

GOVERNMENT OF NEPAL  
MINISTRY OF PHYSICAL PLANNING AND WORKS  
DEPARTMENT OF ROADS  
THE PROJECT DIRECTORATE (ADB), BISHALNAGAR

**INVITATION FOR BIDS**

**(First Date of Publication: 24 February, 2010)**

**Contract Identification Number:**

Notice No: RD/MB/ADB/66-67/2

1. Government of Nepal has received **Asian Development Bank** finance towards the cost of **The Project Directorate (ADB)** and it intends to apply part of the proceeds of this credit to eligible payments under the contract for which this Invitation for Bids is issued.
2. GoN, Ministry of Physical Planning and Works (MOPPW), Department of Roads (DOR), acting on behalf of Government of Nepal invites **Sealed Bids for Supply and Delivery of Vehicles**. The bidding will be conducted through **International Competitive Bidding** in accordance with ADB's Single-Staged one-enveloped bidding procedures specified in the ADB's *Guidelines: Procurement of Goods* and is open to all the bidders from Eligible Source Countries as defined in the Bidding Document.

Descriptions	Quantity
Double Cab Pickup	7 Units

3. Interested eligible Bidders may obtain further information from and inspect the bidding documents at the address below. A complete set (Three Copies) of bidding documents may be purchased from the **first date of publication of this Invitation for Bids** up to **8 April, 2010** by any interested eligible bidder on the submission of a written application to the above office and upon payment of a non-refundable fee of NRs. 3000.00 or its equivalent in freely convertible currency. The Mechanical Branch takes no responsibility for the loss or delay in delivery of the documents.
4. Sealed Bids must be delivered to the address below at or before 12:00 hours on **9 April, 2010**. Bids will be opened at 13:00 hours on **9 April, 2010** in the presence of the bidder's representatives who choose to attend.
5. If the last date of the Bid purchasing, submission and opening falls on a public holiday, the following working day will be applicable. In such case the bid validity and bid security validity shall be recognized with effect from the original bid submission deadline.
6. Bids shall be valid for a period of 90 days after the deadline of bid submission and must be accompanied by a bid security of **NRs. 700,000**. The bid security shall be valid till **5 August, 2010**. The format of the **bid security (Bank Guarantee)** should be in accordance with form of Bid Security included in **Section IV: Bidding Forms** of Bid Documents.
7. For further query, please contact the address below:

**Deputy Director General**  
Mechanical Branch  
Department of Roads, Babarmahal  
Kathmandu, Nepal  
Tel: 4-262693 Ext: 2110, 2124 Fax: ++977-1-4260510  
**Website:** [www.dor.gov.np](http://www.dor.gov.np) **email:** [dormechb@dor.gov.np](mailto:dormechb@dor.gov.np)

**Government of Nepal  
Ministry of Physical Planning & Works  
Department of Roads**

## **Road Connectivity Sector I Project**

**Asian Development Bank Grant No. 0051NEP(SF)**

# **Supply and Delivery of Vehicles**

**Contract No. RD/MB/ADB/66-67/2**

## **BIDDING DOCUMENT**

**January 2010**





## **Preface**

This Bidding Document for Procurement of Goods has been prepared by Department of Road, Mechanical Branch, Babarmahal and is based on the Standard Bidding Document for the Procurement of Goods issued by the Asian Development Bank, dated October, 2006.

This document reflects the structure and the provisions of the Master Procurement Document for the Procurement of Goods, except where specific considerations within the Asian Development Bank have required a change.



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# Section I. Instructions to Bidders

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## A. General

- 1. Scope of Bid**

  - 1.1 The Purchaser indicated in the **BDS** issues this Bidding Document for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Supply. The name, identification, and number of lots of the International Competitive Bidding (ICB) are provided in the **BDS**.
  - 1.2 Throughout this Bidding Document :

    - (a) the term “in writing” means communicated in written form with proof of receipt;
    - (b) if the context so requires, singular means plural and vice versa; and
    - (c) “day” means calendar day.
- 2. Source of Funds**

  - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the **BDS** has applied for or received financing (hereinafter called “funds”) from the Asian Development Bank (hereinafter called “the ADB”) toward the cost of the project named in the **BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract for which this Bidding Document is issued.
  - 2.2 Payments by the ADB will be made only at the request of the Borrower and upon approval by the ADB in accordance with the terms and conditions of the financing agreement between the Borrower and the ADB (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. Corrupt Practices**

  - 3.1 ADB’s Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:

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

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) “coercive practices” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (iv) “collusive practices” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and
- (c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract.
- 3.2 Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 3.2 and Sub-Clause 35.1 (c) of the General Conditions of Contract.
- 4. Eligible Bidders**
- 4.1 A Bidder may be a natural person, private entity, government-owned entity (subject to ITB 4.5) or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV). In the case of a JV:
- (a) all parties to the JV shall be jointly and severally liable; and

- (b) a JV shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.
- 4.3 ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under ADB's Anticorruption Policy. In pursuance of ADB's Anticorruption Policy's requirement that Borrowers (including beneficiaries of Bank-financed activity), as well as bidders, suppliers, and contractors under Bank-financed contracts, observe the highest standard of ethics. ADB will take appropriate actions, which include not financing of the contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently all Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if, including but not limited to:
- (a) have controlling shareholders in common; or
  - (b) receive or have received any direct or indirect subsidy from any of them; or
  - (c) have the same legal representative for purposes of this Bid; or
  - (d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or

- (e) a Bidder participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one bid; or
  - (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods and services that are the subject of the bid.
- 4.4 A Bidder that is under a declaration of ineligibility by the ADB in accordance with ITB 3, at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 Government-owned enterprises in the Purchaser's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the Purchaser.
- 4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- 4.7 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.
- 5. Eligible Goods and Related Services**
- 5.1 All goods and related services to be supplied under the Contract and financed by the ADB, shall have as their country of origin an eligible country of the ADB (see Section V, Eligible Countries).
- 5.2 For purposes of this Clause, the term "goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.
- 5.3 The term "country of origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.

- 5.4 The nationality of the firm that produces, assembles, distributes, or sells the goods shall not determine their origin.

## **B. Contents of Bidding Document**

### **6. Sections of the Bidding Document**

- 6.1 The Bidding Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

#### **PART 1 Bidding Procedures**

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligible Countries

#### **PART 2 Supply Requirements**

- Section VI. Schedule of Supply

#### **PART 3 Conditions of Contract and Contract Forms**

- Section VII. General Conditions of Contract (GCC)
- Section VIII. Special Conditions of Contract (SCC)
- Section IX. Contract Forms

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

- 6.3 The Purchaser is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the Purchaser.

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

### **7. Clarification of Bidding Document**

- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the **BDS**. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of Bids. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Document directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 8 and 24.2.

