works, shall be exempt from payment of customs duties, VAT and applicable taxes. However, the Contractor shall deposit the amount or provide a Bank Guarantee to the GoN Customs office equal to amount of customs duties and other taxes as per the prevailing laws, rules and regulations of Nepal for those imported equipment, plant, materials and supplies at the time of import. Such deposited amounts shall be refunded, or the Bank guarantee cancelled by the Customs Office after Re-export of those imported equipment, plant, materials and supplies. (b) Any plant, materials or supplies imported by the Contractor for the performance of the Works but not incorporated in the Works shall be taken out of Nepal within 90 (Ninety) days from the date of issuance of the Performance Certificate. If the Contractor disposes off or consumes any equipment, spare parts, materials or supplies within Nepal, it shall pay all customs duties, VAT, income tax on the sales proceeds and taxes applicable on such items under the laws and regulation of Nepal in force. (c) Equipment, plant, materials and supplies, imported by the Contractor for execution of the Works, shall be subject to payment of customs duty at a special rate of one percent (1%) or as per the prevailing laws, rules and regulations of Nepal of CIP or Customs entry point value. This customs duty shall be paid by the Contractor at the time of import and will be reimbursed by the Employer to the Contractor upon submission of the original receipt issued by the Customs Department. VAT shall be exempted on all imported materials & equipment purchased for the use in the Works (shall be reimbursed by the Employer in case the Employer is unable to avail exempt facility) (d) VAT applicable on plant & equipment supplied directly from manufacturing plant in Nepal shall be paid by the Employer (e) The Contractor shall maintain records satisfactory to the Employer documenting use of all Plant, Materials and Supplies imported into and/or procured for the performance of the Works. If any of such Plant, Materials and/or Supplies, imported into Nepal or otherwise supplied to the Project at a special or preferential rate of Customs Duties or taxes, are misused or found to be used or appropriated for any purpose other than the Project, the Contractor shall be held fully responsible, and liable to pay customs duties, VAT and other taxes

	and/or any penalties as may be imposed in accordance with the prevailing laws and regulations of Nepal. (f) Income tax assessed in accordance with the prevailing Income Tax Act of Nepal and as per the provision of any specific Double Taxation Agreement, shall be imposed on the Contractor, its sub-contractors and nominated sub- contractors. An advance income tax as per the prevailing income Tax Act and Finance Act shall be deducted from the monthly progress payment of the Contractor. (g) The Contractor shall pay all duties, taxes, fees and contributions levied in Nepal in Nepalese Rupees as directed by the relevant governmental department or office, or any other local statutory agency or body in accordance with the relevant rules and regulations. (h) The provisions of this clause shall apply equally to foreign subcontractors or nominated subcontractors of the Contractor employed for the Works. (i) The Contractor and any foreign subcontractors or nominated subcontractors employed on the Works, if not already registered in Nepal, shall be required to get registered with the Inland Revenue Department (IRD) for the purpose of the Contract, which shall be undertaken within 28 days after signing of the Contract Agreement. The Contractor, sub-contractor or the nominated subcontractor shall submit Certified copies of the Registration Certificate(s) to the Project Manager within 14 days of registration. (j) Other local fees and charges (toll taxes) shall be applied in accordance with the prevailing laws and regulations of Nepal. Locally available goods, construction materials including fuel, lubricating oil, cement, timber, iron and steel goods, etc. shall be procured locally. All taxes for such goods procured from the local market shall be included in the Contract Rates and Prices and no reimbursement or payment in that respect shall be made to the Contractor.
15.Licenses / Use of Technical Information	**Add the following second paragraph: Under Sub-clause 15.2.** The Employer shall however shall have the right to reproduce any or all drawings, documents and other materials furnished to the Employer for the purpose of the Contract and in addition, if required, for operation and maintenance.
19.Subcontracting	**Add the following paragraph at the end of this sub Clause** "The Contactor is not encouraged to add or the delete the list finalized during the contract signing unless special circumstance which is not in the control of the contractor is evidenced. If such situation arise, the qualification requirement of the manufacturer of the major items and sub-contractor of the major civil work, shall be as that stipulated in

