

**Nepal Electricity Authority**  
(Undertaken by Nepal Government)  
Generation Directorate  
Medium Generation Operation and Maintenance Department  
**Devighat Hydropower Station**  
Battar, Nuwakot



**BIDDING DOCUMENT**

**FOR**

**Gravel Filling Works in Switchyard**  
**Sealed Tender No: DHPS - 074/75-CST-05**

First Date of Notice Publication: **Falgun 09, 2074**

Last Date/Time of Purchasing : **Chaitra 08, 2074 (Office Hour)**

Last Date /Time of Submission: **Chaitra 09, 2074 before 12:00**

Time of Bid Opening : **Chaitra 09, 2074 after 2:00 PM**



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## Section I. Invitation to Bids

**Nepal Electricity Authority.**

**Devighat Hydropower Station,  
Battar, Nuwakot.**

Date: \_\_\_\_\_

Name of Project: **Gravel Filling Works in Switchyard**

Name of Contract: \_\_\_\_\_

Contract Identification No: DHPS-074/75-CST-05

Name of the Donor Agency [if applicable]: \_\_\_\_\_

Donor Loan/Credit/Grant No [if applicable]: \_\_\_\_\_

The **Devighat Hydropower Station, Battar, Nuwakot** invites sealed bids from registered contractors for the construction of **Gravel Filling Works in Switchyard**.

The Estimated amount for the works is Rs. **24,77,770.37** (Without VAT)

Eligible Bidders may obtain further information and inspect the bidding documents at the office of

**Nepal Electricity Authority.**

**Devighat Hydropower Station,**

**Battar, Nuwakot,**

**Email: [nea.devighat41@gmail.com](mailto:nea.devighat41@gmail.com)**

**Tel/Fax : 010-560175.**

Bidding documents may be purchased from the above office and the office of

**Nepal Electricity authority.**

**Medium Generation, Operation and Maintenance Department.**

**Durbar Marg, Kathmandu.**

**Tel no: 01-4153081.**

**Email: <http://www.e-nea.org.np>**

By eligible Bidders on the submission of a written application and upon payment of a non-refundable fee of **Rs.3000.00**.

Bids must be submitted to the office of **Devighat Hydropower Station, Battar, Nuwakot. and**  
**Email: [nea.devighat41@gmail.com](mailto:nea.devighat41@gmail.com)** on or before **12:00** noon on **2074/12/09**. Documents received after this deadline shall not be accepted.

Bids shall be opened in the presence of Bidders' representatives who choose to attend at **2:0 PM, 2074/12/09** at the office of **Devighat Hydropower Station, Battar, Nuwakot**.

Bids must be valid for a period of **90 days** after opening of sealed bid and must be accompanied by Cash Security or Bank Guarantee, amounting to a Rs. **71,000** which shall be **valid for 120 days** after opening of the sealed bid.

If bidder wishes to submit the Bid Security in the form of cash, the cash should be deposited in Deposit Account No. **021692'C' at Nepal Bangladesh Bank, Battar, Nuwakot** and submit the receipt of the deposited amount of cash along with the bid.

If the last date of purchasing, submission and opening falls on a government holiday then the next working day shall be considered as the last day. Bidders are advised to visit site and assess the actual site conditions before submitting their bid.



The Employer reserves the right to accept or reject, wholly or partly any or all the bids without assigning any reason, whatsoever



## Section II. Instructions to Bidders

### Instructions to Bidders

- A. General**
1. **Scope of Works** The Employer invites bids for the contraction of works as detailed in attached specifications, drawings and the bill of quantities provided herein. The successful Bidder is expected to complete the works as mentioned in the Bidding Data.
  2. **Eligible Bidder** This Invitation for Bids is open to all registered Bidders with qualifications as described in the Bidding Data.
  3. **One Bid per Bidder** Each Bidder shall submit only one bid, either individually or as a partner in a joint venture. A Bidder who submits or participates in more than one bid shall cause all the proposals with the Bidder's participation to be disqualified. A firm may participate in more than one bid only as a subcontractor.
  4. **Cost of Bidding** The Bidder shall bear all costs associated with the preparation and submission of his bid and the Employer shall in no case be liable for those costs.
  5. **Site Visit** The Bidder at his own cost, responsibility and risk may visit the site of the works and acquire all necessary information for preparing the bid and entering into a contract for construction of the works.
- B. Bidding Documents**
6. **Content of Bidding Documents** The Bidding Documents comprise the documents listed below:  
Section
    - I. Invitation for Bids
    - II. Instructions to Bidders
    - III. Sample Forms of Bid, Letter of Acceptance and Agreement
    - IV. General Conditions of Contract (GCC)
    - V. Special Conditions of Contract (SCC)
    - VI. Technical Specifications
    - VII. Drawings
    - VIII. Bill of Quantities
    - IX. Sample Forms of Securities
  7. **Clarification of Bidding Documents** A prospective Bidder may request clarification on the bidding documents in writing and the Employer shall respond to such request. Copies of the response shall be forwarded to all the purchasers of the bidding documents.
- C. Preparation of Bids**
8. **Language of Bid** All documents relating to the bid shall be in English or in Nepali.
  9. **Documents Comprising Bid** The bid by the Bidder shall comprise the following:
    - a. Bid and Qualification/ Eligibility Information
    - b. Bid Security



- c. Priced Bill of Quantities
- d. Rate Analysis (optional at request of Employer)

**10. Bid Prices**

The contract shall be for the whole works described in scope of works based on the priced Bill of Quantities submitted by the Bidder. The Bidder shall fill in rates and prices for all items of the works in Nepali Rupees. Items for which no rate or price is entered shall be deemed covered by the other rates and prices in the Bill of Quantities and shall not be paid by the Employer.

All duties, taxes and other levies payable by the contractor under the contract shall be included in the rates, prices and total Bid Price submitted by the Bidder.

**11. Bid Validity**

The bid shall remain valid for the period specified in the Bidding Data.

**12. Bid Security**

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

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

**13. Format and Signing of Bids**

One original and one duplicate copy of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the Bidding Data and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. Any entries or amendments including alternations, additions or corrections made shall be initialled by the same authorized person.

**D.****Submission of Bids****14. Sealing and Marking of Bids**

The Bidder shall submit one original and a duplicate copy of the bid. These bids shall be placed in sealed envelopes. Both the sealed envelopes shall be placed in an outer envelope which shall also be sealed. The inner envelopes shall duly be marked as 'Original' and 'Copy'. The envelopes shall be addressed to the Employer at the address provided in the Bidding Data and bear the name and identification number of the contract.

**15. Pre-Bid Meeting**

A Pre-Bid meeting if provided for in the Bidding Data shall be held at least 10 days before the bid submission date at the place, date and time as mentioned in the Bidding Data. Any amendment to be made in the Bid subsequent to the Pre-bid meeting shall be issued within 5 days of the meeting and the Addendum shall be circulated to all the purchasers of the Bidding Document, The Addendum thus issued shall be a part of the Bidding document.

**16. Deadline for**

Bids shall be delivered to the Employer at the address no later than



- Submission of Bids** the time and date specified in the Bidding Data.
- 17. Late Bids** Any bid received by the Employer after the deadline shall not be accepted and shall be returned unopened to the Bidder.
- 18. Modification and Withdrawal of Bids**
- 18.1 Bidders may modify or withdraw their Bids after it has been submitted by giving a written notice, duly signed by an authorized representative and shall include a copy of the authorization in accordance with Clause 13 before the deadline prescribed in Clause 16. The corresponding modification of the bid must accompany the respective written notice.
- 18.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clauses 16 with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL," as appropriate.
- 18.3 No bid may be modified after the deadline for submission of Bids.

**E.****Bid Opening and Evaluation**

- 19. Bid Opening** The Employer shall open the bids in the presence of the Bidders' representatives who choose to attend at the time and in the place specified in the Bidding Data.

The Bidders' names, the Bid Prices, the total amount of each bid, any discounts, bid modifications and withdrawals, the presence or absence of Bid Security, difference of rate in words and figures, quoted price for alternate technical specification if proposed, whether the Bid Form has signature of the bidder or authorized representative, corrections/effacement or obliteration in bidding document, any remarks made by the bidder in the Bid Form, details of rates if requested and such other details as the Employer may consider appropriate shall be announced by the Employer at the opening.

The Employer shall prepare and provide minutes of the bid opening including the information disclosed to those present.

- 20. Process to be Confidential** Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to Bidders or any other persons not officially concerned with such process until the award to the successful Bidder has been announced.
- 21. Clarification of Bids and Contacting the Employer**
- 21.1 To assist in the examination, evaluation and comparison of Bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by facsimile, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with Clause 23.



