

**TENDER FOR**  
**EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED**  
**BUILDINGS AT THE EMBASSY OF INDIA IN KATHMANDU, NEPAL**  
(21 May, 2018)

**EMPLOYER**

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**The President of India**

Represented through

**The Head of Chancery**

Embassy of India,  
336 Kapurdhara Marg,  
Kathmandu  
NEPAL

**ARCHITECTS AND CONSTRUCTION MANAGEMENT CONSULTANTS**

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**Akshaya Jain & Associates**

Architects, Planners and Interior Design Consultants

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## 1. NOTICE INVITING TENDER

### Sub: EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS AT THE EMBASSY OF INDIA IN KATHMANDU, NEPAL

Sealed Item Rate Tenders from reputed contractors in the prescribed form are hereby invited for and on behalf of THE PRESIDENT OF INDIA through the Head of Chancery, Embassy of India, Kathmandu, for the EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS at 336 Kapurdhara Marg, Kathmandu, Nepal. The work is estimated to cost about INR 2,68,00,000/- (Indian Rupees Two crore and sixty eight lakh only), which however, is to be taken merely as a rough guide.

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a.	Name of the work	:	External painting works & silicone treatment for newly constructed buildings at Embassy of India Complex in Kathmandu, Nepal
b.	Earnest Money Deposit	:	INR 5,36,000/- (Indian Rupees Five lakh and thirty six thousand only) in the form of a Demand Draft in favour of the Embassy of India, Kathmandu
c.	Validity of Offer	:	90 (ninety) days from the date of opening of the Tender
d.	Date of commencement from order to commence	:	7 (seven) days from the date of Award of Work
e.	Time for Completion	:	4 (four) Months from the date of commencement
f.	Tenders to be addressed to	:	The Head of Chancery, Embassy of India, Kathmandu
g.	Last Date of Submission	:	11 June, 2018 upto 5.00 p.m.
h.	Place of Receipt of Tender	:	Office of the Head of Chancery, Embassy of India, Kathmandu, Nepal
i.	Date of Opening of Tender (Technical Bid)	:	12 June, 2018 at 11.00 a.m.
j.	Cost of Tender document (Non-refundable)	:	INR 5900/- (Indian Rupees Five thousand & nine hundred only), in the form of a demand draft payable at New Delhi, in favour of M/s Akshaya Jain & Associates, Architects for the project. Documents to be purchased from 22 May to 10 June, 2018 (between 11.00 a.m. & 5.00 p.m.) with prior appointment, in India, from the office of the Architects at C-6/ 6098, Vasant Kunj, New Delhi - 110070, (+91-11-26136098, 26132304, 41601615), or at Kathmandu, from their Site Office at Embassy of India, Kapurdhara Marg, Kathmandu (Mr Balaram Dhakal, +977-9823642820). Bidder downloading the Tender Document from website/ online portal need to submit Demand Draft for INR 5900/- payable at New Delhi, favouring M/s Akshaya Jain & Associates, along with Technical Bid.
k.	Normal Working Hours	:	9 A.M. to 5 P.M.
l.	Mobilization advance (interest free)	:	10% of the Contract value against Bank Guarantee from a Scheduled Bank
m.	Security Deposit	:	5% of the Bill amount

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n. Liquidated Damages	1% of Contract value per week of delay upto a maximum of 10% of the Contract value
o. Defects Liability Period	: 12 months from the date of Virtual Completion
p. Currency	: Indian Rupees (INR)
q. Ruling language	: English
r. Performance Guarantee	: 5% of the Contract Value in the form of a Bank Guarantee within 21 days from the issue of the Letter of Acceptance

## 1. Mode of Submission of Tenders

The Tender for the work shall be submitted by the Bidder in a sealed envelope marked as 'EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS AT THE EMBASSY OF INDIA IN KATHMANDU, NEPAL'. The Bidder should also superscribe on top of the envelope the name, address & contact details of his Firm.

This sealed envelope shall contain the tender bid in two separately sealed & superscribed covers, namely 'Technical Bid' and 'Financial Bid', alongwith the name of the Firm on each envelope.

- A. Cover No. 1 – Technical Bid, shall contain :
- Covering letter
  - Demand Draft towards "Earnest Money Deposit"
  - Unconditional acceptance to the Tender conditions in its entirety, as per the "Acceptance Letter"
  - Requisite documents for pre-qualification
  - In case the document is downloaded from website/ online portal, demand draft for INR 5900/- towards cost of Tender document, payable at New Delhi in favour of M/s Akshaya Jain & Associates
- B. Cover No. 2 – Financial Bid, shall contain :
- Tender Document, containing Conditions, Specifications, Schedule of Quantities (rates & amounts duly filled-in) and Tender Drawing/s, each page duly signed & stamped by the Bidder

At the stipulated time of opening of the Tender, "Cover No. 1" shall only be opened. The offers from those Bidders who are unable to unconditionally accept the Tender conditions and who fail to deposit the required Earnest Money will be rejected.

Bidders who unconditionally accept the Tender conditions, deposit the required Earnest Money and fulfil the pre-qualification requirement, shall only be considered for the work and "Cover No. 2" containing the Tender quotation for the work from such Bidders only shall be opened, the date & time for which shall be intimated to the qualified Bidders subsequently.

Once the Bidder has given an unconditional acceptance to the Tender conditions in its entirety, he is not permitted to put any remark(s)/ condition(s) (except unconditional rebate in price, if any) in/ alongwith the Tender enclosed in "Cover No. 2".

In case the above-mentioned condition is found violated after opening "Cover No. 2", the Tender shall be summarily rejected and the Employer, without prejudice to any other right or remedy, shall forfeit the full said Earnest Money absolutely.

The Bidder should return the Original Tender Documents, even if not quoting for the job.

## 2. Earnest Money Deposit

The Tender shall be accompanied by the Earnest Money Deposit (E.M.D.) of an amount of INR 5,36,000/- (Indian Rupees Five lakh and thirty six thousand only), submitted in the form of a Demand Draft from a Nationalised Bank which should be payable in the name of 'The Embassy of India, Kathmandu', payable at Kathmandu/ New Delhi. The E.M.D. shall be valid for a minimum period of 90 (ninety) days from the date of submission of Tender.

The Tender, not accompanied by the requisite E.M.D., will be summarily rejected. For the selected Contractor, on acceptance of his Tender, the E.M.D. will be converted into a part of the Security Deposit. No interest shall be paid on the said deposit.