	"Part I, "Evaluation and Qualification Requirement" of the bidding document.
20.Design and Engineering	20.1.1 **Add this after the end of this clauses: Contractor shall provide** detail condition and specification or parameters taken under consideration for design of the substation and it cost shall be deemed to be included in the contract price. 20.1.2 **Delete this sub-clause.** 20.3.2 **Change** "14 days" to 21 days in both paragraph of this sub clauses.
21.Procurement	21.3.2 **Add the following at the end of this Sub-Clause:** The Employer shall in no way be responsible for the condition of road and access. 21.3.4 **Add the following at the end of this Sub-Clause:** "The Contractor shall restore all such facilities, as far as possible, to its original condition at its own expense and to the satisfaction of the Owner of the Facilities." In case of any damage, the Contractor shall restore all such facilities, as far as possible, to its original condition at its own expense and to the satisfaction of the Employer." 21.4 Custom Clearances; **Add the following paragraph at the beginning of this Sub-Clause:** The Contractor shall familiarize himself with the rules and regulations of Nepal with regard to customs, duties, taxes, importation and clearing of goods and equipment and the like and the Contractor shall follow the required procedures regardless of the relief provided by the Employer. The Employer will provide assistance whenever possible
22.Installation	22.1.1 **Add the following at the end of the second paragraph:** The checking of any setting-out by the Employer shall not relieve the Contractor of his responsibility for the accuracy thereof. 22.1.3 **Add the following Sub Clause:** Expatriate personnel engaged for work in Nepal may require work permit issued by the Nepalese Authorities. The Contractor shall be responsible for applying and obtaining such permits. Such applications shall be made in good time so as to enable the completion of the work in accordance with the approved Work Program. The Employer will assist the Contractor to obtain the permit. 22.2 Labor 22.2.5 Working Hours (a) Normal working hours are :The Contractor shall be responsible for following the normal working hours to specific location and rules 22.2.7 Health and Safety

	(d) The Contractor shall throughout the contract (including the Defect Liability Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) Provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor. The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub- clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose. 22.3.4 **Add the Sub-Clause 22.3.4 "Duties on Contractor's** Equipment, Plant, Materials and Supplies" Notwithstanding the provision of this document, Contractor's Plant and Equipment, including essential tools and spare parts thereof, imported by the contractor for the sole purpose of executing the Contract, and taken out of Nepal upon completion of the Works shall, except for Plant and Mandatory Spare Parts to be supplied from abroad in Price Schedule No.1, be exempt from payment of customs duties and taxes levied in Nepal. However, the Contractor shall deposit the amount or provide a Bank Guarantee to the GoN, Customs Department equal to the amount of customs duties at the prevailing laws, rules and regulations of Nepal for those imported equipment, plant, materials and supplies at the time of import. The amount of the deposit so provided will be refunded in Nepalese Rupees, or the Bank guarantee cancelled by the Employer, after the submission to the Employer of the re-export certificate issued by the Customs Department.

