



**Mahakali Municipality**  
**Office of the Municipal Executive**  
**Dodhara-Chadani, Kanchanpur**

**Procurement of Works**  
Milan Chowk to Jogbuda Road Blacktop Work  
Contract no: 18/073/074

**April 2017**

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## **Section II. Instructions to Bidders**

### ***Notes on the Instructions to Bidders***

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

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

## Instructions to Bidder

- 1. Scope of Works** The Employer stated in the Invitation for Sealed Quotation invites bids for the construction of works as detailed in attached specifications, drawings and the bill of quantities provided herein. .
- 2. Eligible Bidder** This Invitation for Bids is open to all registered contractors with qualifications as described below:
  - a) Up to date Firm/Company Registration Certificate
  - b) VAT and PAN Registration Certificates
  - c) Tax Clearance Certificate
  - d) 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 bid procurement proceedings and has not been punished for the profession or business related offence.
  - e) Power of Attorney
  - f) Other documents as needed
- 3. One Bid per Bidder** Each Bidder shall submit only one quotation, A Bidder who submits more than one quotation shall cause all the quotations with the Bidder's participation to be disqualified.
- 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.
- 6. Content of Quotation Form** The Quotation Form comprise the documents listed below:
  1. Invitation for Sealed Quotations
  2. Instructions to Bidders
  3. Forms of Bid, Letter of Acceptance and Agreement
  4. General Conditions of Contract (GCC)
  5. Special Conditions of Contract (SCC)
  6. Technical Specification
  7. Bill of Quantities
- 7. Clarification** A prospective Bidder may obtain clarification on the Quotation Form from the Employer.
- 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 Eligibility Information
  - b. Bid Security
  - c. Priced Bill of Quantities
- 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 separately 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 of 45 days after opening. Of the quotation.
- 12. Bid Security** The Bidder shall furnish a Bid Security in Nepali Rupees in the amount equivalent to 2.5 % of the bid amount. The Bid Security shall remain valid for a period of 75 days after opening of the quotation.
- The Bid Security shall be in the form of cash voucher deposited in the Bank Account of the Employer specified in the notice for "Invitation for Quotation" or a bank guarantee from a bank acceptable to the Employer.
- 13. Format and Signing of Bids** The bid shall be typed or written in indelible ink and shall be signed by an authorized person. Any entries or amendments including alternations, additions or corrections made shall be initialled by the same authorized person.
- 14. Sealing and Marking of Bids** The Bidder shall submit his bid in sealed envelopes. The envelope shall be addressed to the Employer specified in the Invitation for Quotation and shall bear the name and identification number of the quotation.
- 15. Deadline for Submission of Bids** Bids shall be delivered to the Employer at the address no later than the time and date specified in the Invitation for Quotation.
- 16. Late Bids** Any bid received by the Employer after the deadline shall not be accepted and shall be returned unopened to the Bidder upon request.
- 17. Modification and Withdrawal of Bids** Bids once submitted shall not be withdrawn or modified.
- 18. 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 as specified in the Invitation for Quotation. The Employer shall prepare and provide minutes of the bid opening including the information disclosed to those present.
- 19. Process to be Confidential** Information relating to the examination, 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. Any efforts by the Bidder to influence the Employer in the bid evaluation, bid comparison or contract award decisions may result in rejection of Bidder's bid.
- 20. Examination of Bids** 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.

- 21. Evaluation and Comparison of Bids**
- 21.1 In evaluating the Bids, the Employer shall determine for each bid the evaluated Bid Price by adjusting any corrections for errors. Bids 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
- 21.2 If the Bidder does not accept the corrected amount, the bid shall be rejected and the Bid Security may be forfeited.
- 22. Award of Contract**
- 22.1 The Employer shall decide the award of the contract to the Bidder whose bid is within the approved estimate and who has offered the lowest evaluated Bid Price within 15 days of the opening of the quotation, provided that such Bidder has been determined to be eligible in accordance with the provisions of Clauses 2.
- 22.2 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, 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 25 by an 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.
- 23. 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 or 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.
- 24. Notification of Award and Signing of Agreement**
- 24.1 The Bidder whose bid is accepted and all other participating bidders shall be notified of the award by the Employer.
- 24.2 The notification (hereafter called the "Letter of Acceptance") to the successful Bidder 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. Within 7 days of receipt of the Letter of Acceptance, the successful Bidder shall deliver the Performance Security pursuant Clause 25 and sign the Agreement.
- 24.3 Inability of the Bidder to make an Agreement within the above stated period shall result in cancellation of the Contract Award and forfeiture of the Bidder's Bid Security, upon which the Contract shall then be awarded to the next successive successful Bidder.
- 25. Performance Security**
- The successful Bidder shall deliver to the Employer a Performance Security in cash or Bank Guarantee acceptable to the Employer equivalent to 5% of the bid amount..