- 21.2 Subject to Sub-Clause 21.1, no Bidder shall contact the Employer on any matter relating to his bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.
- 21.3 Any efforts by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidder's bid.
- 22. Examination of Bids and Determination of Responsiveness**
- 22.1 Prior to the detailed evaluation of Bids, the Employer shall determine whether each bid (a) meets the eligibility criteria defined in Clause 2; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the Bidding documents.
- 22.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the Bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Bidding documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.
- 22.3 If a bid is not substantially responsive, it shall be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 23. Correction of Errors**
- 23.1 Bids determined to be substantially responsive shall be checked by the Employer for any arithmetic errors. Errors shall be corrected by the Employer as follows:
- a where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern; and
- b where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted shall govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall govern, and the unit rate shall be corrected.
- 23.2 The amount stated in the bid shall be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the bid shall be rejected and the Bid Security may be forfeited.
- 24. Evaluation and Comparison of**
- 24.1 The Employer shall evaluate and compare only the Bids determined to be substantially responsive in accordance with



**Bids**

## Clause 23.

- 24.2 Further the employer shall evaluate :
- a) Whether the construction work plan, work performance schedule and mobilization period is consistent with the requirement of the bidding document or not,
  - b) Whether the quoted item unit rates in the Bill of quantities are reliable or not,
  - c) Whether or not the quoted price is unbalanced due to unnaturally high rates quoted by the bidder for work items to be completed in the initial stages of the contract or for work items whose quantities are assumed by the bidder to be underestimated.

24.3 In evaluating the Bids, the Employer shall determine for each bid the evaluated Bid Price by adjusting any corrections for errors pursuant to Clause 23;

24.4 The Employer reserves the right to accept or reject any variation deviation or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Bidding documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in bid evaluation.

24.5 If the bid, which results in the lowest Evaluated Bid price, is unbalanced or frontloaded in relation to the Employer's estimate of the items of Work to be performed under the contract pursuant to Sub - Clause 24.2 ,the Employer shall ask the bidder to give clarification with detailed rate analysis for any or all items of the Bill of Quantities. If the clarification is found satisfactory then the Employer shall increase at the expense of the bidder the performance security set forth in clause 28 by additional 8% of the quoted amount to protect the Employer against financial loss in the event of default of the successful bidder under the contract and if the clarification is found unsatisfactory then the Employer may reject such bid.

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**F.****Award of Contract****25. Award of Contract**

The Employer shall award the contract to the Bidder who has offered the lowest evaluated Bid Price, provided that such Bidder has been determined to be eligible in accordance with the provisions of Clause2.

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

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



**27. Notification of Award and Signing of Agreement**

27.1 The Employer shall notify its intention to award the Contract to the successful bidder in accordance with Clause 25 prior to the expiration of the bid validity period and within 7 days of acceptance of his bid. This notification (called the "Letter of Acceptance") shall state the sum that the Employer shall pay the Bidder in consideration of the execution, completion, and maintenance of the works as described by the contract. The employer shall also provide information regarding the name, address and the contract amount of the successful bidder to all bidders who participated in the bid.

27.2 Any Bidder who is not satisfied with the procurement process or Employer's decision as per Sub - Clause 27.1 and believes that the Employer has committed an error or breach of duty which has or will result in loss to the bidder then the bidder may give an application for review of the decision to the Employer with reference to the error or breach of duty committed by the Employer. The review application should be given within 7 days of receipt of information regarding issue of Letter of Acceptance by the Employer to the successful bidder.

27.3 If the review application is not received by the Employer as per clause 27.2 then the bid of the Bidder selected as per clause 25 shall be accepted by the Employer and the successful bidder shall be notified by the Employer to submit Performance security as per clause 28, within 15 days for signing of an Agreement.

27.4 If the successful bidder fails to deliver the Performance Security and sign the Agreement pursuant to Sub - Clause 27.3 then the Employer shall forfeit the Bid Security of the bidder and accept the bid of immediately next lowest evaluated substantially responsive bidder.

**28. Performance Security**

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

**29. Advance Payment**

The Employer may provide an Advance Payment on the Initial Contract Price as stipulated in the Letter of Acceptance, subject to a maximum amount<sup>1</sup> as stated in the Bidding Data.

**30. Additional Securities**

The Contractor shall provide additional Performance Security pursuant to Sub -Cause 24.5

**31. Adjudicator**

The Employer proposes the person named in the Bidding Data to be appointed as Adjudicator under the Contract, at the hourly fee specified in the Bidding Data, plus reimbursable expenses. If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Contract Data at the request of either party.

<sup>1</sup> This amount is normally 20 percent of the Contract Price. The amount should be adequate to minimize the needs of the Contractor to borrow for the Contract. This may be particularly important in terms of foreign currency.



### 32. Conduct of Bidders

- 32.1 The Bidder shall be responsible to fulfil his obligations as per the requirement of the Contract Agreement, Bidding documents, GoN's Procurement Act and Regulations.
- 32.2 The Bidder shall not carry out or cause to carry out the following acts with an intention to influence the implementation of the procurement process or the procurement agreement :
- a) give or propose improper inducement directly or indirectly,
  - b) distortion or misrepresentation of facts
  - c) engaging or being involved in corrupt or fraudulent practice
  - d) interference in participation of other prospective 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 bid or interference of any kind in examination and evaluation of the bids during the period after opening of bids up to the notification of award of contract

### 33. Blacklisting Bidder

- 33.1 Without prejudice to any other right of the Employer under this Contract, GoN, Public Procurement Monitoring Office may blacklist a bidder for his conduct up to three years on the following grounds and seriousness of the act committed by the bidder:
- a) if it is proved that the bidder committed acts pursuant to the Sub - Clause 32.2,
  - b) if the bidder fails to sign an agreement pursuant to Sub - Clause 27.4,
  - c) if it is proved later that the bidder/contractor had committed substantial defect in implementation of the contract or had not substantially fulfilled his obligations under the contract or the completed work is not of the specified quality as per the contract ,
  - d) if convicted by a court of law in a criminal offence which disqualifies the bidder from participating in the contract.
  - e) if it is proved that the contract agreement signed by the bidder was based on false or misrepresentation of bidder's qualification information,
  - f) other acts mentioned in the Bidding Data
- 33.2 A firm declared blacklisted and ineligible by the GoN shall be ineligible to bid for a contract during the period of time determined by the PPMO.



## G. Bidding Data

### Instruction to Bidders Clause References

#### A. General

ITB 1	<p>The Employer is: <b><i>Nepal Electricity Authority.</i></b>  <b><i>Devighat Hydropower Station,</i></b>  <b><i>Battar, Nuwakot,</i></b></p> <p>The Scope of Work: <i>[ insert details ]</i></p>
ITB 2	<p>Bidder's Eligibility Requirement:</p> <ol style="list-style-type: none"> <li>a) Registration Certificate</li> <li>b) Business Registration Licence</li> <li>c) VAT and PAN Registration Certificates</li> <li>d) Tax Clearance Certificate or Submissions of Tax Returns up to F/y 2073</li> <li>e) A written declaration made by the Bidder stating that the Bidder is not ineligible to participate in the Bid; has no conflict of interest in the proposed bid procurement proceedings and has not been punished for the profession or businesses related offence.</li> <li>f) Joint Venture Authorization/ Agreement (if any)</li> <li>g) Power of Attorney</li> </ol>

#### B. Bidding Documents

ITB 7	<p>Employer's address for clarification purposes is:</p> <p><i>Nepal Electricity Authority.</i>  <i>Devighat Hydropower Station,</i>  <i>Battar, Nuwakot,</i></p> <p>Requests for clarification should be received by the Employer no later than: <i>10 day</i></p>
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#### C. Preparation of Bids

ITB 8	<p>The language of the bid is: <i>English</i></p>
ITB 11	<p>The bid validity period shall be: <i>90 calendar days after the date of bid closing prescribed by NEA</i></p>



<b>ITB 12</b>	<p>Amount of Bid Security shall be: <i>71,000</i></p> <p>The bid Security validity period shall be: valid for 30 days beyond the validity period of the bid.</p> <p>The Bank Account of the Employer, Account No: <b>021692'C' at Nepal Bangladesh Bank, Battar, Nuwakot</b></p>
<b>ITB 13</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall indicate: <i>[insert “</i></p> <p><i>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as a Power of Attorney; and</i></p> <p><i>(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.”]</i></p>

#### D. Submission of Bids

<b>ITB 15</b>	<p>A Pre-Bid meeting <i>shall not</i> take place.</p> <p>If a Pre-Bid meeting will take place, it will be at the following date, time and place:</p> <p>Date:</p> <p>Time:</p> <p>Place:</p>
<b>ITB 16</b>	<p>The Employer’s address for bid submission purposes <u>is</u>: <b>Devighat Hydropower Station, Battar, Nuwakot.</b></p> <p>The deadline for bid submission is:</p> <p>Date: <b>2074/12/09</b></p> <p>Time: 12:00 Non</p>

#### E. Bid Opening and Evaluation

<b>ITB 19</b>	<p>The bid opening shall take place at: <i>[insert address time &amp; date below]</i></p> <p>Address: <b>Devighat Hydropower Station, Battar, Nuwakot.</b></p> <p>Date: <b>2074/12/09</b></p> <p>Time: 2:00 PM</p>
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#### F. Award of Contract

<b>ITB 29</b>	<p>The Advance Payment amount shall be: Maximum up to <i>20% of Bid Amount.</i></p>
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<b>ITB 31</b>	<p>The Adjudicator proposed by the Employer is:<i>As agreed by the Contractor and Employer</i></p> <p>The hourly fee for this proposed Adjudicator shall be:<i>2000/hr.</i></p> <p>Brief biographical data of the proposed Adjudicator is as follows: Should be legally registered.</p>
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## Eligibility Information

### 1. Eligibility Requirements:

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

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

### 2. Joint Ventures Requirements (if any)

- 2.1 Attach the power of attorney of the signatory (ies) of the bid authorising signature of the bid on behalf of the joint venture.
- 2.2 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
  - (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (c) execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
  - (d) each joint venture partners shall provide details as per information listed in 1 above.