	If the Contractor disposes of any Contract's Equipment, spare parts, materials or supplies in Nepal, it shall pay all customs duties and taxes applicable on such items under the laws and regulations of Nepal in force at the time and shall repay to the Employer the amount of any customs duties and taxes which may have been reimbursed to the Contractor by the Employer in connection with importation of such items. Contractor shall re-export all the equipment, plant, materials, and supplies within 90(Ninety) days after completion of the project. 22.4 .1 **Add the following Sub-Clause** Site Regulations and Safety The Contractor shall comply with all the National Legislatures, Environmental Acts, proposed Environmental legislatures and the proposed mitigation measures in preparing proposed site regulations and plan for approval. The Contractor shall take all reasonable steps to protect the environment on and off the Site and avoid damage or nuisance to persons to persons or to property of the public or others resulting from pollution, noise or other causes as a consequence of his method of operation. During the progress of the Contract, the Contractor and his Sub-contractors shall abide at all times by all existing Acts on environmental protection and rules made there under, regulations, notifications bye-laws of the His Majesty's Government of Nepal, and any other law, bye-law, regulations that may be passed or notifications that may be issued in this respect in future. 22.4.2 **Add the following Sub - Clause** Use of Explosives; No blasting or work involving the use of explosives will be permitted in the substation area or adjacent areas under this Contract. 22.6 **Add the following at the end of first paragraph:** The materials to be removed shall be incinerated or disposed off at places which will not be unsightly or objectionable to the inhabitants of the area following all environmental requirements.
23.Tests and Inspections	23.2 **Add the following at the end of this Sub-Clause:** The Employer and the Project Manager or their designated representatives shall be entitled to attend at his own cost to witness the tests for all the equipments as specified in the Section 5-Employers Requirements (Technical Specifications) at Manufacturer's/Contractor's factory.

	23.3 **Supplementing Sub Clause 23.3** The Contractor shall intimate the Project Manager the detailed program about the tests and/or inspection and of the place and time thereof at least two (2) weeks in advance in case of domestic supplies & six (6) weeks in advance in case of foreign supplies. 23.4 **Supplementing Sub-Clause GC 23.4** The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection within fifteen (15) days after completion of tests" 23.6 **Add the following at the end of this Sub-Clause:** All costs incurred by the Employer including all travelling and board and lodging expenses by the repetition of the tests or false call for tests shall be borne by the Contractor pursuant to GCC Sub-Clause 23.2. Any delay in delivery due to retest or false call shall not constitute a release of the Contractor from his responsibilities for delay.
24.Completion of Facilities	24.2 **Add the following paragraph at the end of this clause:** If Appendix to the Contract Agreement titled "Scope of Works and Supply by the Employer " does not specify the personnel and other necessary materials required for the Pre-commissioning the facilities, the supply and management of same shall be the responsibility of the Contractor. The Contractor is responsible for providing the Pre-commissioning training to the NEA staffs if so requested by NEA and the cost for the same shall be deemed to have been included in the Price Schedule. The maximum number of NEA, Staffs to receive the pre-commissioning training from the contractor shall be 10 (ten). 24.8 **Delete this Sub-Clause in its entirety and replace by the following:** The issue of the completion certificate does not relieve the Contractor from his responsibilities for the care and custody of the Facilities or the relevant parts thereof together with the risk of loss or damage thereto.
25.Commissioning and Operational Acceptance	25.1.2 Add "if so specified in corresponding Appendix (Scope of Works and Supply by the Employer)" at the end of the paragraph. 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within 7 days from the date of Completion. 25.3.1(e) **Add the following new Sub-Clause:** Six (6) sets of as built drawings, operating and maintenance manuals and CD's, USB drives etc. as per Technical Specifications of the Bidding Documents are furnished. 25.3.3 Change "seven (7) days" to "twenty one (21) days" 25.3.4 Change "seven (7) days" to "twenty one (21) days"