The Employer shall without prejudice or any other right or remedy, be at liberty to forfeit the whole of the Earnest Money Deposit if the Contractor fails to commence the work specified in the NIT (along with the changes in the scope, if any), in the prescribed time or abandon the work before the completion.

3. The Employer reserves the right to accept/ reject any or all the Tenders without assigning any reason.
4. Canvassing whether directly or indirectly in connection with Tenders is strictly prohibited and the Tender submitted by the Bidder who resorts to canvassing will be liable to rejection.
5. The Bidder shall not be permitted to Tender if his near relative is posted as an accountant or an engineer or any higher rank(s) with the Employer. The Bidder shall also intimate the name(s) of person(s) who is/ are working with him in any capacity or are subsequently employed by him and who are near relatives to any of the officers working with the Employer. Any breach of this Tender condition would render him liable to the withdrawal of the work awarded to him and forfeiture of earnest money deposit and security deposit.
6. Extension of time shall not be allowed for submission of the Tender.
7. Amendment of Bidding Documents

Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing Addenda. Any Addendum thus issued shall be part of the Bidding Documents and shall be communicated to all the Bidders. The Bidder shall acknowledge receipt of each addendum in writing to the Employer. To give Bidder reasonable time in which to take an addendum in preparing their bids, the Employer may extend as necessary the deadline for submission of bids.

Head of Chancery  
Embassy of India Kathmandu

## 2. FORM OF TENDER

To,  
The Head of Chancery,  
Embassy of India,  
Kathmandu

Sub: EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS at the Embassy of India Complex at Kathmandu, Nepal

Sir,

1. We have read and examined the following documents relating to the EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS AT THE EMBASSY OF INDIA COMPLEX AT KATHMANDU, NEPAL, visited the project site and verified the existing conditions as they relate to the Tender submitted herein:

### **Conditions of Contract**

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- a. Notice Inviting Tender
- b. Form of Tender
- c. Acceptance Letter
- d. Articles of Agreement
- e. Instructions to Bidders
- f. Special Conditions
- g. Notes and Definitions
- h. General Conditions of Contract
- i. Working and Safety Regulations
- j. Proformae (2 Nos.) for Guarantees

### **Specifications**

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- a. General Instructions for Specifications and Schedule of Quantities

### **Schedule of Quantities**

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- a. BOQ for external painting Works & silicone treatment

2. We hereby tender for the execution of the works referred to in the aforesaid documents upon the terms and conditions contained or referred to therein and in accordance with, in all respects, the specifications and designs and other relevant details, quantities at the rates contained in the schedule of quantities and within the period of completion as stipulated.

3. Earnest Money Deposit & Validity of Offer

We hereby tender the E.M.D. of INR 5,36,000/- (Indian Rupees Five lakh and thirty six thousand only), in the form provided by you, which will bear no interest. We agree to abide by this Tender for a period of 90 (ninety) days from the date fixed for receiving the same. It shall remain binding upon us as may be accepted by you at any time before the expiration of this period.

We undertake, if our Tender is accepted, to commence the works within 7 days of your order to commence. We also agree that the above-mentioned E.M.D. may be forfeited by you in the event of our failure to abide by any of the terms set out in this paragraph (or failure to commence the work within 7 days from the issue of the letter of order to commence work).

4. We agree to complete and handover the whole of the works comprised in the Contract within 4 (four) months, calculated from the 7th day after the issue of the letter of acceptance by you.

5. Till a formal Agreement is prepared and executed, the Tender, together with your written acceptance thereof, shall constitute a binding contract between us. We shall be present in your Office at the pre-determined time and complete all the formalities related to the documents, before the site is handed over to us for painting purposes.
6. We confirm that after acceptance of our Tender, we shall sign the Agreement/ Contract documents within 7 (seven) days of the issuance of the Letter of Intent. Expenses for the execution of the Contract Document including the cost of stamp papers, duty (if any) and other fees/ levies, etc., required to be paid shall be borne by us.
7. We acknowledge and accept that you are not responsible for and shall not defray any expenses incurred by us in visiting the site or in submitting this Tender.
8. We acknowledge and accept that you have unfettered right to reject any or all the Tenders, or to accept any Tender received by you, at your sole discretion, without assigning any reason whatsoever therefor.
9. We acknowledge and accept all liabilities to pay sales tax/ works contract tax/ VAT, GST/ service tax, toll tax, education cess, labour welfare cess, excise duty, octroi, royalty, import/ export duties, or any other tax, duty, levy on material, labour, fuel, transportation, etc. already in force or likely to be levied by the Government/ Authorities during the currency of the Contract including the extended period of the Contract and the Defects Liability Period, and you shall not entertain any claim whatsoever in that respect. The rates quoted by us are all inclusive, firm and final.
10. We acknowledge and accept that all temporary site works shall be provided by us at our own cost and nothing separate is payable by you on this account. We also agree to dismantle all such temporary works, clear debris, clean the site and hand over the clear site to you at the time of the issue of the completion certificate.
11. We promise to indemnify (through Indemnity Bond on non-judicial stamp paper) and keep you indemnified in respect of all taxes, duties (including customs and excise) and all other costs & expenses to be borne and paid by us under the Contract and pay for any permits required for the works. We will also insure the Whole Work and take out Comprehensive All-risk Policy (including Third Party) and Insurances under the Workmen's Compensation Act in respect of any claim, if any, against you arising out of the performance of this Contract or otherwise/ whatsoever upto the completion of the Defects Liability Period.
12. We will undertake full responsibility of the works and furnish specific Guarantees towards works carried out by us and our other sub-Contractors/ specialist Agencies.
13. We confirm that our payment for the works is acceptable to us in Indian Rupees (INR) or as may be decided by you.

Date

Signature of Contractor  
or Authorised Representative

### 3. ACCEPTANCE LETTER

To,  
The Head of Chancery,  
Embassy of India,  
Kathmandu

Sub : ACCEPTANCE OF THE TENDER CONDITIONS

Sir,

The Tender documents for the work "EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS" have been sold to me/ us by the Embassy of India, Kathmandu, Nepal, through their Architects and I/ we hereby unconditionally accept the conditions of the Tender Document in their entirety for the above work.

The contents of the Tender Document have been noted and I/ we confirm that after unconditionally accepting the Tender conditions, in their entirety, it is not permissible to put any remark(s)/ condition(s) (except unconditional rebate on price, if any) in the Tender enclosed in "Cover No. 2". In case this provision of the Tender is found violated after opening "Cover No. 2", I/ we agree that the Tender submitted by me/ us shall be summarily rejected and the Embassy of India shall, without prejudice to any other right or remedy, forfeit the full said Earnest Money absolutely.