## Letter of Intention to Award

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

Date:

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

This is to notify you in accordance with the Instruction to Bidders that it is our intention to award the contract *[name of the Contract and identification number, as given in the Contract Data and/or SCC]* to you as your Bid price of the equivalent,<sup>2</sup> of *[amount in numbers and words in Nepalese Rupees]*, as corrected and modified <sup>3</sup>in accordance with the Instructions to Bidders, is determined to be substantially responsive and lowest evaluated Bid price.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

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<sup>2</sup> Delete "of the equivalent" if the Contract Price is expressed wholly in one currency.

<sup>3</sup> Delete "corrected and" or "and modified" if not applicable. See Note on Agreement, next page.



# Letter of Acceptance

*[Letterhead of the Employer]*

Date: \_\_\_\_\_

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

This is to notify you that your bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Invitation to Bid]* for the Contract Price of *[insert the amount in Nepalese Rupees in numbers and words]* as corrected and modified<sup>4</sup> in accordance with the Instructions to *Bidders* is hereby accepted by our Agency.

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

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

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

Authorised Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

<sup>4</sup> Delete "corrected and" or "and modified" if not applicable. See Notes on Standard Form of Agreement, next page.



## Agreement

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

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

Now this Agreement witnesseth as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the contractor as hereinafter mentioned, the contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the contractor in consideration of the execution and completion of the Works and the remedying of defects wherein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of \_\_\_\_\_  
was hereunto affixed in the presence of: \_\_\_\_\_

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

Binding Signature of Employer \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

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



## Section IV. General Conditions of Contract (GCC)

### 1. General Provisions

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

#### The Contract

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

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

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

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

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

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

#### Persons

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

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

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

#### Date, Times and Periods

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

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

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

#### Money and Payments

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



## Other Definitions

- 1.1.14 **"Contract Price"** is the price stated in the letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- 1.1.15 **"Retention Money"** means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 11.3.
- 1.1.16 **"Contractor's Equipment"** means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant.
- 1.1.17 **"Country"** means Nepal.
- 1.1.18 **"Employer's Liabilities"** means those matters listed in Sub-Clause 6.1.
- 1.1.19 **"Force Majeure"** means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- 1.1.20 **"Materials"** means things of all kinds (other than Plant) intended to form or forming part of the permanent work.
- 1.1.21 **"Plant"** means the machinery and apparatus intended to form or forming part of the Permanent Works.
- 1.1.22 **"Site"** means the places provided by the Employer where the Works are to be executed, and any other places specified in the Contract as forming part of the Site.
- 1.1.23 **"Variation"** is an instruction given by the Employer which varies the Works pursuant to Sub-Clause 10.1
- 1.1.24 **"Works"** means all the work and design (if any) to be performed by the contractor including temporary work and any Variation.
- 1.1.25 **"Permanent Works"** means the permanent works to be executed (Including Plant) in accordance with the Contract.
- 1.1.26 **"Temporary Works"** means all temporary works of every kind (other than contractor's Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
- 1.1.27 **"Adjudication"** means the procedure to be adopted by the contractor and the Employer in solving the dispute if it is not solved amicably pursuant to Sub-Clause 15.1.

## 1.2 Interpretation

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

## 1.3 Priority of

The documents forming the Contract shall to be taken as mutually



- Documents** explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary instructions to the contractor, and the priority of the documents shall be in accordance with the order as listed in the SCC.
- 1.4 Law** The law of the Contract is stated in the SCC.
- 1.5 Communications** Where provision is made for the giving or issue of any notice, instruction, or other communication by any person, unless otherwise specified such communication shall be written in the language stated in the SCC as shall not be unreasonably withheld or delayed.  
If a notice given pursuant to Sub-Clause 1.5 fails to be delivered due to failure to trace the address of the party then the notice shall be published as public notice in a National daily newspaper and when the notice is so published then the notice shall be considered to be delivered to the concerned party.
- 1.6 Statutory Obligations** The contractor shall comply with the laws of the countries where activities are performed. The contractor shall give all notices and pay all fees and other charges in respect of the Works.
- 2. The Employer**
- 2.1 Provision of Site** The Employer shall provide the Site and right of access thereto at the times stated in the SCC.
- 2.2 Permits and Licenses** The Employer shall, if requested by the contractor, assist him in applying for permits, licences or approvals which are required for the Works.
- 2.3 Employer's Instructions** The contractor shall comply with all instructions given by the Employer in respect of the Works including the suspension of all or part of the Works.
- 2.4 Approvals** No approval or consent or absence of comment by the Employer or the Employer's representative shall affect the contractor's obligations.
- 3. Employer's Representatives**
- 3.1 Authorised Person** One of the Employer's personnel shall have authority to act for him. This authorised person shall be as stated in the SCC, or as otherwise notified by the Employer to the contractor.
- 3.2 Employer's Representative** The Employer may also appoint a firm or individual to carry out certain duties. The appointee may be named in the SCC, or notified by the Employer to the contractor from time to time. The Employer shall notify the contractor of the delegated duties and authority of this Employer's representative.
- 4. The Contractor**
- 4.1 General Obligations** The contractor shall carry out the Works properly and in accordance with the Contract. The contractor shall provide all supervision, labour, Materials, Plant and contractor's Equipment which may be required. All Materials and Plant on Site shall be deemed to be the property of the Employer.

During continuance of the of the contract, the contractor and his sub-contractors shall abide at all times by all labour laws, including child labour related enactments, and rules made there under.

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

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

## 5. Design by Contractor

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

## 6. Employer's Liabilities

- 6.1 Employer's Liabilities** In this Contract, Employer's Liabilities mean:
- a. war, hostilities (whether war be declared or not), invasion, act of foreign enemies, within the Country,
  - b. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
  - c. riot, commotion or disorder by persons other than the contractor's personnel and other employees, affecting the Site and/or the Works,
  - d. ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear



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

## 7. Time for Completion

- 7.1 Execution of the Works** The contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion.
- 7.2 Programme** The contractor shall submit to the Employer a programme for the Works within the time stated in the SCC
- 7.3 Extension of Time** Subject to Sub-Clause 10.3, the contractor shall be entitled to an extension to the Time for Completion if he is or shall be delayed by any of the Employer's Liabilities.  
The contractor shall submit an application to the Employer for extension of time, stating the causes for delay, 7 days before the expiry of the Contract completion date. On receipt of an application from the contractor, the Employer shall consider all supporting details provided by the contractor and shall extend the Time for Completion as appropriate.



**7.4 Liquidated Damages for Delay** If the contractor fails to complete the Works within the Time for Completion, the contractor's only liability to the Employer for such failure shall be to pay the amount stated in the SCC for each day for which he fails to complete the Works. The total amount of Liquidated damages shall not exceed the amount stated in the SCC.

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

## 8. Taking-Over

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

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

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

## 9. Remedying Defects

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

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

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

## 10. Variations and Claims

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



**10.2 Valuation of Variations**

Variations shall be valued as follows:

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

**10.3 Early Warning**

A Party shall notify the other as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The contractor shall take all reasonable steps to minimise these effects.

The contractor's entitlement to extension to Time for Completion or additional payment shall be limited to the time and payment which would have been due if he had given prompt notice and has taken all reasonable steps.

**10.4 Right to Claim**

If the contractor incurs cost as a result of any of the Employer's Liabilities, the contractor shall be entitled to the amount of such cost. If as a result of any of the Employer's Liabilities, it is necessary to change the Works, this shall be dealt with as a Variation.

**10.5 Variation and Claim Procedure**

The contractor shall submit the Employer an itemised make-up of the value of Variations and claims within 30 days of the instruction or of the event giving rise to the claim. The Employer shall check and if possible agree the value. In the absence of agreement, the Employer shall determine the value.

**11. Contract Price and Payment****11.1 Valuation of the Works**

The Works shall be valued as provided for in the SCC, subject to Clause 10.

**11.2 Monthly Statements**

The contractor shall be entitled to be paid at monthly intervals:

- a. the value of the Works executed,
- b. the percentage stated in the SCC of the value of Materials and Plant delivered to the Site at a reasonable time,

subject to any additions or deductions which may be due.

The contractor shall submit each month to the Employer a statement showing the amounts to which he considers himself entitled.

**11.3 Interim Payments**

Within 30 days of acceptance of each statement, the Employer shall pay to the contractor the amount shown in the contractor's statement less retention at the rate stated in the SCC, and less any amount for which the Employer has specified his reasons for disagreement. The Employer shall not be bound by any sum previously considered by him to be due to the contractor.