26.Completion Time Guarantee	26.2 Applicable rate for liquidated damages: 0.05 % of Contract Price per day of delay. Maximum deduction for liquidated damages: 10% of Contract Price 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.
27.Defect Liability	27.2 **Delete first paragraph of the Sub-Clause and replace with the following:** The Defect Liability period shall be twelve (12) months from the date of Operational Acceptance. 27.8 **Add the following paragraph at the end of this Sub-Clause:** Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a period of twelve (12) months from the time such repair/replacement of the Facilities or any part thereof. 27.9 **Change** "Completion" in line 5 of the Sub Clause to "Operational Acceptance" 27.10 Time Period shall be 12 Months
31. Transfer of Ownership	31.1 **Add** "and upon endorsement of the dispatch documents in favor of the Employer." at the end of this Sub-Clause. 31.5 In the 4th line, replace "Completion of the Facilities" by "Operational Acceptance of the Facilities".
32. Care of Facilities	32.1 **Replace all** "Completion" by "Operational Acceptance".
33. Loss of Damage	33.1 **Add** "and defective design, material or workmanship of the contractor" after "the supply and installation of the Facilities".
34. Insurance	34.1(c) **Add** "including property of the Employer" after the word "property".
36. Change in Laws and Regulations	36.1 **Add the following after** " obligation under the Contract." in this Sub-Clause: However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components, etc. by the Contractor.
37. Force Majeure	37.6 **Replace** "either party may terminate." in line 7-9 by "the dispute will be resolved in accordance with GC Clause 45." in this Sub-Clause. 37.7 **Delete** this Sub-Clause in its entirety.

39. Change in the Facilities	39.1.2 **Interchange the words** "Employer" and "Project Manager" in lines 2 and 3 in this Sub-Clause. 39.2.2 **Delete this Sub-Clause in its entirety and replace with the following:** "Upon instruction from the Project Manager, the Contractor shall prepare the 'Change Proposal' without any cost to the Employer". 39.2.5 **Replace** "shall withdraw the proposed Change and shall notify the Contractor in writing thereof." at the end of the first paragraph by "and the Contractor shall agree on specific rates for valuation of the Change." in this Sub-Clause. 39.4 **Add this new Sub-Clause as follows:** The scope of work under the package shall be as per the Section-6 "Employer's Requirement" of Bidding Documents. The quantity variation applicable for the existing scope shall be generally as per the following. The Employer reserves the right to increase or decrease the quantity of different items of the specified goods and services to the extent of fifteen percent (15%) of the revised contract price pursuant to the GC Clause 11.1, by way of suitable amendment to the Contract, without any change in unit rate/price and/or other terms and conditions of the Contract. However, the quantities of individual items of goods and services may vary up to any extent.
40. Extension of Time for Completion	40.2 Delete "as soon as reasonably practicable …… circumstance." And replace within 21 days of the identification of the event of such change known to the Contractor.
41. Suspension	**41.1 Replace** "request" by "instruct" in the line 1 of the first Paragraph. **41.5 Add this new Sub-Clause as follows:** If the Contractor chooses not to treat prolonged suspension as an omission or termination, the Employer shall, upon request of the Contractor, take over the responsibility for protection, storage, security and insurance of the suspended work and of the plant which has been delivered to the Site and which is affected by suspension and the risk of loss or damage thereto shall thereupon pass to the Employer. After receipt of permission or an order to proceed, the Contractor shall after due notice to the Project Manager examine the works and the Plant affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Facilities that may have occurred during the suspension. Cost properly incurred by the Contractor, which would not have incurred but for the suspension shall be added to the Contract Price together with profit. The Contractor shall not be entitled for costs incurred in making good any deterioration, defect, or loss caused by faulty workmanship or materials or by the Contractor's failure to take the measures such

	as protect and secure and insure against any deterioration, loss or damage during suspension.
42. Termination	42.4 (h) The maximum number of days is: 200
45.Disputes and Arbitration	45.3 The place of arbitration shall be: Kathmandu, Nepal
Add this new Clause SCC 46 (Supplementing to GCC) **<u>Construction of the</u>** **<u>Contract Document</u>**	46.1 The Contract will be signed in two (2) originals and the Contractor shall be provided with one signed original and the other will be retained by the Employer. 46.2 The Contractor shall provide free of cost to the Employer all the engineering data, drawing and descriptive materials submitted with the bid, in at least two (2) copies to form a part of the Contract immediately after Notification of Award. 46.3 Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Employer with at least five (5) true copies of Contract Agreement within thirty (30) days after signing of the Contract.