- 8. Amendment of Bidding Document**
- 8.1 At any time prior to the deadline for submission of the Bids, the Purchaser may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document directly from the Purchaser.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Purchaser may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB 24.2

### **C. Preparation of Bids**

- 9. Cost of Bidding**
- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 10. Language of Bid**
- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the **BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid**
- 11.1 The Bid shall comprise the following:
- (a) Bid Submission Sheet and the applicable Price Schedules, in accordance with ITB Clauses 12, 14, and 15;
  - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21, if required;
  - (c) alternative bids, if permissible, in accordance with ITB 13;
  - (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22;
  - (e) documentary evidence in accordance with ITB 16 establishing the Bidder's eligibility to bid;
  - (f) documentary evidence in accordance with ITB 17, that the Goods and Related Services to be supplied by the Bidder are of eligible origin;

- (g) documentary evidence in accordance with ITB Clauses 18 and 31, that the Goods and Related Services conform to the Bidding Document;
  - (h) documentary evidence in accordance with ITB 19 establishing the Bidder's qualifications to perform the contract if its Bid is accepted; and
  - (i) any other document required in the **BDS**.
- 12. Bid Submission Sheet and Price Schedules**
- 12.1 The Bidder shall submit the Bid Submission Sheet using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
  - 12.2 The Bidder shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms furnished in Section IV, Bidding Forms.
- 13. Alternative Bids**
- 13.1 Unless otherwise indicated in the **BDS**, alternative bids shall not be considered.
- 14. Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Bid Submission Sheet and in the Price Schedules shall conform to the requirements specified below.
  - 14.2 All items in the Schedule of Supply must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed not to be included in the Bid, and provided that the Bid is substantially responsive, the corresponding adjustment shall be applied in accordance with ITB 32.3
  - 14.3 The price to be quoted in the Bid Submission Sheet shall be the total price of the Bid excluding any discounts offered.
  - 14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Bid Submission Sheet.
  - 14.5 The terms EXW, CIF, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, at the date of the Invitation for Bids or as specified in the **BDS**.

14.6 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered:

- (a) For Goods offered from within the Purchaser's country :
  - (i) the price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of goods quoted ex works or ex factory, or on the previously imported goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf;
  - (ii) sales tax and all other taxes applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder; and
  - (iii) the total price for the item.
- (b) For Goods offered from outside the Purchaser's country :
  - (i) the price of the goods quoted CIF(named port of destination), or CIP (border point), or CIP (named place of destination), in the Purchaser's country, as specified in the **BDS**;
  - (ii) the price of the goods quoted FOB port of shipment (or FCA, as the case may be), if specified in the **BDS**;
  - (iii) the total price for the item.
- (c) For Related Services whenever such Related Services are specified in the Schedule of Requirements:
  - (i) the local currency cost component of each item comprising the Related Services; and
  - (ii) the foreign currency cost component of each item comprising the Related Services,

inclusive of all custom duties, sales and other similar taxes applicable in the Purchaser's country, payable on the Related Services, if the Contract is awarded to the Bidder

- 14.7 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, unless otherwise specified in the **BDS**. A Bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 31. However, if in accordance with the **BDS**, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a Bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.
- 14.8 If so indicated pursuant to ITB 1.1, Bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the **BDS**, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one Contract shall specify the applicable price reductions in accordance with ITB 14.4, provided the bids for all lots are submitted and opened at the same time.

**15. Currencies of Bid**

- 15.1 Bid prices shall be quoted in the following currencies:
- (a) Bidders may express their bid price in any fully convertible currency. If a Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three currencies in addition to the currency of the Purchaser's country.
  - (b) If some of the expenditures for the Related Services are to be incurred in the borrowing country, such expenditures should be expressed in the Bid and will be payable in the Purchaser's currency.

**16. Documents Establishing the Eligibility of the Bidder**

- 16.1 To establish their eligibility in accordance with ITB 4, Bidders shall:
- (a) complete the eligibility declarations in the Bid Submission Sheet, included in Section IV, Bidding Forms; and
  - (b) if the Bidder is an existing or intended JV in accordance with ITB 4.1, submit a copy of the JV Agreement, or a letter of intent to enter into such an Agreement. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended JV, as appropriate.

- 17. Documents Establishing the Eligibility of the Goods and Related Services**
- 17.1 To establish the eligibility of the Goods and Related Services, in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 18. Documents Establishing the Conformity of the Goods and Related Services to the Bidding Document**
- 18.1 To establish the conformity of the Goods and Related Services to the Bidding Document, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods and Related Services conform to the requirements specified in Section VI, Supply Requirements.
- 18.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item-by-item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to those requirements, and if applicable, a statement of deviations and exceptions to the provisions of Section VI, Schedule of Supply.
- 18.3 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Section VI, Schedule of Supply, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in Section VI, Schedule of Supply.
- 19. Documents Establishing the Qualifications of the Bidder**
- 19.1 The documentary evidence of the Bidder's qualifications to perform the contract, if its bid is accepted, shall establish to the Purchaser's satisfaction that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 19.2 If so required in the **BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's country.

- 19.3 If so required in the **BDS**, a Bidder that does not conduct business within the Purchaser's Country shall submit evidence that it will be represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.
- 20. Period of Validity of Bids**
- 20.1 Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Purchaser. A Bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 21, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid.
- 21. Bid Security**
- 21.1 Unless otherwise specified in the **BDS**, the Bidder shall furnish as part of its bid, in original form, either a Bid Securing Declaration or a Bid Security as specified in the **BDS**. In the case of a Bid Security, the amount shall be as specified in the **BDS**.
- 21.2 If a Bid-Securing Declaration is specified pursuant to ITB 21.1 the Bidder shall use the form included in Section IV, Bidding Forms.
- 21.3 If a bid security is specified pursuant to ITB 21.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:
- (a) a bank guarantee;
  - (b) an irrevocable letter of credit; or
  - (c) a cashier's or certified check;
- all from a reputable bank from an eligible country. In case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in Section IV, Bidding Forms, or another form acceptable to the Purchaser. The form must include the complete name of the Bidder. The Bid Security shall be valid for twenty-eight days (28) beyond the end of the validity period of the bid. This shall also apply if the period for bid validity is extended.

- 21.4 If a bid Security is required in accordance with ITB 21.1, any Bid not accompanied by an enforceable and compliant Bid Security in accordance with ITB 21.3, shall be rejected by the Purchaser as nonresponsive.
- 21.5 If a Bid Security is specified pursuant to ITB 21.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder furnishing of the signed Contract Agreement and the Performance Security pursuant to ITB 44.
- 21.6 If a Bid Security is specified pursuant to ITB 21.1, the Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract Agreement and furnished the required Performance Security.
- 21.7 The Bid Security may be forfeited or the Bid-Securing Declaration executed:
- (a) if a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Submission Sheet, except as provided in ITB 20.2; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB 43; or
    - (ii) furnish a Performance Security in accordance with ITB 44.
- 21.8 The Bid Security or the Bid-Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 16.1.
- 22. Format and Signing of Bid**
- 22.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 11 and clearly mark it “ORIGINAL.” In addition, the Bidder shall submit copies of the Bid, in the number specified in the **BDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 22.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the **BDS** and shall be attached to the Bid.

- 22.3 Any amendments such as interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

#### **D. Submission and Opening of Bids**

##### **23. Sealing and Marking of Bids**

- 23.1 Bidders may always submit their bids by mail or by hand. When so specified in the **BDS**, Bidders have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the **BDS**.

- 23.2 Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, “ALTERNATIVE” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB 23.3 and 23.4.

- 23.3 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Purchaser in accordance with ITB 24.1;
- (c) bear the specific identification of this bidding process pursuant to ITB 1.1 and any additional identification marks as specified in the **BDS**; and
- (d) bear a warning not to open before the time and date for bid opening, in accordance with ITB 27.1.

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

##### **24. Deadline for Submission of Bids**

- 24.1 Bids must be received by the Purchaser at the address and no later than the date and time indicated in the **BDS**.