- 11.4 Payment of First Half of Retention** One half of the retention and any such other retention shall be paid by the Employer to the contractor within 15 days upon expiry of Defects Liability Period.
- 11.5 Payment of Second Half of Retention** The remainder of the retention shall be paid by the Employer to the contractor within 15 days after submission of evidence document from the concerned Internal Revenue Office that the contractor has submitted his Income Returns.
- 11.6 Final Payment** Within 45 days of the latest of the expiry of the defects liability period, the contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the final contract value.
- Within 30 days after the submission of this final account, the Employer shall pay to the contractor any amount due. If the Employer disagrees with any part of the contractor's final account, he shall specify his reasons for disagreement when making payment
- 11.7 Currency** Payment shall be in the currency stated in the SCC.
- 11.8 Delayed Payment** The contractor shall be entitled to interest at the rate stated in the SCC for each day the Employer fails to pay beyond the prescribed payment period.
- 11.9 Advance Payment**
- a The Employer may make advance payment to the contractor of the amounts stated in the SCC within 15 days, against provision by the contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the contractor. Interest shall not be charged on the advance payment.
  - b The contractor is to use the advance payment only to pay for Equipment, Plant, Materials and mobilization expenses required specifically for execution of the Contract. The contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Employer/ Engineer.
  - c Unless otherwise stated in the SCC, the advance payment shall be repaid through percentage deductions from the monthly certified statements in accordance with this clause. Deductions shall commence in the next monthly statement in which the value of work executed exceeds thirty (30%) percent of the initial Contract Amount less provisional sums, day works and VAT. Deduction shall be made at the amortization rate of thirty (30%) percent of the amount of each monthly statement until such time as the advance payment has been repaid completely, provided that the advance payment shall be completely repaid prior to the end of 90 % of the approved contract period.
- 11.10.Price Adjustment**
- a) The Contract is subject to price adjustment only for construction material in accordance with this clause. If the



Contract Agreement is concluded following the Invitation for National Level Bidding and after the signing of the Contract Agreement if the price of the construction materials stated in the SCC increase or decrease in an unexpected manner in excess of ten (10%) percent in comparison to the base price stated in the SCC, then the price adjustment for the increase or decrease of price of the construction material beyond 10% shall be made by applying the following formulas:

For unexpected increase in price  

$$P = [R_1 - (R_0 \times 1.10)] \times Q$$

For unexpected decrease in price  

$$P = [R_1 - (R_0 \times 0.90)] \times Q$$

Where:

“ P ” is price adjustment amount

“ R<sub>1</sub> ” is the present price of the construction material

“ R<sub>0</sub> ” is the base price of the construction material

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

- (b) The Price Adjustment amount pursuant to the clause will be limited to a maximum of 25% of the initial Contract Amount unless otherwise is specified in the SCC
- b) The Price Adjustment provision pursuant to Clause 11.10 (a) shall not be applicable if the contract is not completed in time due to the delay caused by the contractor or the contract is a Lump sum Contract or a Fixed Budget Contract.

#### 11.11 Local Taxation & Value Added Tax

- a. The prices tendered by the Contractor shall include all taxes that may be levied in accordance to the laws and regulations in being in Nepal on the date 30 days prior to the closing date for submissions of Bids on the Contractor's equipment, plant and materials acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in Nepal on profits made by him in respect of the Contract.
- b. The Contract is not exempted from value added tax. An amount specified in the schedule of taxes shall be paid by the Contractor in the concerned VAT office within time frame specified in VAT regulation.

## 12. Termination of Contract

### 12.1 Default by Contractor

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

If the contractor has not taken all practicable steps to remedy the default within 15 days after the contractor's receipt of the Employer's notice, the Employer may, by a second notice given within a further 22 days, terminate the Contract. The Contractor



shall then demobilize from the Site leaving behind Materials and Plant and any contractor's Equipment which the Employer instructs in the second notice to be used until the completion of the Works.

**12.2 Default by Employer**

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

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

**12.3 Insolvency**

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

**12.4 Termination by Convenience**

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

**12.5 Payment upon Termination**

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

- a. any sums to which the contractor is entitled under Sub-Clause 10.4,
- b. any sums to which the Employer is entitled,
- c. if the Employer has terminated under Sub-Clause 12.1 or 12.3, the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination,
- d. if the contractor has terminated under Sub-Clause 12.2 or 12.3, the contractor shall be entitled to the Cost of his suspension and demobilisation together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination

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

**13. Risk and Responsibility**

**13.1 Contractor's Care of the Works**

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



loss or damage so that the Works conform to the Contract.

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

### 13.2 Force Majeure

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

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

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

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

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

## 14. Insurance

### 14.1 Extent of Cover

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

- a. for loss and damage to the Works, Materials, Plant and the contractor's Equipment,
- b. for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the contractor's performance of the Contract, including the contractor's liability for damage to the Employer's property other than the Works, and
- c. for liability of both Parties and of any Employer's representative for death or injury to the contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their employees.

### 14.2 Arrangements

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



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

**14.3 Failure to Insure**

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

**15. Resolution of Disputes**

**15.1 Adjudication**

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

**15.2 Notice of Dissatisfaction**

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

**15.3 Arbitration**

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

**16. Conduct of Bidders**

16.1 The Bidder shall be responsible to fulfil his obligations as per the requirement of the Contract Agreement, Bidding documents, GoN's Procurement Act and Regulations.

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

- h) give or propose improper inducement directly or indirectly,
- i) distortion or misrepresentation of facts
- j) engaging or being involved in corrupt or fraudulent practice



- k) interference in participation of other prospective bidders.
- l) 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,
- m) 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..
- n) contacting the Employer with an intention to influence the Employer with regards to the bid or interference of any kind in examination and evaluation of the bids during the period after opening of bids up to the notification of award of contract

#### 17. Blacklisting Bidder

17.1 Without prejudice to any other right of the Employer under this Contract, GoN, Public Procurement Monitoring Office may blacklist a bidder for his conduct up to three years on the following grounds and seriousness of the act committed by the bidder:

- g) if it is proved that the bidder committed acts pursuant to the Sub - Clause 16.2,
- h) if the bidder fails to sign an agreement pursuant to ITB Sub – Clause 27.4,
- i) if it is proved later that the bidder/contractor had committed substantial defect in implementation of the contract or had not substantially fulfilled his obligations under the contract or the completed work is not of the specified quality as per the contract ,
- j) if convicted by a court of law in a criminal offence which disqualifies the bidder from participating in the contract.
- k) if it is proved that the contract agreement signed by the bidder was based on false or misrepresentation of bidder's qualification information,
- l) other acts mentioned in the Bidding Data

33.2 A firm declared blacklisted and ineligible by the GoN shall be ineligible to bid for a contract during the period of time determined by the PPMO.



## Section V Special Conditions of Contract (SCC)

This SCC forms part of the Agreement

[Note: with the exception of the items for which the Employer's requirements have been inserted, the Bidder shall complete the following information before submitting his bid.]

Item	Clause	Data
Documents forming the Contract listed in the order of priority	1.1.1	<b>Document</b> (delete if not applicable) <ol style="list-style-type: none"> <li>The Agreement</li> <li>Special Conditions of Contract</li> <li>General Conditions of Contract</li> <li>The Technical Specifications</li> <li>The Drawings</li> <li>The contractor's tendered design (if any)</li> <li>The Bill of Quantities</li> <li>.....(if any)</li> <li>.....(if any)</li> </ol>
Time for Completion	1.1.12	<i>120 calendar days after receiving work order</i>
Law of Contract	1.4	Applicable Law of Nepal
Language	1.5	English or Nepali
Provision of Site	2.1	On the commencement date*
Authorised person	3.1	<i>Station Chief, Devighat Hydropower Station. Battar, Nuwakot</i>
Name and address of Employer's representative (if known)	3.2	
Performance security : Amount	4.4 4.4	<p>i) If the bid price of the bidder selected for acceptance is up to 15 (fifteen) percent less than the approved cost estimate, the performance security amount shall be 5 (five) percent of the bid price.</p> <p>ii) For the bid price less than 15 percent of the cost estimate, the performance security amount shall be determined as follows: Performance Security Amount = <math>[(0.85 \times \text{Cost Estimate} - \text{Bid Price}) \times 0.5] + 5\%</math> of Bid Price. The Bid Price and Cost Estimate shall be inclusive of Value Added Tax.</p> <p>Security format Attached in section IX</p>
Form		
Requirements for contractor's design (if any)	5.1	NA
Time for the submission of programme	7.2	Within 14 days* of the commencement date

\* Employer to specify as appropriate



Item	Clause	Data
Liquidated Damages for Delay	7.4	0.05% of Contract Price per day up to a maximum of 10%* of sum stated in the Agreement
Bonus or early completion (if any)	7.4	NA
Period for notifying defects	9.1	365 days* calculated from the date stated in the notice under Sub-Clause 8.2.
Day work rates (if any)	10.2 (e)	Approved District Rate of Nuwakot