The required Earnest Money for this work is enclosed herewith.

Yours faithfully,

(Signature of the Bidder)  
with rubber stamp

Date :

#### 4. ARTICLES OF AGREEMENT

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2018 between the President of India, represented by the Head of Chancery, Embassy of India, Kathmandu (hereinafter called 'the Employer') of the one part and \_\_\_\_\_, represented by its Sole Proprietor/ Partner/ Managing Director (hereinafter called 'the Contractor') of the other part.

WHEREAS the Employer is desirous that certain works should be executed viz : "EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS" for THE EMBASSY OF INDIA COMPLEX AT KATHMANDU, NEPAL, FOR THE REPUBLIC OF INDIA and has accepted a Tender by the Contractor as summarised in the "Summary of Cost" for the execution, completion and maintenance of such works upto the completion of the Defects Liability Period.

NOW THIS AGREEMENT WITNESSETH as follows :

- 1.0 In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
- 2.0 Definitions
  - 2.1 The "EMPLOYER" is THE PRESIDENT OF INDIA represented through the Head of Chancery, Embassy of India, Kathmandu.
  - 2.2 The "CONTRACTOR" is the successful Bidder on whom a Work order or a Letter of Intent has been issued by the Employer and the legal successors in title to such person, but not (except with consent of the Employer) any assignee of such person.
  - 2.3 The "ARCHITECT" is M/s Akshaya Jain & Associates, Architects, Planners and Interior Design Consultants, C-6/6098, Vasant Kunj, New Delhi-110019, represented in Kathmandu, Nepal by their authorized representative Architect/ Engineer-in-Charge. The Architect is also the "Construction Management Consultant" for the project.
  - 2.4 The Employer and the Architect are those mentioned as such in this Agreement and shall include their legal representatives, assigns or successors. The Architect shall act as the Employer's representative, and shall have authority to act on behalf of the Employer with respect to all matters pertaining to the Work, Contractor's performance, General Specifications, Technical Specifications and Schedule of Quantities. Communications concerning these matters received by the Architect, or a duly authorised representative of the Architect, from the Contractor shall be deemed to have been received by the Employer. The above referenced are treated throughout the Contract as if each were of the singular and masculine gender.
  - 2.5 The "SITE" shall mean the site of the Contract Works including any building and erections thereon and any other land allotted by the Employer for the Contractor's use.
  - 2.6 The term "SUB-CONTRACTOR", as employed herein, includes those having a direct Contract with the Contractor for any part/ piece-meal work and it includes one who furnishes materials worked to a special design according to the plans or specifications of the Work but does not include one who merely furnishes materials, not so worked upon. Anyone doing work on a piece-rate basis shall be deemed a Sub-contractor. The Contractor shall be responsible to the Employer for the work performed by its Sub-contractors to the same extent as it would be, if the work was performed by the Contractor itself.

- 3.0 The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
- a. Notice Inviting Tender
  - b. The Original Tender offer submitted by the Contractor
  - c. Subsequent correspondence exchanged between the Employer and the Contractor upto the date of issuance of the Letter of Intent by the Employer
  - d. The Letter of Intent issued by the Employer to the Contractor, vide letter no. \_\_\_\_\_ dated \_\_\_\_\_
- 4.0 In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to execute, complete and maintain the works till the completion of the Defects Liability Period, in conformity with all respects with the provisions of the Contract.
- 5.0 The Employer hereby covenants to pay the Contractor in consideration of the execution, completion and maintenance of the works the contract price at the times in the manner prescribed by the Contract.

IN WITNESS, whereof the parties hereto have hereunder set their respective hands and seals on the day, month and year referred to above.

Signed by duly authorised Signatory  
for and on behalf of the PRESIDENT OF INDIA

Signed by duly authorised Signatory  
for and on behalf of the CONTRACTOR

Witness

Witness

## 5. INSTRUCTIONS TO BIDDERS

1. Each and every page of the Tender document must be signed by the Bidder or his authorized representative holding Power of Attorney and provided with the seal of the Company or Firm and the same shall be binding on the Bidder. No blank space will be left in the Tender nor will alterations be made. Any Tender with any of the documents not signed and stamped with seal as above may be rejected.
2. If the Tender is submitted on behalf of a Partnership Firm it shall be signed by all the Partners of the Firm or by a Partner who has the necessary authority on behalf of the Firm to enter into the proposed contract, and attach such power of attorney with the Tender. If the Tender is submitted by a Company incorporated under the Companies Act, it shall be signed by their Managing Director or one of the Directors duly authorised on their behalf. Otherwise the Tenders will be liable for rejection.
3. The Bidders shall submit the Tender alongwith the documents/ information as follows:
  - A. Cover No. 1 – Technical Bid, shall contain :
    - a. Covering letter
    - b. Demand Draft towards “Earnest Money Deposit”
    - c. Unconditional acceptance to the Tender conditions in its entirety, as per the “Acceptance Letter”
    - d. Requisite documents for pre-qualification
    - e. In case the document is downloaded from website/ online portal, demand draft for INR 5900/- towards cost of Tender document, payable at New Delhi in favour of M/s Akshaya Jain & Associates
  - B. Cover No. 2– Financial Bid, shall contain :
    - a. Tender Document, containing Conditions, Specifications, Schedule of Quantities (rates & amounts duly filled-in), each page duly signed & stamped by the Bidder
4. Bidders should quote their rates both in figures and in words in indelible ink. The amount for each item shall be worked out and requisite totals given. The rates quoted shall be inclusive of all taxes, levies, duties, etc. and taken as firm throughout the tenure of the contract including extension of time, if any granted, upto completion of the Defects Liability Period, and will not be subject to any fluctuation due to the increase in the cost of labour, materials, P.O.L., sales tax, octroi, VAT/ WCT, labour laws, import/ export duties and/ or any other taxes, transportation costs, etc. All entries should be filled up in English. Any Tender in which there is overwriting or erasure is liable to be rejected. All corrections should be attested by the Bidder with his dated initials as many times as the corrections occur.

The Bidder should note that no unauthorised alterations shall be made in the Tender documents and, if any such alterations are made or if an incomplete Tender is submitted, such Tender shall be liable to rejection.