- 24.2 The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

- 25. Late Bids**
- 25.1 The Purchaser shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 26. Withdrawal, Substitution, and Modification of Bids**
- 26.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written Notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 22.2 (except that Withdrawal Notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written Notice. All Notices must be:
- (a) submitted in accordance with ITB Clauses 22 and 23 (except that Withdrawal Notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification”; and
  - (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 24.
- 26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.
- 26.3 No Bid shall be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.
- 27. Bid Opening**
- 27.1 The Purchaser shall conduct the bid opening in public at the address, date and time specified in the **BDS**. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 23.1, shall be as specified in the **BDS**.
- 27.2 First, envelopes marked “WITHDRAWAL” shall be opened, read out, and recorded, and the envelope containing the corresponding Bid shall not be opened, but returned to the Bidder. If the withdrawal notice is not accompanied by a copy of the valid authorization pursuant to ITB 22.2, the withdrawal shall not be permitted and the corresponding Bid will be opened. Next, envelopes marked “SUBSTITUTION” shall be opened, read out, recorded, and exchanged for the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid shall be substituted unless the corresponding Substitution Notice

contains a valid authorization to request the substitution and is read out and recorded at bid opening. Envelopes marked "MODIFICATION" shall be opened, read out, and recorded with the corresponding Bid. No Bid shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at bid opening. Only envelopes that are opened, read out, and recorded at bid opening shall be considered further.

- 27.3 All other envelopes shall be opened one at a time, and the following read out and recorded: the name of the Bidder and whether there is a modification; the Bid Prices (per lot if applicable), any discounts and alternative offers; the presence of a Bid Security, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative offers read out and recorded at bid opening shall be considered for evaluation. No Bid shall be rejected at bid opening except for late bids, in accordance with ITB 25.1.
- 27.4 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, any discounts and alternative offers if they were permitted; and the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted on line if electronic bidding was permitted. The Bidders' representatives who are present shall also be requested to sign the attendance sheet.

### **E. Evaluation and Comparison of Bids**

- 28. Confidentiality**
- 28.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until publication of the Contract award; thereafter, information will be disclosed in accordance with ITB 42.3.
- 28.2 Any attempt by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and postqualification of the Bids or Contract award decisions may result in the rejection of its Bid.

- 28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.
- 29. Clarification of Bids**
- 29.1 To assist in the examination, evaluation, comparison and post-qualification of the Bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder with regard to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Bids, in accordance with ITB 33.
- 30. Deviations, Reservations, and Omissions**
- 30.1 During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 31. Determination of Responsiveness**
- 31.1 The Purchaser's determination of the responsiveness of a Bid is to be based on the contents of the Bid itself, as defined in ITB11.
- 31.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
    - (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in Section VI, Schedule of Supply; or
    - (ii) limits in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
  - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

- 31.3 The Purchaser shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI, Schedule of Supply have been met without any material deviation or reservation.
- 31.4 The bids shall be considered non-responsive for the conditions as specified in BDS.
- 32. Nonmaterial Nonconformities**
- 32.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.
- 32.2 Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 32.3 Provided that a Bid is substantially responsive, the Purchaser shall rectify nonmaterial nonconformities or omissions. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section III, Evaluation and Qualification Criteria.
- 33. Correction of Arithmetical Errors**
- 33.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
  - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
  - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to

- (a) and (b) above.
- 33.2 If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be rejected.
- 34. Conversion to Single Currency** 34.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as specified in the **BDS**.
- 35. Margin of Preference** 35.1 Unless otherwise specified in the **BDS**, no margin of preference shall apply.
- 36. Evaluation of Bids** 36.1 The Purchaser shall evaluate each Bid that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 36.2 To evaluate a Bid, the Purchaser shall only use all the criteria and methodologies defined in this Clause and in Section III, Evaluation and Qualification Criteria. No other criteria or methodology shall be permitted.
- 36.3 To evaluate a Bid, the Purchaser shall consider the following:
- (a) the bid price as quoted in accordance with ITB 14;
  - (b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;
  - (c) price adjustment due to discounts offered in accordance with ITB 14.4; and
  - (d) price adjustment due to application of the evaluation criteria specified in Section III, Evaluation and Qualification Criteria. These criteria may include factors related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services which shall be expressed to the extent practicable in monetary terms to facilitate comparison of bids unless otherwise specified in Section III.
- 36.4 The Purchaser's evaluation of a bid will exclude and not take into account:
- (a) in the case of Goods offered from within the Purchaser's country, all sales tax and all other taxes, applicable in the Purchaser's country and payable on the Goods if the Contract is awarded to the Bidder;
  - (b) in the case of Goods offered from outside the Purchaser's country, all customs duties, sales tax, and other taxes, applicable in the Purchaser's country and payable on the

- Goods if the Contract is awarded to the Bidder; and
- (c) any allowance for price adjustment during the period of performance of the Contract, if provided in the Bid.
- 37. Comparison of Bids** 37.1 The Purchaser shall compare all substantially responsive bids to determine the lowest-evaluated bid, in accordance with ITB 36.
- 38. Post-qualification of the Bidder** 38.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 19.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.
- 39. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids** 39.1 The Purchaser reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to the Bidders.

## F. Award of Contract

- 40. Award Criteria** 40.1 The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 41. Purchaser's Right to Vary Quantities at Time of Award** 41.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VI, Schedule of Supply, provided this does not exceed the percentages indicated in the **BDS**, and without any change in the unit prices or other terms and conditions of the Bid and the Bidding Document.
- 42. Notification of Award** 42.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its

Bid has been accepted.

42.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

42.3 The Purchaser will publish in an English language newspaper or well-known freely accessible website the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their bids were not selected. The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.

**43. Signing of Contract**

43.1 Promptly after notification, the Purchaser shall send to the successful Bidder the Contract Agreement and the Special Conditions of Contract.

43.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

**44. Performance Security**

44.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Purchaser.

44.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

## Section II. Bid Data Sheet

This Section includes provisions that are specific to each procurement and that supplement Section I, Instructions to Bidders. Whenever there is a conflict, the provisions herein shall prevail over those in Section I.

<b>A. Introduction</b>	
<b>ITB 1.1</b>	The Purchaser is: <b>Department of Roads, Project Directorate (ADB) Purchaser's Representative; DDG, Mechanical Branch, DoR</b>
<b>ITB 1.1</b>	The name of the ICB is: <b>Supply and Delivery of Vehicles.</b>  The identification number of the ICB is: <b>RD/MB/ADB/66-67/2</b>  The number and identification of lots comprising this ICB is: <b>1</b>
<b>ITB 2.1</b>	The Borrower is: <b>Government of Nepal</b>
<b>ITB 2.1</b>	The name of the Project is: <b>The Project Directorate (ADB), Bishalnagar</b>
<b>B. Bidding Document</b>	
<b>ITB 7.1</b>	For <u>Clarification of bid purposes</u> only, the Purchaser's address is:  <b>DDG, Mechanical Branch Department of Roads, Babar Mahal Kathmandu, Nepal Telephone: ++977-1-4262693 Facsimile : ++977-1-4262510</b>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The language of the Bid is: <b>ENGLISH</b>
<b>ITB 11.1(i)</b>	The Bidder shall submit the following additional documents with its Bid:  <b>a) Manufacturer's authorization(s) (Such authorization letter shall be furnished in accordance to the sample format of bid document).</b>  <b>b) Detailed Technical Specifications / Catalogues / Leaflet etc., including performance curve and operating characteristics. (All such technical catalogues, charts etc. must be manufacturer's</b>