Valuation of the Works*	11.1	[insert "Ad measurement with bid bill of quantities" or "Lump Sum price in case of Lump sum contract"]																																													
Percentage of value of Materials and Plant	11.2 (b)	[insert Materials .....% if applicable] [insert Plant .....% if applicable]																																													
Percentage of retention	11.3	5% of each Payment made to the Contractor																																													
Currency of payment	11.7	Nepalese Rupees																																													
Rate of interest	11.8	NA																																													
Advance Payment	11.9	Upto 20% of the contract price																																													
Price Adjustment Base Price	11.10.	<p><b><i>[insert Base Price of construction material that are considered for price adjustment ]</i></b></p> <table border="1"> <thead> <tr> <th>Construction Material</th> <th>Base Price (Ex-factory )</th> <th>Source (factory)</th> </tr> </thead> <tbody> <tr> <td>i. Cement</td> <td>NRs...../ MT</td> <td></td> </tr> <tr> <td>ii. Steel</td> <td></td> <td></td> </tr> <tr> <td>    a) Reinforcement</td> <td>NRs...../ MT</td> <td></td> </tr> <tr> <td>    b) Structure</td> <td>NRs...../ MT</td> <td></td> </tr> <tr> <td>iii. Brick</td> <td></td> <td></td> </tr> <tr> <td>    a) Chimney</td> <td>NRs...../ No</td> <td></td> </tr> <tr> <td>    b) Machine Made</td> <td>NRs...../ No</td> <td></td> </tr> <tr> <td>iv. CGI Sheets</td> <td>NRs...../ Sqm</td> <td></td> </tr> <tr> <td>v. Gabion wire</td> <td>NRs...../ MT</td> <td></td> </tr> <tr> <td>vi. Bitumen</td> <td>NRs...../ MT</td> <td></td> </tr> <tr> <td>vii. Aluminium</td> <td></td> <td></td> </tr> <tr> <td>    Extrusion</td> <td>NRs...../ MT</td> <td></td> </tr> <tr> <td>viii. Timber</td> <td>NRs...../ Cum</td> <td></td> </tr> <tr> <td>ix. Others</td> <td></td> <td></td> </tr> </tbody> </table> <p>The base prices of the construction materials shall be taken as of 30 days before the deadline for submission of the Bid.</p>	Construction Material	Base Price (Ex-factory )	Source (factory)	i. Cement	NRs...../ MT		ii. Steel			a) Reinforcement	NRs...../ MT		b) Structure	NRs...../ MT		iii. Brick			a) Chimney	NRs...../ No		b) Machine Made	NRs...../ No		iv. CGI Sheets	NRs...../ Sqm		v. Gabion wire	NRs...../ MT		vi. Bitumen	NRs...../ MT		vii. Aluminium			Extrusion	NRs...../ MT		viii. Timber	NRs...../ Cum		ix. Others		
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		For the purpose of calculation of price adjustment, the Ex-factory price of the same source shall be taken into consideration.	
<b>Insurances</b>	14.2	<p><b><u>Type of Cover</u></b></p> <p>The Works.Material.Plant And Fees</p> <p>Contractor's Equipment</p> <p>Third Party injury to persons and damage to property</p> <p>Workers</p>	<p><b><u>Amount to Cover</u></b></p> <p>The Sum stated in the Agreement plus 15%</p> <p>Full Replacement Cost</p> <p>Insert amount per person, number of persons and number of occurrences</p> <p>As per Labour Act of Nepal</p>
Adjudication	15.1	Appointing Authority: Nepal Council of Arbitration (NEPCA}	
Arbitration	15.3	<p>Arbitration Rules : Nepal Council of Arbitration(NEPCA}</p> <p>Appointing Authority: Nepal Council of Arbitration (NEPCA}</p> <p>Place of Arbitration: Nuwakot</p> <p>Language; English ,Nepali</p>	

## Section VI. Technical Specification

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### A. SPECIFICATION FOR MATERIALS AND CIVIL WORKS

#### 1. Earth Work Excavation:

Earth work in excavation in trenches, foundation etc, in all kinds of soil including timbering and shoring, pumping out water from the trenches (if necessary), dressing of sides, ramming on the bottom, lift up to, 2.5m stacking of excavated material at least 1 m from the edge of foundation trench and then returning to the stacked soil in 15cm layer when required in plinth, floors, sides of foundation trench. Consolidation depositing the layer by ramming and watering and then depositing of all surplus excavated soil with in a lead of 10 m and lift 1.5 m. As directed by site incharge.

##### (a) Excavation

The foundation trenches shall be dug to the dimensions shown on the drawings and to the depth at which in the option of site incharge a stratum of good hard soil is met with. The excavation shall be carefully dug out to the levels, shapes and dimensions as shown or figured on the drawings or as directed by the site incharge to receive the concrete work. Should any of the excavation be taken down below the proper levels, the contractor shall fill in such at his own expense with concrete well rammed in position until it is brought up to the proper levels; filling in which excavated materials will not be allowed for this purpose, No extra charge will be given for the lift of the excavated materials up to 2.5m .The excavated earth shall be stacked at least 1 m from the edge of the foundation trench, if the trenches are made broader or longer than directed, the extra length and breadth shall be filled in, after the foundation is built, with earth rammed hard, by the contractor at his own costs. The contractor shall at his own expense make provision for all or extra excavation in slope, working spaces, including spaces for pumping, dredging, or bailing out water and these trenches shall be kept free from water while the foundation work is in progress. The contractor shall also at his own costs remove such portions of boulders or rocks as required to make the bottom of the trench horizontal and level. Nothing extra shall be admissible for pumping and or bailing out water unless otherwise taken separately in the schedule .The trenches or pit shall be inspected by the site incharge before the concrete is laid there in, when the trench level shall be recorded. The filling inside of trenches or pits shall be done in not more than 15cm layers. Each layer shall be flooded with water and rammed hard before adding the next layer. Such fillings shall be brought up to the ground level without extra charge and shall form part of the item of excavation.

##### (b) Timbering of Trenches: -

When the trenches are to be taken deep, the sides of the trenches shall be protected by erecting timber shoring and shuttering as directed by the site incharge, nothing extra on this account shall be admissible unless otherwise taken separately in the schedule.

##### (c) Trimming and Levelling: -

The bottom of all excavation should be trimmed and levelled in accordance with the drawing or as directed by site incharge. Bottom of the trenches shall be rammed before concrete is deposited as directed by site incharge.

##### (d) Classification of Soil: -

All soil shall be taken as soft soil unless hard rock or old masonry or concrete or block kanker or running sand which requires special treatment for the purpose of excavation are met with when an additional item shall be formed.

##### (e) Disposals:, -

Disposal of the extra surplus earth shall be done within the area as directed by the owner, engineer.

Measurement shall be the product of the exact length and width of the lowest step of the footings according to the drawing or the site in charge's



instruction and depth measured vertically. Where the ground is not level, average depth shall be taken.

## 2. Earthwork in filling:-

Earthwork in filling in floor with proper ramming in 20 cm layers, after sprinkling with water and consolidating to 15cm layers, in m<sup>3</sup>. This shall be done with good excavated earths as per article 14. The excavated earth shall be filled in 20 cm layers and layer shall be well watered and thoroughly rammed with iron rammer till the layer is consolidated to 15cm layer.

## 3. Stone Work:-

The stone shall be hard, sound and durable of approved quarry. Stone shall be hammer dressed to secure close joints so that the stones when laid will conic in to close proximity. Stones shall be fairly equal in size and every stone shall be fitted to the adjacent stones. No stones shall be less than 15 c m in size. Stone with round surface shall not be used. The Stone shall be strong and durable having rectangular shape. The stone shall be free from cracks, chips, flaws stones or humps of any kind. They shall not show appreciable signs of efflorescence either dry or subsequent to soaking in water. They shall be sound, hard, and homogeneous in texture and emit a clear ringing sound when struck with a trowel.

Face stone shall be comparatively larger and uniform in size and the breadth of face stones shall be greater than the height. Stones shall be laid with broader face downward to give good bedding. Face joints shall be broken and face of wall shall be, truly in plumb. Corner stones of quoins should be a good stone and dressed to correct angle and laid as headers and stretchers.

## 4. Aggregates:-

The aggregate shall be hard, sound and durable of approved quarry. aggregate shall be hammer dressed to secure close joints so that the stones when laid will conic in to close proximity. aggregate shall be fairly equal in size. No stones shall be less than 20 mm in size. The aggregate shall be strong and durable having good shape. The aggregate shall be of size as specified in BOQ and other specification and requirements as per instruction of Site Engineer.

## 5.0 MEASUREMENTS

The measurements of work shall be the product of the length height and thickness. Deductions for doors, windows and other openings including lintels shall be made to arrive at the net quantity of work. Nothing shall be paid extra for forming such openings. However, no deductions shall be made for areas less than 0.1 sq.m. overall, bearing of lintels, beams, girders and holdfast blocks but nothing extra like formwork shall be paid for embedding these. Unless otherwise specified nothing extra shall be admissible for cutting in brickwork or brick to suit RCC structures, walls in any shape other than straight or any cutting necessary for shaping the walls to the structural design. Rate shall be inclusive of all necessary scaffolding, watering, cutting of bricks, curing, materials and labour.