If on check, there are differences between the rates quoted by the Bidder in words and in figures or in the amount worked out by him, the following procedure shall be followed :

  - a) When there is a difference between the rates in figures and in words, the rates which correspond with the amount worked out by the Bidder shall be followed
  - b) When the amount of an item is not worked out by the Bidder or it does not correspond with the rate written either in figures or in words, then the rate quoted by the Bidder in words shall be taken as correct.
  - c) When the rates quoted by the Bidder in figures and in words tally but the amount is not worked out correctly, the rate quoted by the Bidder will be taken as correct and not the amount.
5. This is an Item-Rate Tender. Bidders must carefully examine all the Tender documents containing the Notice Inviting Tender, Conditions of Contract, Specifications of Materials and Workmanship and the Schedule of Quantities, etc., before quoting for this Tender. The rates

quoted by the Bidder should be inclusive of the costs towards transportation, import/ export duties, levies, taxes, etc. applicable for the works to be carried out in Kathmandu.

6. The Bidders must obtain for themselves, on their own responsibility and at their own expense, all the information which may be necessary, including risks, contingencies and other circumstances to enable them to fill the proper rates in the Tender and for entering into a Contract, specifications and conditions and inspect the site of the work and nature of the Work and all matters pertaining thereto before submitting the Tender. They can also get any clarifications required from the Architects, before Tendering, by contacting them at their office during working hours with prior appointment.

No claim for extra payment on the grounds of not having full specifications or misunderstanding any of the conditions of Contract and instructions to Bidders will be entertained. The decision of the Architect in all these matters will be final and binding on the Contractor once the Contract is awarded.

7. The Bidder is deemed to have examined the laws of Nepal and the fulfilment of the various statutory enactments under the same pertaining to his labour and establishment. He will indemnify the Employer from any liability arising out of the same during execution of his painting works & silicone treatment upto completion of the Defects Liability Period.
8. Before Tendering, the Bidder shall have visited and examined the Site and satisfied himself as to the nature of the existing roads or other means of access, the correct dimensions of the work, the site areas available for execution of painting works & silicone treatment (since this is a functioning Embassy), the accommodation he has to arrange for his labour & materials outside the site and the facilities for obtaining any special articles called for in the Contract Document and shall have obtained generally his own information on all matters affecting the commencement, continuation and progress of the Works. No extra charge made in consequence of any misunderstanding or incorrect information of any of these points, or on the grounds of insufficient description, will be allowed. Should the Contractor after visiting the Site, find any discrepancies, omissions, ambiguities or conflicts in or among the Contract Document, or be in doubt as to their meaning, he shall bring them to the Architect's attention, and obtain all necessary clarifications thereto.
9. Each page of the Tender document, signed by the person submitting the Tender, will be in token of his having acquainted himself with the site, the General Conditions of Contract, special conditions, specifications and schedule of quantities etc. as laid down. After the work is awarded, the Bidder will have to enter into a Contract with the Employer for the execution of the work by signing an Agreement. The Tender documents shall form part of the Contract.
10. If the successful Bidder fails to furnish the performance bank guarantee within the stipulated period and sign the Contract for any reason, the E.M.D. will be forfeited without prejudice to the Employer's right and also to reissue the Tender or award it to any Bidder considered suitable.
11. For abnormally low quoted rate(s) of item(s), the Employer may accept the Tender subject to the furnishing by the Bidder of an additional Performance Bank Guarantee from a Nationalized Bank for the total value of such low quoted item(s), valid till the execution of such item(s) at site to the entire satisfaction of the Engineer-in-Charge.
12. The Employer does not bind himself to accept the lowest or any Tender and reserves the right to reject any or all Tenders without assigning any reason whatsoever or to accept the whole or any part of the Tender and the Bidder shall be bound to perform the same at his quoted rates.

## 6. PRE-QUALIFICATION REQUIREMENTS

The Head of Chancery, Embassy of India, Kathmandu, for and on behalf of the President of India, invites experienced Contractors based in India and/ or Nepal for the "EXTERNAL PAINTING WORKS & SILICONE TREATMENT FOR NEWLY CONSTRUCTED BUILDINGS" for the Embassy of India Complex, Kathmandu, for which the pre-qualification requirements are given below :

- i. The Contractor should be based in India and/ or Nepal
- ii. The Contractor should have at least seven years' experience in Painting works
- iii. The Contractor should have satisfactorily completed during the last three years ending March 2018
  - three projects for similar painting works costing not less than Indian Rupees 1,07,20,000/- each, or
  - two projects for similar painting works costing not less than Indian Rupees 1,60,80,000/- each, or
  - one project for similar painting works costing not less than Indian Rupees 2,14,40,000/-
- iv. The Contractor should have had an average annual turnover of Indian Rupees 1,34,00,000/- for similar works works during the last three financial years
- v. The Contractor should have a solvency of Indian Rupees 1,07,20,000/-
- vi. Should not have suffered more than two losses in last five financial years including the last financial year. Statements duly certified by Chartered Accountant are to be submitted

Accordingly, the Bidder is required to submit the following documents:

1. Company Profile
2. Details, as per the enclosed Performa, regarding :
  - a. Organisation
  - b. Registrations with various Authorities
  - c. Painting works executed by the Contractor during the last three years ending March 2018, giving details as to their size, costs and details of Clients
  - d. List of similar painting works in-hand
  - e. A statement showing financial turnover for the last three financial years
3. Certificates from the Clients
4. Name and address of the Bank from whom reference can be obtained
5. Solvency certificate from the Bank
6. Audited balance sheets and profit & loss statement for the last three financial years, duly authenticated by the Chartered Accountant. The details & statements should be strictly in English, and with respect to English Calender, otherwise they would be summarily rejected
7. List of supervisors & staff, alongwith their experience, available with the Contractor

**PERFORMA**

1. Name and address of Applicant :
2. Telephone No. / Telex No./ Fax No./ E-mail :
3. Legal status of the Applicant (attach copies of original document defining the legal status)
  - a. A Proprietary Firm
  - b. A Partnership Firm
  - c. A Limited Company or Corporation

4. Particulars of registration with various Government bodies (attach attested photocopy)

S.No.	Organization / place of registration	Registration No.
i.		
ii.		
iii.		