	<p>standard publications, without any alterations).</p> <p>c) <b>Statement and disclosure of local agent (if any), A local agent bidding on behalf of the Supplier shall also furnish Agency registration, VAT registration and Income tax clearance certificates.</b></p>
<b>ITB 13.1</b>	Alternative Bids <b>shall not be permitted</b>
<b>ITB 14.5</b>	The Incoterms edition is: <b>Incoterms 2000</b>
<b>ITB 14.6 (b) (i), (ii)</b>	<p>For Goods offered from outside the Purchaser’s country, the Bidder shall quote prices using the following Incoterms:</p> <p><b><i>The price quoted shall be CIP site delivery price, to be quoted in a manner as indicated in Price schedule (for goods offered from outside the purchaser’s country) of the bid document.</i></b></p> <p><b><i>For such CIP site price quoted in the case of vehicle from overseas the seller should take the responsibility for clearing at Port of discharge and Nepalese border customs and transportation and delivering it to site. All such costs incurred should be included in the CIP site price.</i></b></p> <p><b><i>The bidder shall not include in his price customs duty, VAT, or any other local taxes, that is collected by Government of Nepal on the vehicle as a consignment, if any.</i></b></p> <p><b><i>In case of supplies from India, the bidder should quote in Indian Currency. If Excise Duty is applicable, goods should be supplied in Duty Refundable Procedures (DRP).</i></b></p>
<b>ITB 14.7</b>	The prices quoted by the Bidder shall be: <b>Fixed</b>
<b>ITB 14.8</b>	<b>NOT APPLICABLE</b>
<b>ITB 19.2</b>	<p>Manufacturer’s authorization :</p> <p><b>Bidder shall submit a letter of authorization from the manufacturer stating that the bidder is authorized to offer the goods in its Bid as stated in Price Schedule or the bidder shall submit a copy of the certificate of Authorized Dealership, if the bidder is an authorized dealer/distributor.</b></p>
<b>ITB 19.3</b>	After sales service is: <b>Required – And the bider be required to include with its bid, an evidence that it will be represented by an Agent in the country.</b>

<b>ITB 20.1</b>	The bid validity period shall be <b>90 days after the deadline of bid submission.</b>
<b>ITB 21.1</b>	ITDB21.1 is modified as; Bidders shall furnish a bid security of: The amount of bid security shall be <b>NRs. 700,000.00.</b>
<b>ITB 22.1</b>	In addition to the original of the Bid, the number of copies is: <b>2 (Two)</b>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 23.1</b>	Bidders shall not have the option of submitting their bids electronically. If bidders submit their bids electronically, the electronic bidding submission procedures shall be: <b>NOT APPLICABLE</b>
<b>ITB 23.3 (c)</b>	The inner and outer envelopes shall bear the following additional identification marks: <b>BID FOR “Supply and Delivery of Vehicles”–RD/MB/ADB/66-67/2.</b>
<b>ITB 24.1</b>	For bid submission purposes, the Purchaser’s address is: <b>DDG, Mechanical Branch</b> <b>Department of Roads, Babar Mahal</b> <b>Kathmandu, Nepal</b> <b>Telephone: +977-1-4262693</b> <b>Fax: +977-1-4262510</b>
<b>ITB 24.1</b>	<b>The deadline for bid submission is:</b> Date: <b>9 April, 2010</b> Time: <b>12:00 Hrs</b>
<b>ITB 27.1</b>	<b>The bid opening shall take place at:</b> <b>Mechanical Branch</b> <b>Department of Roads, Babar Mahal</b> <b>Kathmandu, Nepal</b> <b>Telephone: +977-1-4262693</b> <b>Fax: +977-1-4262510</b> Date: <b>9 April, 2010</b> Time: <b>13:00 Hrs</b>
<b>ITB 27.1</b>	If electronic bid submission is permitted in accordance with ITB 23.1, the specific bid opening procedures shall be: <b>NOT APPLICABLE</b>

<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 31.4</b>	<p><i>Bids shall be considered non-responsive, if;</i></p> <ul style="list-style-type: none"> <li><i>a) The bid is not submitted in the bid document issued by the department.</i></li> <li><i>b) The bid is not submitted in the complete Bid Document issued in the name of the Bidder himself.</i></li> <li><i>c) The bid is not sealed.</i></li> <li><i>d) The bid is not submitted with the Bid Submission sheet duly filled and signed in the complete document.</i></li> <li><i>e) The bid is not submitted within the specified date / time for submission of bids.</i></li> <li><i>f) The bid is not submitted along with the Bid security as specified in ITB 21.1.</i></li> <li><i>g) The bid does not comply with the instructions as specified in the Invitation for bids.</i></li> <li><i>h) Terms of payment and Destination of Delivery of the Vehicle supplied are different from those specified in the Bid Document.</i></li> <li><i>i) All prices quoted are either not firm, or conditional, or not valid for the period specified in the Bid Document.</i></li> <li><i>j) There is a major deviation in specification of the vehicle proposed by the bidder from that specified in the technical specifications.</i></li> </ul>
<b>ITB 34.1</b>	<p>Currency chosen for the purpose of converting to a common currency:  <i>Nepali Rupees</i></p> <p>Source of exchange rate: <i>Nepal Rastra Bank</i></p> <p>Date of exchange rate: <i>Date of bid opening</i></p>
<b>ITB 35.1</b>	A margin of preference Shall not apply.
<b>F. Award of Contract</b>	
<b>ITB 41.1</b>	The maximum percentage by which quantities may be increased or decreased is : <b>20 (Twenty) Percentage</b>



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## **Section III. Evaluation and Qualification Criteria**

*This Section complements the Instructions to Bidders. It contains the criteria that the Purchaser may use to evaluate a bid and determine whether a Bidder has the required qualifications. No other criteria shall be used.*

*[The Purchaser shall select the criteria deemed appropriate for the procurement process, insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

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1. Evaluation Criteria (ITB 36.3 (d))
3. Qualification Criteria
4. Postqualification Requirements (ITB 38.2)

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## 1. Evaluation Criteria (ITB 36.3 (d))

The Purchaser's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.6, one or more of the following factors as specified in ITB Sub-Clause 36.3(d) and in BDS referring to ITB 36.3(d), using the following criteria and methodologies.

(a) *Delivery schedule.*

*Relevant parameters of delivery: 150 days*

*Additional range : Additional 30 days*

The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:

Deviation in Delivery schedule: **YES**

The goods under the invitation for bids shall be delivered at the time specified in the schedule of requirement. A delivery "adjustment" will be calculated for the bids at the rate of one-twentieth (0.05%) of the bid price for each day of delay beyond the time specified in the Schedule of Requirements, and this will be added to the total bid price for the purpose of the evaluation. No credit shall be given for early delivery.

## 2. Qualification Criteria

In addition to the Eligibility requirements specified in Clause 4 of the Section I Instructions to Bidders, the following Criteria have been set for the qualification of the Bidders. They are to be evaluated on the pass/fail basis. The Bidders' response to each criteria on yes/no basis is mandatory. Whenever the Bidders' response is yes, it should be substantiated by documentary evidence.

- i) Has successfully completed a contract as a main supplier of goods of similar nature for over a three year period ending on the deadline for bid submission.
- ii) Has a service facilities and the availability of spare parts in the Purchaser's Country.

## 3. Postqualification Requirements (ITB 38.2)

- (a) After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 37.1, the Purchaser shall carry out the postqualification of the Bidder in accordance with ITB Clause 38, using only the requirements specified.