## GENERAL SPECIFICATION OF CIVIL WORK

### Note: -

The work shall be carried out according to these specifications work shall be carried out whether specifically mentioned elsewhere or not. No extra in any form will be paid unless it is definitely stated as an item in the Bill of Quantities.

1. Whenever the specification are not given or when the specification are ambiguous, the relevant Nepalese standard or Indian standard or British standard and further amendment will be consider as final and binding.

2. The work shall be related to the drawing, that the contractor is presumed to study. Nothing extra to be paid for any item because of its shape, locations or other difficult circumstances, even if the schedule makes no distinction, as long as the item is shown in the drawing

3. The source of materials stated in the specification is those from which Materials are generally



available. However, materials not conforming to specifications shall be rejected even if they come from the slated sources. The contractor should satisfy him that sufficient quantity of material of acceptable specification from the stated or other sources.

4. Owner shall mean Nepal Electricity Authority.

5."Site in charge" shall mean the employee deputed by the owner.

6. The requirements of the specifications under (A) GENERAL,(B) MATERIALS shall be fulfilled by the contractor without extra charge i.e. the item rate quote shall be deemed to have taken these specifications into account.

**GENERAL:-**

**1. Office accommodation and W.C. for contractor**

The contractor shall provide at his own expense adequate temporary accommodation and toilet facilities for his workman and keep the same in good order. It may be done to suit site condition with the approval of Site in charge. The above-mentioned temporary structures shall be removed on the completion of work at contractor own costs. All materials shall belong to contractor,

**2. Boards**

A board of site approximately 215 cm x 200cm shall be made and put at an approved place on the site. This board shall be painted in approved color with names of (a) The proposed construction Owner (b) the contractor. This shall be provided by the contractor at his own costs.

**3. Drawing Instructions, Measurements**

All the works shall be done according to the drawing and instruction of the site in charge and the contractor shall arrange to test materials and portion of the work at his own costs in order to prove their soundness and sufficiency. If after any work and positions of work is found to be defective or unsound, the contractor pull down and re execute the same at his own costs. The defective materials shall be removed from the site.

**4. Preparing and clearing sites**

The site described and shown on the drawing / Plan plus 3m.wall around the wall shall be cleared of all obstructions, loose Stones materials, rubbish of all kinds as well as brush- Wood. All holes or hollows whether originally existing or produced by removal of loose stone or brushwood shall be carefully filled up with earth, well rammed and leveled of as directed. Also the contractor shall dress the site 3m all round the building after completion, maximum cutting or filling being 30 cm.No extra shall be paid for this.

**5. Trees**

No trees, saplings shall be removed / cut without prior permission of the owner. If any trees have to be cut, this shall form an extra item. For the purpose of the specification; a tree shall be defined as growth whose circumference of the trunk at 30cm from the base is not less than 90 cm.

**6. Measuring materials**

Materials requiring measuring shall be measured separately in boxes of appropriate sizes before being mixed.

**7. Temporary Protection**

All trenches, walls newly laid Concrete or other work requiring protection from weather or accidental injury shall be protected by means of tarpaulin or in any other way so as to keep the work immune from damage, Nothing extra shall be paid for on this matter.

**8. Quality of work**

Materials, tools and plants and workmanship shall be the best of several kinds obtainable in the market and as approved by the site, in charge.

**9. Leave clean**

On completions, all work must clean down ,rubbish removed and the works end land cleared of



rubbish, surplus material, debris and other accumulations and everything left in a clean and orderly condition.

**10. Sample**

Sample of each class of the work required shall be submitted by the contractor for the approval Of the site-in charge. The contractor will be required to perform all work under the contract in accordance with these approved samples.

**11. Provisional Items**

All provisional items in the scheduled shall he carried out at the discretion of the site incharge and may or may not form part of the contract; the rate shall be settled as for extra items as stated in the condition of contract.

**12. Storage**

Safe dry and proper storage shall be provided for all materials, particularly for cement. For cement storage capacity, should be equal to at least one fourth the total quantity to be used but may not exceed 40 tones (i.e.800 bags). If silo site is installed at the site of work the site incharge may reduced the capacity of storage.



## Section VII. Drawings

- If drawing is not available bidders are strictly advised by site engineer on site.
- The works shall be carried out according to norms and technical specifications.
- The quality and quantity should be maintained as per the direction of technical specifications & BOQ.

## Section VIII. Bill of Quantities

**Nepal Electricity Authority  
Generation Directorate  
Medium Generation, Operation & Maintenance Department  
Devighat Hydropower Station**

### BILL OF QUANTITY

Job : Gravel Filling Works in Switchyard

Location: near power house area

S.N.	Description of works	Quantity	Unit	Rate NRs. (Excluding VAT)		Amount NRs	Remarks
				in Figure	in Words		
1	Site Clearance Works for existing materials removal of grass roots, gravel leveling before and after completion of works	1.00	Job				
2	insurance	1.00	Job				
3	Earthwork excavation in gravelled mixed soil and removal of earthwork from switchyard and lead up to 30 m.	578.62	m3				
4	Supplying of machine crushed gravel (20 mm - 40 mm) in switch yard and Filling and levelling of gravel including compaction by man with 10m transportation..	771.48	m3				
<b>Sub Total</b>							
<b>VAT @ 13%</b>							
<b>Grand Total</b>							

Total Amount in words:

Name of the Bidder:

Address of the Bidder:  
Official Seal:

Authorized Signature:

(Note: Rate and total amount for each item have to be duly filled and are to be exclusive of VAT)



## Section IX. Forms of Securities

### Bid Security (Bank Guarantee)

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

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

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

The conditions of this obligation are:

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

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

This Guarantee will remain in force up to and including the date *[number]* days<sup>2</sup> after the deadline for submission of bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date \_\_\_\_\_ Signature of the Bank \_\_\_\_\_

Witness \_\_\_\_\_ Seal \_\_\_\_\_

\_\_\_\_\_  
*[signature, name, and address]*

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

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



## Performance Bank Guarantee

To: *[name and address of Employer]*

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

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

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

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

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

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

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

Signature and seal of the Guarantor \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

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

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



### Bank Guarantee for Advance Payment

To: *[name and address of Employer]*

*[name of Contract]*

Gentlemen:

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

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

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

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

Yours truly,

Signature and seal: \_\_\_\_\_

Name of Bank/Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_



## Section X. Rules for Adjudication

Referred to in GCC Sub-Clause 15.1

- |                                   |   |
|-----------------------------------|---|
| <b>General</b>                    | 1. Any reference in the Conditions of Contract to the Rules for Adjudication shall be deemed to be a reference to these Rules.  |
|                                   | 2. Definitions in the Contract shall apply in these Rules.  |
| <b>Appointment of Adjudicator</b> | 3. The Parties shall jointly ensure the appointment of the Adjudicator. The Adjudicator shall be a suitably qualified person.   |
|                                   | 4. If for any reason the appointment of the Adjudicator is not agreed at the latest within 15 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Contract or, if none, to the President of Nepal Council of Arbitration (NEPCA) or his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive. |
|                                   | 5. The Adjudicator's appointment may be terminated by mutual agreement of the Parties. The Adjudicator's appointment shall expire when the Works have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.   |
| <b>Terms of Appointment</b>       | 6. The Adjudicator is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.   |
|                                   | 7. The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Works form part other than in accordance with these Rules.  |
|                                   | 8. The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Contract.   |
|                                   | 9. The Adjudicator shall treat the details of the Contract and all activities and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.  |
|                                   | 10. The Adjudicator may resign by giving 30 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under these Rules, the Parties shall agree upon a replacement Adjudicator within 15 days or Rule 4 shall apply.   |



11. The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to have been in bad faith.
12. If the Adjudicator shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

### Payment

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

### Procedure for Obtaining Adjudicator's Decision

19. A dispute between the Parties may be referred in writing by either Party to the Adjudicator for his decision, with a copy to the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and refer to these Rules.



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

## Adjudicator's Agreement

Identification of Project:

\_\_\_\_\_ (the "Project")

Name and address of the Employer:

\_\_\_\_\_ (the "Employer")

Name and address of *contractor*:

\_\_\_\_\_ (the "*contractor*")

Name and address of Adjudicator:

\_\_\_\_\_ (the "Adjudicator")

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

**The Employer, Contractor and Adjudicator agree as follows:**

1. The Rules and the dispute provisions of the Contract shall form part of this Agreement.
2. The Adjudicator shall be paid:

A retainer fee of \_\_\_\_\_ per calendar month (where applicable)

A daily fee of \_\_\_\_\_

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

Receipts will be required for all expenses.



- 3. The Adjudicator agrees to act as adjudicator in accordance with the Rules and has disclosed to the Parties any previous or existing relationship with the Parties or others concerned with the Project.
- 4. This Agreement shall be governed by the law of Nepal.
- 5. The language of this Agreement shall be English *[or in Nepali if both parties agrees]*.