5. Name and Titles of Directors and officers with designation, to be concerned with this work.
6. Designation of individuals authorized to act for the organization.
7. Was the Applicant ever required to suspend work for a period of more than three months continuously after you commenced the execution of work? If so, give the name of the project and reason for not completing the work.
8. Has the Applicant ever abandoned the awarded work before its completion? If so, give name of the project and reasons for abandonment
9. Has the Applicant ever been debarred/ black listed for tendering in any organisation at any time? If so, give details.
10. Has the Applicant ever been convicted by a court of law? If so give details.
11. Any other information considered necessary but not included above.

12. Similar works completed during the last three years ending March 2018

S. No.	Title & Location of work	Size & Application of work	Value (in INR)	Client	Client certificate at page

13. Similar works in-hand

S. No.	Title & Location of work	Size & Application of work	Value (in INR)	Client

14. Annual Turnover for the last three years ending financial year 2017-2018 (strictly in English, and with respect to English Calendar)

Year	Turnover (in INR)

Contractor's Signature

## **7. SPECIAL CONDITIONS**

### **1. General**

- 1.1 The following special conditions shall be read in conjunction with the CPWD General Conditions of Contract. If there are any provisions in these special conditions which are at variance with the provisions in the CPWD GCC, the provisions in these special conditions shall take precedence.
  - 1.1.1 The work in general shall be carried out as per the CPWD Specifications 2016, and with latest amendments, unless otherwise specified in the nomenclature of the individual item.
  - 1.1.2 For items not covered under paragraph 1.1.1 above, the work shall be done as per particular Technical Specifications given along with the Tender.
  - 1.1.3 For items not covered under paragraph 1.1.1 and 1.1.2 above, the work shall be done as per latest relevant IS: Code of Practice.
  - 1.1.4 For items not covered by paragraph 1.1.1, 1.1.2 and 1.1.3 above, the work shall be done as per sound engineering practice as directed by the Architect and confirmed by the Employer, whose decision in this regard shall be final and binding on the Contractor.
  - 1.1.5 The Contractor is required to follow the safety standards and codes issued by the Government of Nepal and the Kathmandu Municipality, including any revision in clauses therein, made by such Authorities.

### **2. Site**

- 2.1 The works are to be executed within the Embassy of India Complex in Kathmandu. Most of the buildings have brick tiles/ sand stone claddings on walls and clay tiles on roof where silicone treatment is to be carried out. The external painting works are required for public buildings. Since the buildings are operational, the Contractor shall take all necessary measures and precautions so that buildings are not damaged and their functioning is not disturbed
- 2.2 The Contractor shall visit the site and satisfy himself regarding the space available for his works, and storage of various materials & equipment, etc. All additional spaces required by the Contractor shall be arranged by him at his own cost.
- 2.3 The Contractor will not be permitted to make use of any space other than the working space allotted to him without the specific written permission of the Employer.

### **3. Completion Time of the Project**

- 3.1 The entire project is to be completed in 4 (Four) months. The completion period of 4 (four) months, shall include the time taken by the Contractor to complete all the painting works & silicone treatment.

### **4. Water Supply and Power Supply**

- 4.1 **Water Supply**

The Contractor shall make his own arrangement of water required for his works as well as for drinking purposes at his own cost and make necessary payments directly to the Department/ Authority concerned.
- 4.2 **Power Supply**

The Contractor shall make his own arrangement of electrical power for his works as well as for general lighting at his own cost and make necessary payments directly to the Department/ Authority concerned. He shall at his own cost, lay all electrical wiring distribution boards etc. as required for use on the work and remove the same on completion.

The Contractor shall also install and maintain, at his own cost, necessary stand-by Generator sets of sufficient capacity, in running condition, to supply adequate electricity necessary for the work in case of power cut/ break.

- 4.3 Any delay in works due to non-availability of water & power supply will be on the Contractor's account.
- 4.4 The Contractor shall ensure that the existing water & power supply in the functioning Embassy Complex is not disrupted/ damaged at any stage during the execution of works.

## **5. Instruments and Testing**

- 5.1 Instruments – The Contractor shall provide at his own cost, suitable and sufficient number of instruments for surveying, weighing and measuring purposes at the site of work as may be necessary for execution of the work.
- 5.2 Testing – The Contractor shall be responsible for conducting all necessary tests as per specifications and/ or required from time-to-time by the Engineer-in-Charge, from approved laboratories. The cost of these tests, at all stages, shall be borne by the Contractor.

## **6. Quality Assurance and Standard Workmanship**

- 6.1 The Contractor shall ensure quality control measures on different aspects of his works including materials, workmanship and correct construction methodologies to be adopted.
- 6.2 The Contractor shall stick to the approved makes of materials. Any change shall be done with the prior approval of the Engineer-in-Charge for which, tests etc. shall be done by the Contractor at his own cost.
- 6.3 The Contractor should use all materials conforming to the Bureau of Indian Standards unless otherwise specified in the approved makes of materials. In case any material proposed to be used by him does not conform to the Bureau of Indian Standards, he must specify the equivalent standards to which such material will conform and get it approved from the Engineer-in-Charge before execution.
- 6.4 The Employer has the right to supply any item of material but fixing will be done by the Contractor and rates shall be suitably adjusted for all such items.
- 6.5 Where the Contractor is using locally available materials from Nepal, he will ensure that such materials conform to the Bureau of Indian Standards, specifications and codes.

## **7. Samples**

- 7.1 After award of the Contract, the Contractor shall prepare mock-ups & samples of the colour shades and texture, for the approval of the Architect, with such promptness as to cause no delay, as per specifications and as directed by the Architect/ Engineer-in-charge. All the samples shall be delivered/ prepared free of cost, as required from time-to-time. All samples shall be finally approved by the Employer/ Architect before the bulk procurement & execution
- 7.2 The quality of material and workmanship shall be of the highest standard. The planes and alignments of works, both horizontal and vertical, surfaces and levels shall be perfect. The colours/ shades/ textures of surfaces shall be uniform. The defective works shall be rectified by the Contractor at his own cost.
- 7.3 The work should be planned in a systematic manner and in co-ordination with other agencies employed at site. If and when required, the Contractor shall repair portions of his work which may be drilled/ scraped/ etc. by other agencies during execution of their work, for which nothing extra shall be paid

## **8. Programme of Works**

- 8.1 The successful Bidder shall, within 7 days of the communication of acceptance of Tender, prepare and submit a detailed programme for the execution of work including procurement schedule of major materials from start of work to completion, indicating the "expected dates" of commencement and completion of all the items of work for the approval of the Architect/ Engineer-in-Charge. The programme chart shall also indicate the scheduling of approvals.