Section 9 - Contract Forms

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

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Letter of Intent

[on letterhead paper of the Employer]

. . . . . ***date***. . . . . .

To: . . . . . ***name and address of the Contractor*** . . . . . .
Subject: . . . . . ***Issuance of letter of intent to award the contract*** . . . . . .

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

Authorized Signature:
.....

Name:
.....

Title:
.....

CC:

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

Letter of Acceptance

[on letterhead paper of the Employer]

. . . . . ***date***. . . . . .

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

Subject: . . . . . ***Notification of Award***

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

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

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

Authorized Signature:

.....

Name and Title of Signatory:

.....

Contract Agreement

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

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

The Employer and the Contractor agree as follows:

1. *In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.*

2. *The following documents shall be deemed to form and be read and construed as part of this Agreement.*
   (a) - the Letter of Acceptance;
   (b) - the Letter of Bid;
   (c) - the Addenda Nos . . . . . ***insert addenda numbers if any***. . . . .
   (d) - the Special Conditions;
   (e) - the General Conditions;
   (f) - Bills of Quantities (BOQ);
   (g) - the Specification;
   (h) - the Drawings*;*
   (i) - the completed Schedules; and
   (j) - Any other document

3. *In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.*

4. *The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.*

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

Signed by	Signed
by	
for and on behalf of the Employer	for and on behalf the Contractor
in the presence of	in the presence of
Witness, Name, Signature, Address, Date	Witness, Name, Signature, Address,
Date	

Appendix -1 : Terms and Procedures of Payment

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

(A) Terms of Payment

Schedule No. 1 - Supply and Delivery of Plant, Equipment and Mandatory Spare Parts supplied from Abroad (CIP – Nepal Border, Excluding Taxes & Duties)

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

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

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

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

Thirty percent (30%) of the total or pro rata CIP or amount upon Incoterm "CIP," upon delivery to the site within 45 days after receipt of invoice with Delivery Completion Certificate (DCC) issued by the Employer showing contract no. goods description, quantity through irrevocable letter of credit opened in favor of Contractor's bank.

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

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

Schedule No. 2 - Plant (including Mandatory Spare Parts) Supplied from within Employer's country

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

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

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

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

Thirty percent (30%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery of goods at site within forty-five (45) days after receipt invoice with Delivery Completion Certificate (DCC) issued by the Employer showing contract no. goods description, quantity through irrevocable letter of credit opened in favor of supplier bank.

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

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

Schedule No. 3 - Insurance, Clearing, Forwarding and Transport up to Site (including port clearance etc.).

In respect of Insurance, Clearing, Forwarding and Transport up to Site (including port clearance etc.), the following payments shall be made in **NRs. only by direct payment through Cheque**.

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

Eight percent (80%) of the total or pro rata quoted amount upon delivery of goods at site within forty five (45) days after receipt invoice with Delivery Completion Certificate (DCC) issued by the Employer showing contract no. goods description, quantity through irrevocable letter of credit opened in favor of supplier bank.

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

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

Schedule No. 4 - Installation Services, Charges and Civil Works

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

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

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

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

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

(B)Payment Procedures:

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

Payment of Taxes & duties:
Provisions in GCC 14 shall apply in respect to Taxes & Duties.

Additional Sub-Clause for Submission of Bills for Payment:

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

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

Appendix 2 – Price Adjustment

(Please refer to Price Bid)

Appendix 3 - Insurance Requirements

(A) Insurances To Be Taken Out By The Contractor

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

(a) Cargo Insurance

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

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

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

(b) Installation All Risks Insurance

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

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

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

(c) Third Party Liability Insurance

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

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

(d) Automobile Liability Insurance

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

(e) Workers' Compensation

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

(f) Employer's Liability

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

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

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

Details:

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

Appendix 4 - Time Schedule

4.1 <u>Description of Facilities:</u> Design, Supply, Construction, Testing and Commissioning of Motipur and Sandhikharka 132/33/11 kV Substation.