SIGNED BY \_\_\_\_\_

for and on behalf of the Employer in the presence of

Witness \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

SIGNED BY \_\_\_\_\_

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

Witness \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

SIGNED BY \_\_\_\_\_

for and on behalf of the Adjudicator in the presence of

Witness \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_



## Section XI. Notes for Guidance

(Not forming part of the Contract)

### General

The objective of this Contract is to express in clear and simple terms traditional procurement concepts. The Contract is intended to be suitable for works of simple content and short duration. If it is required that the contractor should undertake design, this is also provided for.

All necessary additional information is intended to be provided in the SCC.

One result of the simple form of Contract is that there is an increased burden on the Employer to set out in the Specification and Drawings the full scope of works, including the extent of any design to be done by the contractor.

There is no Engineer or Employer's Representative in the formal sense used in some other FIDIC Conditions. The Employer takes all necessary actions. However, the Employer must nominate his authorised spokesman and, if he wishes to engage a consultant to administer the Contract, may appoint a representative with specific delegated duties and authority. The contractor also nominates a representative.

The Conditions contain no overall limit on the contractor's liability. If such a limit is required, a Clause should be inserted in the SCC.

### Agreement

When the applicable law imposes any form of tax such as VAT on the Works, the Employer should make clear whether Bidders should include such taxes in their prices. Similarly, if payment is to be made in whole or in part in a currency other than the currency of the Country, the Employer should make this clear to Bidders. See Sub-Clause 11.7.

### SCC

Any Notes for Guidance on the completion of the SCC are to be found in the Notes to the Clauses concerned. The Employer should complete the SCC as indicated prior to inviting tenders. Bidders may be asked to insert a Time for Completion at 1.1.12 if none is specified. Where Bidders are required to submit design with their tenders, the documents containing the tendered design should be identified by the Bidder against item 1.1.1(f) of the SCC.

A number of suggestions have been made in the SCC, such as the time for submission of the *contractor's* programme under Sub-Clause 7.2 and the amount of retention under Sub-Clause 11.3. If these suggestions are adopted by the Employer, no action is required. Otherwise, they should be deleted and replaced.

### General Provisions

- 1.1 **Definitions.** The definitions in these Conditions are not all the same as those to be found in other FIDIC Contracts. This is as a result of the need for simplicity in Conditions of this sort.
- 1.1.1 **"Contract".** The list of documents serves two purposes: firstly, to identify which documents forms part of the Contract; and secondly, to provide an order of priority in the event of conflict between them.



Document identification is necessary to avoid any possible doubt, for example because specifications have been subject to revisions. A complete list of Drawings is always desirable and could be attached on a separate sheet.

There is no need for SCC but if amendments to these Conditions are required, they should be inserted on the sheet headed SCC and given priority over the General Conditions. If none, delete the reference.

The Specification should set out in clear terms any design that the *contractor* is required to undertake, including the extent to which any design proposals are to be submitted with the tender. If none, the reference to the contractor's tendered design should be deleted.

If there is no bill of quantities, delete the reference.

If there are additional documents which are required to form part of the Contract, such as schedules of information provided by the *contractor*, these should be added by the Employer. Consideration should be given in each case to the required priority.

If a letter of acceptance is used, it should be given high priority, with or in place of the Agreement, for example.

1.1.10 **"Commencement Date"**. The starting date for the Contract is 14 days after the date when the contractor signs the Agreement with the Employer, unless the Parties agree otherwise.

1.1.19 **"Force Majeure"** may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as all of the five conditions stated in the definition have been satisfied:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- c) riot, commotion, disorder, strike or lockout by persons other than the contractor's personnel and other employees,
- d) munitions of war, explosive materials, ionising radiation or contamination by radioactivity, except as may be attributable to the contractor's use of such munitions, explosives, radiation or radioactivity, and
- e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

1.1.24 **"Works"**. The term "Works" is intended to cover all the obligations of the contractor, including any design and the remedying of defects.

1.5 **Communications**. The problem of languages is addressed by requiring the important communications such as notices



and instructions to be in the language stated in the SCC. Otherwise there is no "Ruling Language". Any arbitration will be conducted in the specified language.

- 1.6 Changes to the law after the date of the contractor's offer are at the Employer's risk and any delay or additional cost are recoverable by the contractor. If the law of the Contract is not the law of the Country, then Sub-Clause 1.4 should be changed in the SCC.
- The Employer**
- 2.1 Unless the Parties have agreed otherwise, the Site must be handed over by the Employer to the contractor on the Commencement Date. This is 15 days after the Contract has come into effect, which occurs when the signed Agreement has been returned by the Employer to the contractor.
- 2.2 If for any reason, permits etc may also be required from places other than the Country, this Sub-Clause could be limited by the addition at the end of the words:
- "... in the Country but not elsewhere."
- 2.4 The term "**approval**" is only used in the Conditions in relation to the performance security at Sub-Clause 4.4 and insurances at Sub-Clause 14.1. It is important that risks such as those of poor workmanship or contractor's design are not transferred to the Employer unintentionally. The Sub-Clause is intended to prevent argument.
- Employer's Representatives**
- 3 Two principles guided the drafting of this Clause. Firstly, the contractor should know who in an Employer Organisation is authorised to speak and act for the Employer at any given time. This is achieved by Sub-Clause 3.1: the authorised individual should be named in the SCC.
- Secondly, those Employers who require professional assistance should not be discouraged from doing so and their consultant should have clearly established delegated powers. This is the object of Sub-Clause 3.2. Once appointed, the Employer's representative acts for and in the interests of the Employer. There is no dual role or duty to be impartial. If an impartial Employer's Representative is required with a role similar to the traditional Engineer, then the following words could be used in the SCC:
- "Replace the final sentence of Sub-Clause 3.2 with the following: *"The Employer's Representative shall exercise in a fair and impartial manner the powers of the Employer under or in connection with the following Sub-Clauses: 1.3, 2.3, 4.2, 4.3, 5.1, 7.3, 8.2, 9.1, 9.2, 10.1, 10.2, 10.5, 11.1 to 11.6, 11.8, 12.1, 13.2 and 14. 1."*
- To the extent that the Employer has delegated powers to an Employer's representative, he should be careful not to exercise such powers himself in order to avoid the risk of conflicting instructions, decisions etc.
- The Contractor**
- 4.1 Most contracts do not specify the exact standard required



for each element of the Works, so some benchmark standard is needed with which the contractor is to comply. If a more specific set of standards could be referred to for a particular project, then an amendment in the SCC would be desirable.

**Design by Contractor**

4.4 **Performance Security.** Suggested forms of performance security are provided.

5.1 As with all design-build contracts it is essential that the Employer's requirements are set out clearly and precisely. The SCC should indicate to Bidder the Sub-Clause(s) in the Specification that set out the design requirement. Where the Employer procures any part of the design, the responsibility for design will be shared as this Contract makes the contractor responsible only for design prepared by him. The extent of the contractor's design obligation should therefore be clearly stated if disputes are to be avoided. The Conditions avoid the confusing concept of approval of design. Designs are submitted and may be returned with comments or rejected. The Employer need not react at all.

5.2 The contractor's responsibility for his design remains, as is made clear here and in Sub-Clause 2.4. In the event of conflict between the Specification and Drawings and the contractor's tendered design, the order of priority in the SCC makes it clear that the Employer's documents prevail. This means that if the Employer prefers the contractor's tendered solution, the Specification and Drawings should be amended before the Contract is signed by the Parties.

The contractor will have an absolute obligation to ensure that the parts of the Works designed by him are fit for their purpose, provided that the intended purposes are defined in the Contract. The Employer must therefore make clear in the parts of the Specification that impose design obligations, the intended purposes of the part of the Works to be designed by the contractor. This should be done even where this seems obvious in order to avoid argument about whether an intended purpose is defined or not.

If a party wishes to protect the intellectual property in his design, provision must be made in the SCC.

**Employer's Liabilities**

6.1 This Sub-Clause gathers together in one place the grounds for extension of time under Sub-Clause 7.3 and the grounds for claims under Sub-Clause 10.4. There is no time or claim for bad weather although this could be adjusted in the SCC if so required.

**Time for Completion**

7.2 The SCC should stipulate any particular requirements as to the form and level of detail of programme to be submitted. Where contractor's design is required, the SCC could stipulate that the programme should show the dates on which it is intended to prepare and submit drawings etc.