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## Section IV. Bidding Forms

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## Bid Submission Sheet

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

ICB No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

Alternative No.: \_\_\_\_\_

To: \_\_\_\_\_

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda No.: \_\_\_\_\_;
- (b) We offer to supply in conformity with the Bidding Document and in accordance with the delivery schedule specified in the Schedule of Supply, the following Goods and Related Services: \_\_\_\_\_  
\_\_\_\_\_;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: \_\_\_\_\_  
\_\_\_\_\_;
- (d) The discounts offered and the methodology for their application are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- (e) Our Bid shall be valid for a period of \_\_\_\_\_ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our Bid is accepted, we commit to obtain a Performance Security in the amount of \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract;
- (g) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from the following eligible countries \_\_\_\_\_;
- (h) We are not participating, as Bidders, in more than one Bid in this bidding process, other than alternative offers in accordance with the Bidding Document;

- (i) Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the Contract, has not been declared ineligible by the ADB;
- (j) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate “none.”)

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

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

## Price Schedule For Goods To Be Offered From Within The Purchaser's Country

Name of Bidder \_\_\_\_\_ IFB Number \_\_\_\_\_ Page \_\_\_ of \_\_\_

1	2	3	4	5	6	7	8	9
Item	Description	Country of Origin	Domestic Value Added in Percent	Quantity and Unit of Measurement	Unit Price EXW	Total EXW Price per item	Sales and Other Taxes Per Item	Total Price per Item including Taxes
						<b>5 x 6</b>		<b>7 + 8</b>
				7 Units				
<b>Total Amount</b>								

**Notes:**  
**The bidder is required to show the breakdown of EXW Price into CIF Price, Custom Charges and VAT (as per actual), Bank Scale charges, Transportation charges, etc.**

Column 4: In accordance with margin of preference ITB Clause 35, if applicable.  
 Domestic Value Added comprises domestic labor, the domestic content of materials, domestic overheads and profits from the stage of mining the raw material until final assembly.

Column 6: Incoterm in accordance with ITB Clause 14  
 Currency in accordance with ITB Clause 15  
 Price shall include all customs duties and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the item or the custom duties and sales and other taxes already paid on previously imported items.

Column 8: Payable in the Purchaser's country if Contract is awarded

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

## Price Schedule For Goods To Be Offered From Outside The Purchaser's Country

Name of Bidder \_\_\_\_\_ IFB Number \_\_\_\_\_ Page \_\_\_ of \_\_\_

1	2	3	4	5	6	7	8	9	10	11
No	Description	Country of origin	Qty. And Unit of Meaux - rement	Unit price FOB ..... (specify port or place)	Unit price CIF ..... (specify port of discharge)	Total CIF ..... (port of discharge) (col. 4 x 6)	Total price of inland delivery to final destination with Insurance	Total CIP Price destination (in Nepal) (col. 7+8)	Total Bid Price	Remarks
1.	Vehicle Make/Model:		7 Units							

The total bid Price for the above schedule is ..... in the currency of.....  
 (In Words)

Dated .....this ..... day of.....

Bidder.....

(Affix Cooperate seal)  
*Signature*  
*Title*  
*Business Address*

*Note:*  
 This form may be expanded if necessary.  
 Currencies to be used in accordance with Clause 15 of Instructions to Bidder.  
 In case of discrepancy between unit price and total, unit price shall prevail.

## Price Schedule For Related Services To Be Offered From Outside And Within The Purchaser's Country

Name of Bidder \_\_\_\_\_ IFB Number \_\_\_\_\_ Page \_\_\_ of \_\_\_

1 Item No.	2 Description	3 Country of Origin	4 Quantity and Unit of Measurement	5 Unit Price		6 Total Price per Item	
				(a)	(b)	(a)	(b)
				Foreign Currency	Local Currency	Foreign Currency	Local Currency
						4 x 5(a)	4 x 5(b)
			7 Units				
<b>Total Amount</b>							

**Notes :**

Column 5 and 6: Currencies in accordance with ITB Clause 15

Prices are to be quoted inclusive of all custom duties, sales and other similar taxes applicable in the Purchaser's country and payable on the Related Services, if the Contract is awarded to the Bidder

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

## Form of Bid Security

*[insert Bank's Name, and Address of Issuing Branch or Office]*

**Beneficiary:** *[insert Name and Address of Purchaser]*

**Date:** *[insert date]*

**BID GUARANTEE No.:** *[insert number]*

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

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

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

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the *Purchaser* during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of the Bidder's bid.

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

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Bid Security for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

## Form of Bid-Securing Declaration Not Applicable

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

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

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

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

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

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

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid;  
or
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

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

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

Corporate Seal (where appropriate)

*[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]*

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## Manufacturer's Authorization

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

ICB No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

Alternative No.: \_\_\_\_\_

To: \_\_\_\_\_

WHEREAS \_\_\_\_\_ who are official manufacturers of \_\_\_\_\_ having factories at \_\_\_\_\_ do hereby authorize \_\_\_\_\_ to submit a Bid in relation to the Invitation for Bids indicated above, the purpose of which is to provide the following Goods, manufactured by us \_\_\_\_\_ and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm in reply to this Invitation for Bids.

Name \_\_\_\_\_

In the capacity of: \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the Authorization for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

## Section V. Eligible Countries

### List of Eligible Countries of the Asian Development Bank

1. AFG Afghanistan
2. ARM Armenia
3. AUS Australia
4. AUT Austria
5. AZE Azerbaijan
6. BAN Bangladesh
7. BEL Belgium
8. BHU Bhutan
9. BRU Brunei Darussalam
10. CAM Cambodia
11. CAN Canada
12. PRC China, Peoples Republic of
13. COO Cook Island
14. DEN Denmark
15. FIJ Fiji Island, Republic of
16. FIN Finland
17. FRA France
18. GEO Georgia
19. GER Germany
20. HKG Hong Kong, China
21. IND India
22. INO Indonesia
23. IRE Ireland
24. ITA Italy
25. JPN Japan
26. KAZ Kazakhstan
27. KIR Kiribati
28. KOR Korea
29. KGZ Kyrgyz
30. LAO Laos
31. LUX Luxemburg
32. MAL Malaysia
33. MLD Maldives
34. RMI Marshal Island
35. FSM Federal State of Micronesia
36. MON Mongolia
37. MYA Myanmar
38. NAU Republic of Nauru
39. NEP Nepal
40. NET Netherland

41. NZL New Zealand
42. NOR Norway
43. PAK Pakistan
44. PAL Palau
45. PNG Papua New Guinea
46. PHI Philippines
47. POR Portugal
48. SAM Samoa
49. SIN Singapore
50. SOL Solomon Island
51. SPA Spain
52. SRI Sri Lanka
53. SWE Sweden
54. SWI Switzerland
55. TAJ Tajikistan
56. TAP Taipei, China
57. THA Thailand
58. TIM Timor Lester
59. TON Tonga
60. TUR Turkey
61. TKM Turkmenistan
62. TUV Tuvalu
63. UKG United Kingdom
64. USA United State of America
65. UZB Uzbekistan
66. VAN Vanuatu
67. VIE Vietnam

# Section VI. Schedule of Supply

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## 1. List of Goods and Related Services

<b>Lot No. :</b> [if applicable]				
<b>Lot Name :</b> [if applicable]				
<b>Item No.</b>	<b>Name of Goods</b>	<b>Description</b>	<b>Physical unit of measurement</b>	<b>Quantity</b>
<i>1</i>	<i>Vehicles</i>	<i>Double Cab Pickup</i>	<b>Piece</b>	<i>7</i>

## 2. Delivery and Completion Schedule

The delivery period shall start as of \_\_\_\_\_.