Name of Facilities	Completion Time required by the Employer from the Effective Date	Completion date guaranteed by the bidder from the Effective Date
Design, Supply, Construction, Testing and Commissioning of Motipur and Sandhikharka 132/33/11 kV Substation.	Twenty four (24) Months	

4.2 The activity (ies) under the Contractor's programme for Project Completion shall be in the form of a master network (MNW) and shall identify the various activities like design, engineering, manufacturing, supply, installation, factory testing, transportation to site, site testing and commissioning, trial operation and Taking Over etc. of the Facilities or specific part thereof (where specific parts are specified in GCC). The network shall conform to the above Project Completion Schedule. This master network will be discussed and agreed before Award in line with above, engineering drawing and data submission schedule shall also be discussed and finalized before Award.

4.3 The Employer reserves the right to request minor changes in the work schedule at the time of Award of Contract to the successful Bidder.

4.4 The successful Bidder shall be required to prepare detailed Network(s) and project implementation plans & programmes and finalize the same with the Employer as per the requirement specified in Technical Specifications, which shall from a part of the Contract. The detailed Network(s) and project implementation plans & programmes shall preferably be preferably prepared in Primavera or in MS Project or in the latest Project Management tool as convenient to Employer.

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

A list of major items of plant and services is provided below.

The following Subcontractors and Manufacturers are approved for carrying out the item of the facilities indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Subclause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Services	Approved Subcontractors and Manufacturers	Nationality

Appendix 6 - Scope of Works and Supply by the Employer

The following personnel, facilities, works, and supplies will be provided or supplied by the Employer, and the provisions of GCC Clauses 10, 21, and 24 shall apply as appropriate.

All personnel, facilities, works, and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Subclause 18.2.

Unless otherwise indicated, all personnel, facilities, works, and supplies will be provided free of charge to the Contractor.

Personnel	**Charge to Contractor (if any)**
None	

Facilities	**Charge to Contractor (if any)**
None-except noted	

Works	**Charge to Contractor (if any)**
None	

Supplies	**Charge to Contractor (if any)**
None	

Appendix 7 - List of Documents for Approval or Review

Pursuant to GCC Subclause 20.3.1, the Contractor shall prepare, or cause it's Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Subclause 18.2 (Program of Performance), the following documents for

(A)Approval
As mentioned in the relevant chapter/Section of the Technical Specifications of the Bidding documents and the following

1. Work Program (Detail Work Schedule)
2. Work Procedure
3. Manufacturers, prior to placing of order
4. Design, calculations and drawings of Plant & Equipments
5. All Civil, Electrical & Mechanical design and drawings
6. Aggregate and grading of aggregates
7. Use of admixtures, concrete mixing, steel reinforcement and formwork
8. Marking and labeling of equipment
9. Any other documents as desired by the Employer

(B) Review
As mentioned in the relevant chapter/Section of the Technical Specifications of the Bidding documents and the following

1. Designed and calculation procedures for each component forming part of the Plant
2. Operations and maintenance instructions
3. Procedure for Test on Completion
4. Protection calculation / recalculation and setting.
5. All drawings prepared by the contractor for the execution of this project.
6. Any other documents as desired by the Employer

Note:
Bidder shall furnish the exhaustive list, which shall be discussed and finalized for incorporation into the Contract Agreement.

Performance Security

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

Beneficiary: .....*Name and Address of Employer* .....

Date:.....

Performance Guarantee No.: .....

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

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

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

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

. . . . . .

Seal of Bank and Signature(s)

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

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

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

Advance Payment Security

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

Beneficiary: .....*Name and Address of Employer* .....

Date:.....

Advance Payment Guarantee No.: .....

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

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

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

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

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

. . . . . .

Seal of Bank and Signature(s)

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

****The Guarantor shall insert an amount representing the amount of the advance payment in Nepalese Rupees of the advance payment as specified in the Contract.***

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