- 7.3 The test for entitlement to an extension of time is whether it is appropriate. This means that if an event under Sub-Clause 6.1 caused critical delay to the Works and it is fair and reasonable to grant an extension of time, the Employer should do so. An extension of time should not be granted to the extent that any failure by the contractor to give an early warning notice under Sub-Clause 10.3 contributed to the delay.
- 7.4 There is a maximum amount which the contractor is liable to pay for late completion specified in the SCC. 10% of the sum stated in the Agreement is suggested.
- Taking-Over**
- 8.2 In line with normal practice, it is not envisaged that the Works need be 100% complete before the Employer may take over. Once the Works are ready to be used for their intended purpose, the notice should be given. There is no provision for taking-over of only parts of the Works but if this is required, provision should be made in the SCC.
- If any tests are required to be completed prior to taking-over, these should be specified in the Specification. The definition of Works is broad enough to include any such tests.
- Remedying Defects**
- 9.1 There is no defined Defects Liability Period but during the period - normally 12 months - from the date of taking-over, the Employer may notify the contractor of defects. The contractor must remedy such defects within a reasonable time. If he fails to do so, the Employer may employ others for that purpose at the contractor's cost. The Employer may also notify defects at any time prior to taking-over.
- The liability of the contractor for defects will not normally end with the expiry of the period stated in the SCC. Although he is then no longer obliged to return to Site to remedy defects, the defect represents a breach of contract for which the contractor is liable in damages. This liability remains for as long as the law of the Contract stipulates, often 3, 6 or 10 years from the date of the breach. If this long-term liability is to be reduced or eliminated, a Clause in the SCC is required.
- Variations and Claims**
- 10.1 Variation is defined to include any change to the Specification or Drawings included in the Contract. If the Employer requires a change to part of the Works designed by the contractor either as part of his tender or after the Contract was awarded, then this is to be done by way of an addition to the Specification or Drawings which by Sub-Clause 5.2 will prevail over contractor's design.
- 10.2 This Sub-Clause sets out alternative procedures for the valuation of Variations, to be applied in the order of priority given. It applies equally to omissions as to additional works.
- b) A traditional approach can be taken by valuing the Variation at rates in the bill of quantities and any schedules, or
- c) using these rates as a basis, or

- d) using new rates.
- e) Daywork rates are normally used when the Variation is of an indeterminate nature or is out of sequence with the remaining Works. To ensure reasonable day work rates, provision should be made for these to be priced competitively in the tender documents.

10.3 This Sub-Clause 10.4 and Sub-Clause 10.5 require the contractor to notify the Employer of events promptly and to detail any claim within specified days. If the effects of the event are increased or if the ability of the Employer to verify any claim is affected by the failure to notify, then the Employer is protected.

### Contract Price and Payment

11.1 Normally only one of the options in the SCC should be used to indicate how the sum in the offer is to be calculated and presented. The following explains what is intended:

**Lump sum price** A lump sum offer without any supporting details. This would be used for very minor works where Variations are not anticipated and the Works will be completed in a short period requiring only one payment to the contractor

**Lump sum price with schedule of rates** A lump sum offer supported by schedules of rates prepared by the Bidder. This would be a larger contract where Variations and stage payments would be required. If the Employer does not have the resources to prepare his own bill of quantities then this alternative would be suitable.

**Lump sum price with bill of quantities** A lump sum offer based on bill of quantities prepared by the Employer. This would be the same as last but where the Employer has the resources to prepare his own bill of quantities. A better contract would result with an Employer's bill of quantities.

**Remeasurement with bill of quantities** A sum subject to remeasurement at the rates offered by the Bidder in the bill of quantities prepared by the Employer. This would be the same as last but would suit a contract where many changes are envisaged to the Works after the Contract has been awarded.

**Cost reimbursable** An estimate prepared by the tenderer which will be replaced by the actual cost of the Works calculated in accordance with the terms set by the Employer. This would suit a project where the extent of work cannot be ascertained before the Contract is placed. An



example of this would be an emergency reconstruction of a building damaged by fire.

However, if for some special reason, more than one option is selected, for example there is a remeasurable element in a lump sum Contract, then the details should be carefully defined.

This Standard Bidding Document is intended for works of short duration. In the event of a contract for works of long duration, a new clause could be inserted at Sub-Clause 11.1 to adjust for the rise and fall in the cost of labour, materials and other imports to the Works. Such a clause could be adapted from the other FIDIC Conditions of Contract.

- 11.2 If the Contract is for a lump sum, consideration should be given as to how the work is to be valued for the purposes of interim payments. In completing the Bidding Data for Sub-Clause 11.1, the Employer may request Bidders to submit a cash flow forecast linked to a stage payment proposal for agreement. This would be reviewed in the event of an extension of time made in accordance with Sub-Clause 7.3.

Alternatively, interim payment can be based on valuation of the Works which would also be appropriate for remeasurement and cost reimbursable Contracts. Payment could also be based on the achievement of milestones or a schedule of activities to which values are assigned.

If local law or practice so dictates, an invoice may also be required, in which case it could be submitted with the statement.

- 11.3 Provision should be made for advance payments. If such a payment is made, there should be provision in the SCC and for any security to be provided by the contractor. A Standard form of advance payment guarantee is included..
- 11.4 The deduction of retention is sometimes replaced by the provision of security by the contractor to the Employer. Alternatively, the entire retention sum deducted is released after taking-over upon the provision by the contractor of security. In either event, suitable text would be required in the SCC. An example form of retention guarantee is to be found in FIDIC's Conditions of Contract for Construction.
- 11.5 The release of the second part of the retention will serve as confirmation that all notified defects have been remedied.
- 11.7 It is assumed that payments will be in a single currency. If this is not the case, the proportions of different currencies should be stated in the SCC and provision made in the Specification or the SCC as to how payment is to be made.
- 12.1 The Employer may terminate the Contract if the defaulting contractor does not respond to a formal notice by taking all practicable steps to put right his default. This recognises that not all defaults are capable of correction in 14 days. If

## Termination of Contract



termination takes place, the Employer may take over and use the contractor's Equipment to complete the Works. Care should be taken, however, if the equipment on Site is hired: no specific provision is made to cover this situation and the Employer is unlikely to be able to retain such equipment.

- 12.2 This provision provides the contractor's main remedy for non-payment. 7 days after the Employer's receipt of a default notice, which must refer to Sub-Clause 12.2, the contractor may suspend all or part of his work. 21 days later the option to terminate arises if the Employer persists with non-payment or other default. The contractor must use his right to terminate within 21 days or lose it. This is to prevent a party abusing a right to terminate in his dealings with the other party for the remainder of the project.

If contractor's Equipment is essential for the safety or stability of the Works, the Employer will be obliged to agree terms with the contractor for the retention of such equipment. Local law will often protect the Employer from the immediate and reckless removal of essential items.

- 12.3 The right of the Employer to retain the contractor's Equipment may clash with the right of a liquidator or receiver to realise the assets of an insolvent contractor. Reference to the applicable law would be necessary.

- 12.4 This Sub-Clause enables the financial aspects of the Contract to be resolved quickly and without the necessity to await the completion of the Works by others. By specifying the damages payable to the innocent party for the defaults leading to the termination, much delay, complication and scope for dispute are avoided. The Employer's costs in obtaining a replacement contractor will generally be higher than the contractor's loss of profit.

### **Risk and Responsibility**

- 13.1 Although the contractor is responsible for the Works prior to taking-over, he is protected by the obligation to insure the Works under Clause 14 and by his ability to recover under Clause 6 his Cost if one of the Employer's Liabilities occurs.
- 13.2 To qualify as Force Majeure, events must prevent performance of an obligation. See also the definition at Sub-Clause 1.1.19. Notice must be given at once.

### **Insurance**

- 14.1 The Employer should set out his precise requirements in the SCC. Third Party, public liability insurance would normally be mandatory. As smaller contracts are likely to fall within Bidders' standing contractors' All Risk (CAR) insurance policies, Bidders should generally be asked to submit details of their insurance cover with their tenders.

Any requirements for insurance after the date of the Employer's notice under Sub-Clause 8.2, or arising from taking-over parts of the Works, should be covered by SCC. See also Clause 13.



If the Employer wishes to take out the insurances instead of the contractor, the following should be used as a SCC in place of Sub-Clause 14.1:

"Replace the text of Sub-Clause 14.1 with the following:  
*"The Employer shall, prior to the Commencement Date, effect insurance in the joint names of the Parties of the types, in the amounts and with the exclusions stipulated in the SCC. The Employer shall provide the contractor with evidence that any required policy is in force and that the premiums have been paid."*

Sub-Clauses 14.2 and 14.3 should be deleted if the Employer takes out the insurances.

It should be noted that in the event of the Employer's failure to insure, the contractor may give notice under Sub-Clause 12.2.

#### **Resolution of Disputes 15.1**

There are advantages in appointing an adjudicator from the outset even though the adjudicator may not be required to take any action or earn any fee unless and until a dispute is referred to him. Delays will inevitably occur if the parties initiate the procedure to appoint an adjudicator only when a dispute has arisen. It is therefore recommended that the Employer propose a person to act as adjudicator either at tender stage or shortly after the Agreement is signed and that the matter is discussed and agreed as soon as possible.

Care should be taken about whether an adjudicator should be local or from a neutral country. Although the adjudicator should be impartial, the costs of employing someone from a third country could be disproportionate if it is necessary for the adjudicator to visit or if a hearing became necessary. However, in view of the costs involved in arbitration, even of minor disputes, any extra cost of a truly impartial adjudicator is a recommended investment.

It is intended that all decisions made by the Employer or his representative should be capable of being reviewed by an adjudicator and, if required, by an arbitrator.

- 15.3 Arbitration may not be commenced unless the dispute has first been the subject of adjudication. The Rules of arbitration should be stipulated in the SCC. The NEPCA Rules are recommended. The place of arbitration is significant as the arbitration law of the place of arbitration will apply in such matters as the ability of a party to appeal.