Item No.	Description of Goods	<i>Normal Delivery Schedule in days after receipt of letter of credit</i>	Latest Acceptable Delivery Date after adjustment	Location	<b>Bidder's offered Delivery date</b> <i>[to be provided by the bidder]</i>
1	<i>Double Cab Pickup</i>	<b>150 days</b>	<b>30 days</b>	Department of Road, Heavy Equipment Division, Kathmandu,	

### 3. Technical Specifications

#### Double Cab Pickup

7 Units

S.No	CRITERIA	DEPARTMENTAL REQUIREMENT	OFFERED SPECIFICATION
1	General	Double cab Pickup truck, <b>Right Hand Drive model with four wheel drive</b> , suitable for driving in very rough road for road maintenance and construction in Nepal at an altitude upto 2000 metre and in ambient temperature between -5 to 50 deg. centigrade. <b>Gross Vehicle Weight of the vehicle not less than 2700 Kg.</b>	Make: Model: Country of Origin:
2	Engine	Water cooled diesel Engine, developing <b>Maximum rated Power output not less than 70 kW at governed RPM</b> for efficient full load operation of pickup at operating conditions , shall be equipped with cold starting device, direct electric starting system, heavy duty fuel filter.	Make: Model:
3	Emission Standard	The emission standard of the offered vehicle should be of <b>Euro-1 Standard as prescribed by Nepal Vehicle Mass Emission Standard, 2056 which is to be certified by Department of Transport Management.</b>	
4	Gauges	To include ammeter, water temperature, fuel, oil pressure, transmission gauge etc. as necessary for efficient operation and maintenance, signals for 4 WD, door lock etc.	
5	Clutch	Dry, single plate.	
6	Transmission	<b>Manual shift, at least five forward and one reverse, all forward synchromesh, floor mounted, 4WD engaged through control at driver.</b>	
7	Ground clearance	High ground clearance preferred, <b>minimum 220 mm.</b>	
8	Suspension	Leaf springs / coil springs/ torsion bar, and shock absorbers at front and rear.	
9	Tyres	Standard Size	
10	Steering	<b>Power assisted/Power Steering</b>	
11	Brakes	Front Disc type, rear drum type, hydraulic operated on all wheels, and parking brake, dual circuit preferred.	

12	Cab	4 doors, all metallic cab with insulated roof, right hand drive, laminated glass windscreen, wipers, glass windows on doors, through ventilation, comfortable and adjustable seats for driver and passenger, floor mats, two sun visors, and two side view mirrors and rear view mirror. Rear body to be metallic, pickup type with drop type tail board and canvas hood with rear canvas flap fitted on body.	
13	Chassis and Frame	Steel, heavy duty suitable for rough road conditions with hooks in front and rear.	
14	Essential Accessories	<ol style="list-style-type: none"> <li>1. Head light, tail and rear light, reversing light and turn signals.</li> <li>2. Cabin lights, ash tray.</li> <li>3. Speedometer / odometer.</li> <li>4. Heavy duty front bumper.</li> <li>5. Spare wheel with tyre and tube</li> <li>6. Hydraulic jack with handle</li> <li>7. Front seat belt for driver and co-passenger.</li> <li>8. Defroster/Heater</li> <li>9. High altitude compensator.</li> <li>10. Cassette, Radio, MW &amp; FM.</li> </ol>	
15	Instructions	All signs and instructions in the vehicle shall be in English.	
16	Manuals	<p>Nine copies of following manuals/catalogue in English shall be supplied.</p> <ol style="list-style-type: none"> <li>a) The Operator's and Owner's Instructions and maintenance manual.</li> <li>b) Spare Parts Catalogue.</li> <li>c) Comprehensive workshop Manual.</li> </ol>	
17	Tools	A set of tools as required for general maintenance shall be supplied with each unit.	
18	Color	Standard Color	

19	Proven performance	<ol style="list-style-type: none"> <li>1. The vehicle offered shall be a current model under standard production by the manufacturer for <b>at least one year</b>.</li> <li>2. The bidder shall provide the manufacturer's data of the performance of the unit to include the fuel consumption, performance curve of the engine and production capacity.</li> <li>3. The bidder should produce <b>Emission Standard certificate</b> for Type Approval and Conformity of Production from the recognized authority of vehicle manufacturing Country. (For details see annex-1)</li> </ol>	
20	Warranty	Manufacturer shall provide <b>a minimum of one year warranty after acceptance</b> .	
21	Spare Parts	Following spare parts shall be supplied for each unit of pickup. <ol style="list-style-type: none"> <li>a) Fuel filter – 4 units.</li> <li>b) Oil filter – 4 units.</li> <li>c) Air Cleaner Filters – 2 units.</li> </ol>	
22	Delivery	The Pickups, RHD, (4X4), 7 units, shall be delivered to: <b>THE DEPARTMENT OF ROADS                      HEAVY EQUIPMENT DIVISION                      KATHMANDU, NEPAL</b>	

**Note: The major items are indicated by bold and highlighted letters/alphabets/figures in the technical specifications. Non-compliance of these major items will result in non-responsiveness of the bid offer as per ITB 31.1 (j).**

Bidder's Signature ..... Date .....

## 4. Inspections and Test

4.1—Inspection and tests prior to shipment of Goods and at final acceptance are as follows:

- a. The purchaser shall appoint an Inspection Committee to inspect the goods delivered by the Supplier under this contract. The inspection shall be carried out at the place of delivery soonest possible after the arrival of the complete consignment and not later than fifteen days from the date of receipt of notification from the Supplier stating that the goods are ready for inspection.
- b. The Supplier or his representative shall be responsible for commissioning, testing and demonstrating to the Purchaser's Inspection Committee that the goods meet the specification requirements and also the claimed performances of the manufacturer.
- c. All expenses involved in assembling and commissioning the goods including fuels, oils, machines etc. to meet the requirements of the contract, and the cost of any unsuccessful test or tests for this purpose shall be at the expense of the Supplier. Should there be any defect in material or workmanship, the Supplier will correct or cause to be corrected such defects or deviation from the contract requirement at his own expenses within thirty days from the date of such inspection.
- d. The Supplier shall be completely responsible for the goods until accepted by the Purchaser and should there be any items missing (according to the Invoice and / or packing list) or damaged, the Supplier shall restore such items. As soon as the goods have been found to meet the requirements of the contract, the Purchaser shall issue a certificate of acceptance and the warranty period of the said goods shall be enforced from the date of this certificate. All manuals and books as specified in the Technical Specifications shall be submitted by the Supplier before issuing the acceptance certificate.

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## Section VII. General Conditions of Contract

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## 1. Definitions

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

- (a) “Contract” means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) “Contract Documents” means the documents listed in the Agreement, including any amendments thereto.
- (c) “Contract Price” means the price payable to the Supplier as specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Delivery” means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract.
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “Eligible Countries” means the countries and territories eligible as listed in Section V.
- (h) “GCC” means the General Conditions of Contract.
- (i) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (j) “Purchaser’s Country” is the country specified in the Special Conditions of Contract (SCC).
- (k) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (l) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other similar obligations of the Supplier under the Contract.