8.2 The Contractor shall assume full responsibility for any delay in delivery of materials by his merchants/ suppliers and not having completed the work in accordance with the approved/ agreed Time & Progress Chart by his Sub-contractors. Such excuses shall not form any criterion for extension of time, or any claims by the Contractor.

## **9. Site Register and Order Book**

9.1 Site Register – The Contractor shall maintain at the site a work diary showing an accurate record of the progress of the works, item-wise, the number of men employed under each trade, the weather condition, temperature and other aspects having a bearing on the work.

9.2 Site Order Book – A site order book must be maintained and always be available at site to record the instructions of the Employer/ Engineer-in-Charge/ Architect. The Contractor shall ensure that instructions noted therein are properly carried out.

## **10. Co-ordination**

10.1 The Contractor shall fully co-operate with other Contractors/ Agencies appointed by the Employer and departmental labour, if any. He shall study the plans, specifications and time schedule of other service Contractors and so plan his work in consultation with the Architect, that all related activities are dove-tailed and co-ordinated.

10.2 The Contractor will correspond with other Agencies if necessary only through the Architect/ Employer. Failure on the part of the Contractor to check plans of the other service Contractors affecting his work will render the Contractor responsible for bearing the cost of any necessary consequent changes, delays and infructuous expenditure.

## **11. Stores and Materials**

11.1 All the stores and materials, required for the satisfactory completion of the work shall be arranged by the Contractor from his own sources/ open market, from Nepal and/ or India. No claim, whatsoever, shall be entertained by the Employer on account of delay in either procurement of these materials or non-availability of these materials in the market.

11.2 Storage of materials at the work site shall be at the Contractor's expense and risk. Any damage occurring to material due to any account including faulty storage in the Contractor's shed or on account of negligence on his part or for any other reason, shall be the liability of the Contractor.

## **12. Security and Safety**

12.1 The Contractor shall make his own security arrangements to guard his material at site at his own expense. The Employer accepts no liability for loss or damage to the Contractor's plant, tools or materials.

12.2 The Contractor shall issue identification passes to all his workers/ staff, which shall be got scrutinized and stamped by the Employer. For security reasons, for these passes, required for the admission of the workers into the site, the Contractor shall furnish to the Employer two photographs of each of his workers/ staff and their particulars, and produce satisfactory evidence as to their identity and bonafides for their record. The passes, each of which shall contain the name, photograph & identification number of the worker/ staff, shall be returned by the Contractor on demand of the Employer and in any case, on the completion of the works. In case Police verification for any or all labour/ staff is required by the Employer, it shall be got done by the Contractor at his own cost.

12.3 Any person employed by the Contractor in the capacity of his staff member or labour, whose attitude and conduct is found unsuitable to the interest of the work and general discipline within the premises of the work shall be prevented access into the site by the Employer and this shall be complied with immediately.

12.4 The Contractor shall not employ any labour/ staff of any other nationality except Indian and/ or Nepalese, without the written permission of the Employer.

- 12.5 The Contractor shall adhere to all safety norms while carrying out and commissioning the works. The CPWD Safety Code shall be the guiding principal and the Contractor would be responsible for safety of his staff, labour as well as other occupants within the Embassy Complex in so far as his painting works & silicone treatment are related.

### **13. Equipment**

- 13.1 The Contractor shall provide and install at site all necessary barricades, hoists, ladders, stagings, scaffoldings, tools, tackles, instruments, equipments, etc. and all transport for labour, materials and plant necessary for the proper carrying on, execution, completion and maintenance of the work to the satisfaction of the Engineer-in-Charge/ Employer, at his own expense. However, the Contractor shall take prior permission from the Employer, for various plants and barricades, etc. required to be installed within the site.

### **14. Trespass**

- 14.1 It shall be the responsibility of the Contractor to ensure that :
- a. The work zone is cordoned off with netting and other proper arrangements to the complete satisfaction of the Employer so as not to disturb the day-to-day functioning of the Embassy, and as per local Municipal bye-laws and instructions, if any.
  - b. His workmen do not trespass into areas and buildings beyond the barricades of the work site.

### **15. Contractor's Representatives & Review Meetings**

- 15.1 The Contractor shall depute full-time qualified and experienced Engineers/supervisors at the site of work along with adequate number of supporting staff, etc. as required for the proper execution of work. The details of all technical staff indicating their qualifications and experience who shall be employed on this project shall be furnished by the Contractor before execution.
- 15.2 The qualified Engineers/supervisors of the Contractor's firm shall attend review meetings at the work site, conducted by the Engineer-in-Charge/ Employer to review the progress of works and sort out problems, if any, with an idea of ensuring the completion of the project within the stipulated time period and providing quality works. The expenses on this account shall be borne by the Contractor in-so-far as these relate to the Contractor and/ or his Engineers/ staff.

### **16. Sub-letting & Specialist Sub-contractors**

- 16.1 The whole of the work included in the Contract shall be executed by the Contractor and he shall not, in any manner, transfer, assign or sublet the Contract. However, the Contractor shall employ Specialist Agencies to carry out painting works & silicone treatment, etc. as required for items given in the Particular & Technical Specifications of the Tender Document and shall furnish written guarantees, alongwith the respective manufacturers' warranties, against any defects (in the required formats provided by the Employer) on non-judicial stamp papers of the requisite amounts, for the minimum periods as specified in the Particular/ Technical Specifications, from the date of expiry of the Defects Liability Period prescribed in the Contract. The Contractor shall remain fully responsible for the quality of all the works executed by his Specialist Agencies.
- 16.2 The Contractor shall be responsible in engaging licensed manpower for the work and get the materials tested by the Authorities wherever required, at his own cost and nothing extra shall be payable.
- 16.3 The works shall be carried out as per the regulations/ bye-laws of the local Municipal Corporation or any other concerned local Authority/ Authorities and the Contractor shall produce necessary completion certificates, wherever required, from such Authorities after completion of the work.

## **17. Communication to be in Writing**

- 17.1 All references, communications, correspondence made to the Employer and the Architect/ Engineer-in-Charge shall be in writing and no reference, communication or complaint which is not in writing shall be recognised.

## **18. Working Hours & Working Days**

- 18.1 The painting & silicone treatment works will be allowed during working hours i.e. from 8 a.m. to 6 p.m., with one hour lunch-break, from Sunday to Friday, excluding public holidays. However, for additional working hours or during holidays, the Contractor will have to obtain permission from the Embassy and the Engineer-in-Charge.
- 18.2 However, the Contractor shall follow the prevalent working hours and holidays, as permitted under the local Labour Laws of Kathmandu, Nepal, enforced from time-to-time. In case the above working hours and days require changes as per the local Laws & Regulations, the Contractor shall inform the same in writing to the Employer & the Engineer-in-Charge and work according to permission from them.