**26. Additional Securities**

If 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.

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 =  $[(0.85 \times \text{Cost Estimate} - \text{Bid Price}) \times 0.5] + 5\%$  of Bid Price.

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

**27. Corrupt or Fraudulent Practices**

The Employer shall reject a bid for award if it determines that the Bidder recommended for award of contract has engaged in corrupt or fraudulent practices in competing for the contract in question.

**28. Conduct of Bidders**

28.1 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.

28.2 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

**29. Blacklisting Bidder**

29.1 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 28.2,
- b) if the bidder fails to sign an agreement pursuant to Sub - Clause 24.2,
- 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

29.2 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.

## Eligibility Information

### **Notes to Bidders**

*The information to be filled in by Bidders in the following pages shall be used for purposes of eligibility as provided for in Clause 2 of the Instructions to Bidders. This information shall not be incorporated in the Contract. Attach additional pages as necessary.*

### **1. Eligibility Requirements:**

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

- a. Constitution or legal status of Bidder: [attach copy]
- b. Up to date Registration Certificate: [attach copy]
- c. Pan Registration Certificate: [attach copy]
- d. Up to date Tax Returns/ Clearance: [attach copy]
- e. Power of Attorney: [attach copy]
- f. Place of registration: [insert]
- g. A written declaration made by the Bidder stating that the Bidder is not ineligible to participate in the bid; has no conflict of interest in the bid procurement proceedings and has not been punished for the profession or business related offence.
- h. Principal Place of business: [insert]



## 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, 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 Quotation**” 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 stated in the SCC 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 6.3), calculated from the Commencement Date.
- Money and Payments**
- 1.1.13 “**Cost**” means all expenditure properly incurred (or to be incurred) by the contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.
- 1.1.14 “**Contract Price**” means the sum stated in the Letter of Acceptance as payable to the contractor and adjusted with any Variation Orders and Other Adjustments upon completion of the works and the remedying of any defects therein 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 10.3
- Other Definitions**
- 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 5.1.
- 1.1.19 "**Materials**" means things of all kinds (other than Plant) intended to form or forming part of the permanent work.
- 1.1.20 "**Plant**" means the machinery and apparatus intended to form or forming part of the Permanent Works.
- 1.1.21 "**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.
- 1.1.22 "**Variation**" means any change which is a result of unforeseen circumstances that arise as a result of instruction by the Employer/ Engineer under Sub-Clause 9.1.
- 1.1.23 "**Works**" means all the work and design (if any) to be performed by the contractor including temporary work and any Variation.
- 1.1.24 "**Permanent Works**" means the permanent works to be executed (Including Plant) in accordance with the Contract.
- 1.1.25 "**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.
- 1.1.26 "**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 13.1.

- 1.2 **Interpretation** Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires.
  - 1.3 **Priority of Documents** The documents forming the Contract shall to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary instructions to the contractor, and the priority of the documents shall be in accordance with the order as listed in the SCC.
  - 1.4 **Law** The law of the Contract is stated in the SCC.
  - 1.5 **Communications** Where provision is made for the giving or issue of any notice, instruction, or other communication by any person, unless otherwise specified such communication shall be written in the language stated in the SCC as shall not be unreasonably withheld or delayed.  
  
If a notice given pursuant to Sub Clause 1.5 fails to be delivered due to failure to trace the address of the party then the notice shall be published as public notice in a National daily newspaper and when the notice is so published then the notice shall be considered to be delivered to the concerned party.
  - 1.6 **Statutory Obligations** The contractor shall comply with the laws of the countries where activities are performed. The contractor shall give all notices and pay all fees and other charges in respect of the Works.
2. **The Employer**

- 2.1 Provision of Site** The Employer shall provide the Site and right of access thereto at the times stated in the SCC.
- 2.2 Permits and Licenses** The Employer shall, if requested by the contractor, assist him in applying for permits, licences or approvals which are required for the Works.
- 2.3 Employer's Instructions** 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 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. Employer's Liabilities

### 5.1 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. use or occupation by the Employer of any part of the Works, except as may be specified in the Contract,
- e. design of any part of the Works by the Employer's personnel or by others for whom the Employer is responsible,
- f. 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
- g. a suspension under Sub-Clause 2.3 unless it is attributable to the contractor's failure,
- h. any failure of the Employer,
- i. 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,
- j. any delay or disruption caused by any Variation,
- k. any change to the law of the Contract after the date of the contractor's offer as stated in the Agreement,
- l. 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
- m. damage which is an unavoidable result of the contractor's obligations to execute the Works and to remedy any defects.