- 
- (m) “SCC” means the Special Conditions of Contract.
  - (n) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including its legal successors or permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
  - (o) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.
  - (p) “The ADB” is the Asian Development Bank.
  - (q) “The Site,” where applicable, means the place named in the SCC.
- 2. Contract Documents**      2.1 Subject to the order of precedence set forth in the Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.
- 3. Corrupt Practices**      3.1 ADB’s Anticorruption Policy requires borrowers (including beneficiaries of ADB-financed activity), as well as bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the ADB:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
    - (ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

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

(b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

(c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract.

3.2 The Supplier shall permit the ADB to inspect the Supplier’s accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the ADB, if so required by the ADB.

**4. Interpretation**

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

(a) The meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

(b) EXW, CIF, CIP, and other similar terms, shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce at the date of the Invitation for Bids or as specified in the SCC.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

---

4.4 Amendment

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

4.5 Nonwaiver

(a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

4.6 Severability

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

**5. Language**

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

- 6. Joint Venture, Consortium or Association** 6.1 Unless otherwise specified in the SCC, if the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.
- 7. Eligibility** 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted or incorporated, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract and financed by the ADB shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 8. Notices** 8.1 Any Notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.
- 8.2 A Notice shall be effective when delivered or on the Notice’s effective date, whichever is later.
- 9. Governing Law** 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser’s country, unless otherwise specified in the SCC.
- 10. Settlement of Disputes** 10.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If the parties fail to resolve such a dispute or difference by mutual consultation within twenty-eight (28) days from the commencement of such consultation, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

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| <b>11. Scope of Supply</b>              | 11.1 Subject to the SCC, the Goods and Related Services to be supplied shall be as specified in Section VI, Schedule of Supply.  |
|   | 11.2 Unless otherwise stipulated in the Contract, the Scope of Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and Completion of the Goods and Related Services as if such items were expressly mentioned in the Contract. |
| <b>12. Delivery</b>                     | 12.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Section VI, Schedule of Supply. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.                            |
| <b>13. Supplier's Responsibilities</b>  | 13.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.  |
| <b>14. Purchaser's Responsibilities</b> | 14.1 Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from local public authorities, the Purchaser shall, if so required by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.       |
|   | 14.2 The Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with GCC Sub-Clause 14.1.  |
| <b>15. Contract Price</b>               | 15.1 The Contract Price shall be as specified in the Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to the Contract.   |
|   | 15.2 Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.   |
| <b>16. Terms of Payment</b>             | 16.1 The Contract Price shall be paid as specified in the SCC.   |

16.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all the obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and the Purchaser has accepted it.

16.4 The currency or currencies in which payments shall be made to the Supplier under this Contract shall be specified in the SCC.

**17. Taxes and Duties**

17.1 For goods supplied from outside the Purchaser's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

17.2 For goods supplied from within the Purchaser's country, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**18. Performance Security**

18.1 The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a Performance Security for the due performance of the Contract in the amounts and currencies specified in the SCC.

18.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 The Performance Security shall be denominated in the currencies of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the SCC, or in another form acceptable to the Purchaser.

18.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

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- 19. Copyright**      19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.
- 20. Confidential Information**      20.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the design, procurement, or other work and services required for the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with the ADB or other institutions participating in the financing of the Contract;
  - (b) now or hereafter enters the public domain through no fault of that party;
  - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - (d) otherwise lawfully becomes available to that party from

a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

**21. Subcontracting**

21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Subcontracting shall in no event relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

**22. Specifications and Standards**

22.1 Technical Specifications and Drawings

(a) The Supplier shall ensure that the Goods and Related Services comply with the technical specifications and other provisions of the Contract.

(b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

(c) The Goods and Related Services supplied under this Contract shall conform to the standards mentioned in Section VI, Schedule of Supply and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Goods.

22.2 Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Section VI, Schedule of Supply. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser

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and shall be treated in accordance with GCC Clause 33.

- 23. Packing and Documents**
- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the final destination of the Goods and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.
- 24. Insurance**
- 24.1 Unless otherwise specified in the SCC, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.
- 25. Transportation**
- 25.1 Unless otherwise specified in the SCC, obligations for transportation of the Goods shall be in accordance with the Incoterms specified in Sections VI, Schedule of Supply.
- 26. Inspections and Tests**
- 26.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in Sections VI, Schedule of Supply.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the final destination of the Goods, or in another place in the Purchaser's country as specified in the SCC. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 26.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such

attendance including, but not limited to, all traveling and board and lodging expenses.

26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

26.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

26.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

26.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 26.4.

26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

**27. Liquidated Damages**

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum

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- deduction of the percentage specified in the SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 35.
- 28. Warranty**
- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 28.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment or loading in the country of origin, whichever period concludes earlier.
- 28.4 The Purchaser shall give Notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 28.5 Upon receipt of such Notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 29. Patent Indemnity**
- 29.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright,

or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 29.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 29.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or

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designed by or on behalf of the Purchaser.

- 30. Limitation of Liability**
- 30.1 Except in cases of gross negligence or willful misconduct :
- (a) neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
  - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the amount specified in the SCC, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.
- 31. Change in Laws and Regulations**
- 31.1 Unless otherwise specified in the Contract, if after the date of the Invitation for Bids, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.
- 32. Force Majeure**
- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods,

epidemics, quarantine restrictions, and freight embargoes.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

**33. Change  
Orders and  
Contract  
Amendments**

33.1 The Purchaser may at any time order the Supplier through Notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery and Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

**34. Extensions of  
Time**

34.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in

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which case the extension shall be ratified by the parties by amendment of the Contract.

- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

### **35. Termination**

#### 35.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part:
- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34; or
  - (ii) if the Supplier fails to perform any other obligation under the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- (c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive, or coercive practices, as defined in GCC Clause 3, in competing for or in executing the Contract.

#### 35.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the

Purchaser.

### 35.3 Termination for Convenience

- (a) The Purchaser, by Notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The Notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - (i) To have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

### 36. Assignment

- 36.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(j)</b>	The Purchaser's country is: <b>NEPAL</b>
<b>GCC 1.1(k)</b>	The Purchaser is: <b>Department of Roads, Project Directorate ADB Purchaser's Representative; DDG, Mechanical Branch, DoR</b>
<b>GCC 1.1 (q)</b>	The Project Site(s)/Final Destination(s) is <b>Department of Roads, Heavy Equipment Division , Baneswor, Kathmandu Nepal</b>
<b>GCC 4.2 (b)</b>	The version of Incoterms shall be: <b>Incoterms 2000</b>
<b>GCC 5.1</b>	The language shall be: <b>English</b>
<b>GCC 8.1</b>	For <u>notices</u> , the Purchaser's address shall be:  <b>DDG, Mechanical Branch Department of Roads, Babar Mahal Kathmandu, Nepal Telephone: +977-1-4262693 Fax: +977-1-4262510</b>
<b>GCC 9.1</b>	The governing law shall be: <b>Government of Nepal</b>
<b>GCC 10.2</b>	The formal mechanism for the resolution of disputes shall be:  The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:  In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser's <b>NEPAL ARBITRATION ACT 2055 (1999)</b>  In the case of a dispute between the Purchaser and a Supplier who is not a national of the Purchaser's country, any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the <b>UNCITRAL Arbitration Rules</b> as at present in force.
<b>GCC 11.1</b>	The scope of supply shall be defined in : <b>Schedule of Supply</b>
<b>GCC 12.1</b>	Details of shipping and documents to be furnished by the Supplier shall be:

	<p><b>For Goods supplied from abroad:</b></p> <p>GCC 10.3—Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by facsimile the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"><li>(i) <b>4</b> copies of the Supplier’s invoice showing Goods’ description, quantity, unit price, and total amount;</li><li>(ii) Original and <b>2</b> copies of the negotiable, clean, on-board bill of lading marked “freight prepaid” and <b>2</b> copies of nonnegotiable bill of lading;</li><li>(iii) <b>4</b> copies of the packing list identifying contents of each items;</li><li>(iv) <b>4 copies of</b> insurance certificate;</li><li>(v) <b>4 copies of</b> certificate of origin.</li><li>(vi) <b>4 copies of Inspection Certificate.</b></li></ul> <p>The above documents shall be received by the Purchaser at least one week before arrival of the Goods at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</p> <p><b>For Goods from within Nepal:</b></p> <p>Original VAT Bill, Copies of Tax and PAN Certificates, Copies of Custom Clearance Certificates.</p>
<b>GCC 15.2</b>	The price adjustment shall be: <b>Fixed</b>

**GCC 16.1**

The terms of payment shall be:

GCC 16.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:

**Payment for Goods supplied from abroad:**

**A. Currency:**

*Payment will be made in the currency requested by supplier. However should such currency be non-convertible any convertible currency may be used. In case of supplied from India, the payment shall be made in Indian Currency.*

**B. Letter of Credit:**

*The Purchaser shall within 30 days from the date of signing of the contract open a qualified and divisible letter of credit in favor of the Supplier for the total contract price. However, in case of local bidders L/C shall be established in favour of their principal only. The validity of this letter of credit shall be fixed in accordance with the time of delivery stated in the Bid. In case of force majeure the validity of the letter of credit may be extended for the necessary period.*

Payment of foreign currency portion shall be made in the *currency of the Contract Price through L/C* in the following manner:

- (1) *Advance Payment: Ten (10) percent of the contract price shall be paid within twenty eight (28) days of signing of the contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the goods are delivered and in the form provided in the bidding documents or another form acceptable to the Purchaser.*
- (2) *On shipment: Eighty (80) percent of the Contract price of the goods shipped shall be paid through irrevocable confirmed letter of credit opened in the favor of the Supplier in a bank in its country, upon submission of documents specified in GCC Clause 10.*
- (3) *On acceptance: Ten (10) percent of the contract price of the goods received shall be paid within twenty eight (28) days of receipt of the goods upon submission of the claim supported by the acceptance certificate issued by the purchaser.*

**Payment for Goods supplied from within Nepal:**

- (1) *Advance Payment: Ten (10) percent of the contract price shall be paid within twenty eight (28) days of signing of the contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the goods are delivered and in the form provided in the bidding documents or another form acceptable to the Purchaser.*
- (2) *On acceptance: Ninety (90) percent of the contract price of the goods received shall be paid within twenty eight (28) days of receipt of the goods upon submission of the claim supported by the acceptance certificate issued by the purchaser.*

<b>GCC 16.4</b>	The currencies for payments shall be: <b>Currency specified in bid offered</b>
<b>GCC 18.1</b>	The Supplier shall provide a Performance Security of 5 percent of the Contract Price. The Performance Security shall be denominated in the following amounts and currencies:
<b>GCC 18.3</b>	The amount of performance security, as a percentage of the Contract Price, shall be: <b>Five (5) % of total contract amount to be furnished in accordance to the "Performance security sample form" of bid document.</b>
<b>GCC 18.4</b>	The validity of Performance Security shall be one (1) year after issue of final acceptance certificate to the supplier to cover the supplier's warranty obligations in accordance with clause GCC18.4. The supplier shall promptly extend the validity suitably to cover agreed extension of the warranty period of the supplied goods.
<b>GCC 23.2</b>	The packing, marking and documentation within and outside the packages shall be:  <b>Suitable to delivery upto Final Destinations.</b>
<b>GCC 24.1</b>	The insurance coverage shall be in accordance with: <b>INCOTERMS</b> , upto the end of the Post Warranty Period.
<b>GCC 25.1</b>	Obligations for transportation of the Goods shall be in accordance with:  <b>INCOTERMS.</b>
<b>GCC 26.2</b>	The inspections and tests shall be: As specified in <b>Section VI: Schedule of Supply 4. Inspections and Tests.</b>  The Inspections and tests shall be conducted at <b>Department of Roads, Heavy Equipment Division, Baneshwor, Kathmandu, NepalB.</b>
<b>GCC 27.1</b>	The liquidated damage shall be: <b>0.05 percentage of the Final Contract Price per day.</b>
<b>GCC 27.1</b>	The maximum amount of liquidated damages shall be: <b>10 percentage of the Final Contract Price.</b>
<b>GCC 28.3</b>	The period of validity of the Warranty shall be: <b>12 (Twelve) Months</b>  For purposes of the Warranty, the place(s) of final destination(s) shall be: As specified in <b>Section VI: Schedule of Supply 3. Technical Specifications</b>
<b>GCC 28.5</b>	The Supplier shall correct any defects covered by the Warranty within: seven days of being notified by the Purchaser of the occurrence of such defects.
<b>GCC 30.1</b>	The amount of aggregate liability shall be:

## **Section IX. Contract Forms**

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## Agreement

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ of \_\_\_\_\_ (hereinafter "the Purchaser"), of the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter "the Supplier"), of the other part:

WHEREAS the Purchaser invited bids for certain Goods and Related Services, viz., \_\_\_\_\_ and has accepted a Bid by the Supplier for the supply of those Goods and Related Services in the sum of \_\_\_\_\_ (hereinafter "the Contract Price").

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 Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - (a) the Purchaser's Notification to the Supplier of Award of Contract;
  - (b) the Bid Submission Sheet and the Price Schedules submitted by the Supplier;
  - (c) the Special Conditions of Contract;
  - (d) the General Conditions of Contract;
  - (e) the Schedule of Supply; and
  - (f) \_\_\_\_\_.

This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_ on the day, month and year indicated above.

Signed by \_\_\_\_\_ (for the Purchaser)

Signed by \_\_\_\_\_ (for the Supplier)

## Performance Security

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

Contract Name and No. : \_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_

WHEREAS \_\_\_\_\_ (hereinafter "the Supplier") has undertaken, pursuant to Contract No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ to supply \_\_\_\_\_ (hereinafter "the Contract").

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security \_\_\_\_\_ issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier's performance obligations in accordance with the Contract.

AND WHEREAS the undersigned \_\_\_\_\_, legally domiciled in \_\_\_\_\_, (hereinafter "the Guarantor"), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of \_\_\_\_\_ and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This security is valid until the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the security for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_

## Advance Payment Security

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

Contract Name and No. : \_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_

In accordance with the payment provision included in the Contract, in relation to advance payments, \_\_\_\_\_ (hereinafter called "the Supplier") shall deposit with the Purchaser a security consisting of \_\_\_\_\_, to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of \_\_\_\_\_.

We, the undersigned \_\_\_\_\_, legally domiciled in \_\_\_\_\_ (hereinafter "the Guarantor"), as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligor and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding \_\_\_\_\_.

This security shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until \_\_\_\_\_, \_\_\_\_\_.

Name \_\_\_\_\_

In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the security for and on behalf of \_\_\_\_\_

Date \_\_\_\_\_