## **19. Bureau of Indian Standards**

- 19.1 A reference made to any Indian Standard specifications in the Tender documents, shall imply reference to the latest version of that standard of the Bureau of Indian Standards (BIS), including such revisions/ amendments as may be issued by the BIS during the currency of the Contract and corresponding clause therein shall hold valid in place of those referred to.

## **20. Discrepancies**

- 20.1 The several documents forming part of the Contract are to be taken as mutually explanatory, and special conditions in preference to general conditions. If there are varying or conflicting provisions made in any one document forming part of the Contract, the Architect/ Engineer in-charge shall be the deciding authority with regard to the intention of the document.
- 20.2 Painting works & silicone treatment shall be carried out as per approved samples, and no deviation shall be permitted.

## **21. Variations**

- 21.1 The schedule of quantities are given for the works. The Employer may decide to change the scope of work at any stage thereby causing unlimited variations in the tendered quantities for which no claim from the Contractor will be entertained towards extra rates, etc. The Contractor shall, however, be paid on the basis of actual quantities of the works executed at site.
- 21.2 The Employer/ Architect shall have the power to add, reduce, omit or hold any work/ part of the work at any stage during execution, due to non-availability of a portion of the site or for any reason whatsoever. No compensation whatsoever shall be payable to the Contractor on this account.
- 21.3 The Architect/ Engineer-in-Charge shall have powers to make any alterations in, omissions from, additions to, or substitutions for, the original specifications, designs and instructions that may appear to him to be necessary during the progress of the work and the Contractor shall carry out the work in accordance with such instructions which may be given to him in writing, signed by the Engineer-in-Charge. Such alterations, omissions, additions or substitutions shall be carried out by the Contractor on the same conditions in all respects on which he agreed to do the original work. For any change in the specifications, rate adjustment, plus or minus, shall be made in the rate for which the Contractor shall take prior approval from the Employer before execution of works. For rates of such extra items, the Contractor shall furnish analysis of rates for approval from the Employer.
- 21.4 The Architect's decision in all matters including items related to the aesthetics aspects will be final and he shall have the authority for inspection of the work whether or not such work is completed.

21.5 The Contractor shall be bound to carry out and complete the work in accordance with any instructions given to him, from time to time, and confirmed in writing by the Engineer-in-Charge and such alterations, omissions, additions and substitutions as mentioned above in clauses 21.1, 21.2, shall form part of the Contract as if originally provided therein. No other extra rate/ cost shall be paid on this account except any amount payable under clause 21.3 above.

## **22. Deviations**

22.1 The Architect/ Engineer-in-Charge shall have powers to omit and/ or hold a part of the works in case of non-availability of a portion of the site or for any other reasons or make any alterations in, omissions from, additions to, or substitutions in the original specifications/ designs and instructions that may appear to him to be necessary during the progress of the work and the Contractor shall carry out the work in accordance with such instructions which may be given to him in writing by the Engineer-in-Charge. Such alterations, omissions, additions or substitutions shall not invalidate the Contract and any altered, additional or substituted work which the Contractor may be directed to do in the manner above specified as part of the work shall be carried out by the Contractor on the same conditions in all respects on which he agreed to do the original work. The rates for such additional (extra items) or substituted works shall be regulated as under :

### **22.1.1 Extra Items**

In the case of extra item(s), the Contractor shall, within 15 days of receipt of order or occurrence of such item(s) on instructions of the Employer/ Engineer-in-Charge, claim rates supported by proper analysis, for the work and the Engineer-in-Charge shall determine such rates on the basis of market rates, based on which the Contractor shall be paid. Market rate shall be the rate as decided by the Engineer-in-charge on the basis of the cost of materials and labour at the site where the work is to be executed plus 15% (fifteen percent only) to cover all Contractor's overheads & profits.

### **22.1.2 Substituted Items**

In the case of substituted items, the rate for the Agreement item (to be substituted) and substituted item shall also be determined in the manner as mentioned in the aforesaid para.

- a. If the market rate for the substituted item so determined is more than the market rate of the Agreement item (to be substituted), the rate payable to the Contractor for the substituted item shall be so increased to the extent of the difference between the market rates of substituted item and the Agreement item (to be substituted).
- b. If the market rate for the substituted item so determined is less than the market rate of the Agreement item (to be substituted) the rate payable to the Contractor for the substituted item shall be so decreased to the extent of the difference between the market rates of substituted item and the Agreement item (to be substituted).

22.2 If it shall appear to the Employer/ Engineer-in-charge that any work has been executed with unsound, imperfect, or unskillful workmanship, or with materials of a quality inferior to that Contracted or otherwise not in accordance with the Contract, the Contractor shall, on demand from the Employer even after virtual completion, materials or articles complained of notwithstanding that the same may have been passed/ certified/ paid for, forthwith rectify/ remove/ re-execute the work so specified in whole or in part, as the case may require at his own charge and cost. In the event of failing to do so, the Contractor shall be liable to pay compensation at the same rate as under clause of the Contract (for non-completion of the work in time) for this default.

In such case the Engineer-in-Charge may not accept the item of work at the rates applicable under the Contract but may accept such items at reduced rates as the Employer may consider reasonable during the preparation of on account bills or final bill, if the item is so acceptable without detriment to the safety & utility of the item or he may reject the work outright without any payment and/ or get it rectified, or removed and/ or re-executed at the risk and cost of the Contractor. Decision of the Employer/ Engineer-in-Charge in respect of the same will be final and binding on the Contractor.