## 6. Time for Completion

### 6.1 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.

### 6.2 Programme

The contractor shall submit to the Employer a programme for the Works within the time stated in the SCC

### 6.3 Liquidated Damages for Delay

If the contractor fails to complete the Works within the Time for Completion, the contractor's 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.

## **7. Taking-Over**

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

**7.2 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 8, clear the Site.

## **8. Remedying Defects**

**8.1 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.

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.

**8.2 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 9.2.

## **9. Variations and Claims**

**9.1 Right to Vary** The Employer may instruct Variations.

**9.2 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 or
- c. at appropriate new rates, as may be agreed or which the Employer considers appropriate.

**9.4 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.

**9.5 Variation and Claim Procedure** The contractor shall submit the Employer an itemised make-up of the value of Variations and claims within 7 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.

## **10. Contract Price and Payment**

**10.1 Valuation of the Works** The Contract Bill of Quantities and the approved Variation quantities shall be used to calculate the valuation of the works completed. The contractor shall be paid for the quantity of work done at the rate in the Bill of Quantities or rate agreed pursuant to clause 9.2 for varied works.

- 10.2 Payments Certificates** The Contractor shall submit to the Employer monthly statements of the estimated value of the works completed less the cumulative amount certified previously. The Employer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor
- 10.3 Payments** The Employer shall pay to the contractor the amount certified less retention at the rate stated in the SCC within 30 days of the date of each certificate.
- 10.5 Advance Payment**
- a The Employer may make advance payment to the contractor of the amounts stated in the SCC within 30 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 will not be charged on the advance payment.
  - b. The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the contractor, following the schedule of completed percentages of the Works as indicated in SCC
- 10.6 Local Taxation & Value Added Tax**
- a. The prices quoted by the Contractor shall include all taxes that may be levied in accordance to the laws and regulations in being in Nepal.
  - b. The Contract is not exempted from value added tax. The Contractor shall pay VAT in the concerned VAT office within time frame specified in VAT regulation.
- 11. Termination of Contract**
- 11.1 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.
- 11.2 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.
- 11.3 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.

**11.4 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.

**11.5 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 9.4,
- b. any sums to which the Employer is entitled,
- c. if the Employer has terminated under Sub-Clause 11.1 or 11.3, 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 11.2 or 11.4, 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.

**12. Risk and Responsibility**

**12.1 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 7.2. 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.

**12.2 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 9.4,
- 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.

**13. Resolution of Disputes**

**13.1 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. However if the dispute is not settled amicably then the dispute shall be referred to the Adjudicator. The adjudicator shall be any person agreed by the Parties. In case of disagreement the Employer shall request Nepal Council of Arbitration (NEPCA) for appointment of the Adjudicator.

### **13.2 Amicable Settlement**

If either Party is dissatisfied with the decision of the adjudicator attempt shall be made to resolve the dispute amicably.

### **14. Conduct of Bidders**

14.1 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.

14.2 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

### **15. Blacklisting Bidder**

15.1 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 14.2,
- h) if the bidder fails to sign an agreement pursuant to Instruction to Bidders Sub - Clause 24.2,
- 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

15.2 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 <b>Document</b> (delete if not applicable) a. The Agreement b. Special Conditions of Contract c. General Conditions of Contract d. The Bill of Quantities	1.1.1	Contract no:18/2073/074
Time for Completion	1.1.12	45 days
Law of Contract	1.4	Applicable Law of Nepal
Language	1.5	English or in Nepali version
Provision of Site	2.1	On the commencement date*
Authorised person	3.1	Mr. Mahesh Bahadur Bam
Name and address of Employer's representative (if known)	3.2	Mahakali Municipality, Office of the Municipal Executive, Dodhara Chadani, Kanchanpur
Performance security (if any): Amount: Form:	4.4 4.4	5 % of the contract price if the bid amount is upto 15 percent below contract price. Additional performance security as mention in II section clause 26.
Time for the submission of programme	6.2	Within 15 days* of the commencement date
Liquidated Damages for Delay	6.4	0.05% of the Contract Price per day up to a maximum of 10%* of sum stated in the Agreement
Period for notifying defects	8.1	365 days* calculated from the date stated in the notice under Sub-Clause 8.1.

\* Employer to specify as appropriate

Percentage of retention	10.3	5% of each payment made to the Contractor
Advance Payment	10.5(a)	10% of the contract price will be paid in advance and remaining advance payment will be given according to progress of work.

**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]* 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 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]*