### **23. Site to be Kept Clean**

- 23.1 During the course of painting works the Contractor shall stack the materials in a proper way and keep the site neat and clean after the day's work is over.
- 23.2 During the course of execution the Contractor shall stack the materials in a proper way and keep the site neat and clean after the day's work is over. The Contractor shall be entirely responsible for the prompt removal from the site of all surplus materials, spoils, and debris/deleterious materials of whatever nature. This removal shall be carried out on a regular basis, and subject, if necessary, to the instructions of the Employer/ Engineer-in-Charge. The said instructions shall be binding upon the Contractor but shall not relieve him of any of his obligations under the Contract.
- 23.3 The material found surplus on completion of the project shall not be disposed off without the prior permission of the Engineer-in-Charge.
- 23.4 The work of the Contractor will not be treated as complete unless he removes all the debris from the work site and hands over the site, clean in all respects including removal of temporary installations erected by him.
- 23.5 The Contractor shall have to promptly remove, apart from all the debris from the site of the works, dust, dirt and colour splashes from floors, walls, doors, windows, glass panes, electrical works etc. before handing over the building to the Employer.
- 23.6 The Contractor shall be responsible for selection of the place of disposal which shall be legally authorized for that purpose. The Contractor shall defend, indemnify and hold harmless the Employer from any and all losses, damages, expenses, fines, etc. that the Contractor may incur if in violation of such requirement. The Contractor is deemed to have allowed for these associated costs in his Tender.

### **24. Permits, Insurances & Indemnification and Miscellaneous Expenses**

- 24.1 The Contractor shall obtain and pay for all permits and miscellaneous expenses required for the works. The Employer shall only make payment of security deposits and fees for getting permanent electric, water, service connections, meters, etc. against proper official receipts from the respective Authorities. The Contractor shall obtain and deliver to the Employer, certificates of final inspection and approval by the respective local and other concerned Authorities. However, charges and security deposits, etc. for the temporary connections required for the execution of works at site shall be borne by the Contractor.
- The Contractor shall give to the municipal and other Authorities all notices etc. that may be required by the law and obtain all requisite licenses and pay all proper legal fees and shall meet all other miscellaneous & unforeseen expenses in this connection, from time to time and upon completion, as required by the concerned Authorities.
- All liaison works, formalities, payments, miscellaneous expenses during painting works, etc. for the works will be done by the Contractor to the Departments/ Authorities/ Fire Authorities concerned, for which nothing extra shall be payable over his quoted rates.
- 24.2 The Contractor shall follow the Safety Code and Model Rules for the protection of Health as well as Sanitary arrangements for labour as prescribed by the Local Authorities as regards to Safety Code. The Contractor shall be responsible for meeting obligations under the Employees State Insurance Act and the Provident Fund Act, etc.
- 24.3 The Contractor shall comply with and give all notices required under any Government Authorities, instrument, rule of order made under any Act of Parliament, State Laws or any regulation in India and Nepal, as well as bye-laws of the local Authorities related to the work. He shall comply with applicable bye-laws, ordinances, rules, regulations and pay any fines or penalties imposed for violation thereof. The Contractor shall indemnify the Employer against any liability in respect of the above, without any additional cost.

- 24.4 Insurance of works
- Before commencing the execution of works, the Contractor shall insure the whole work for a sum equivalent to the Contract value and interest of the Employer against all risks (including fire, theft, riots, explosions, etc.), claims, proceedings, loss or damage costs (to materials, plant & machinery and works) etc. and take a Contractors Comprehensive All Risk Policy from an approved Insurance Company in the joint names of the Employer and the Contractor against such risks and deposit the said policy alongwith the receipt for the payment of upto-date premium (in original) with the Employer. The validity of the policy shall be extended/ renewed till the completion of the Defects Liability Period for the entire project.
  - The Insurance policy/ policies to be taken by the Contractor shall also cover his own employees, the staff & engineers of the Architect & the Employer, deputed at site.
- 24.5 Insurance under Workmen's Compensation Act
- Before commencement of work, the Contractor shall take in the joint names of the Employer and Contractor, an insurance cover, under the applicable Workmen's Compensation Act, as amended from time to time, from an approved Insurance Company, valid till the completion of the Defects Liability Period, and deposit such policy (in original) alongwith the receipt of payment of the premium with the Employer.
- 24.6 Third Party Insurance
- Before start of work, the Contractor shall insure and indemnify and keep indemnified the Employer against all claims which may be made against the Employer by any member of the public, third party, statutory bodies, Sub-contractor, labour, properties, roads and bridges, etc. adjoining/ outside the site, etc. in respect of anything which may arise in respect of the works and at his own expense arrange to effect, secure and maintain until the Defects Liability Period, a policy of insurance in the joint names of the Employer and the Contractor, from an approved Insurance Company against such risks, and deposit such insurance policy (in original) alongwith the receipt of payment of the premium with the Employer.
- 24.7 Similarly, the Contractor shall indemnify the Employer against all claims which may be made upon the Employer under the Payment of Wages Act, Minimum Wages Act, and Employer's Liability Act, Workmen's Compensation Act, Industrial Disputes Act or any other statute in force during the currency of this Contract including the Defects Liability Period.
- 24.8 The Contractor shall bear all losses, expenses, compensation, liabilities, etc., financial and/ or legal, consequent to any/ all damages done to the public/ private/ government roads and properties outside the site while transporting materials to the site.
- 24.9 In case the Contractor fails to furnish the All Risks Insurance Policy, Insurance under the Workmen's Compensation Act, Third Party Insurance and the requisite Indemnity Bonds to the Employer, as required under clause nos. 24.4 to 24.7 before the stipulated date of commencement of work at site i.e. within 21 days from the date of issue of the Letter of Intent by the Employer, the payments of his running account bills shall be withheld till the compliance of the above-mentioned requirements.
- 24.10 The Contractor shall keep harmless and indemnify the Employer & the Architect from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any of the Contractor's equipment, materials or plant used for or in connection with or for incorporation in the Works.

## **25. Grounds for Withholding Payments**

- 25.1 The Employer may withhold the whole or part of any payment due to the Contractor to the extent necessary to protect the Employer from loss on account of any breach of the Contractor's obligations under the Contract. When the cause for withholding is rectified, such amount as then due and owing shall be paid or credited to the Contractor.

## **26. Possession of Site**

- 26.1 Save in so far as the Contract may prescribe the extent of portions of the site of which the Contractor is to be given possession, and subject to any requirement in the Contract as to the order in which the work shall be executed, the Employer through the Engineer-in-Charge shall give to the Contractor possession of the site/ building as required to proceed with and complete the works.
- 26.2 The Employer shall have the right to use or occupy all, or any portion of the work before the work is accepted as finally completed, except only that the Engineer-in-Charge shall inspect those parts of the works to be occupied by the Employer and issue to the Contractor a List of Defects/ deficiencies outstanding, prior to occupation by the Employer. With this sole exception, such occupation shall not relieve the Contractor of any of its obligations under the Contract.

## **27. Rates**

- 27.1 The rates quoted by the Contractor shall be inclusive of :
- a. Prices/ costs of all materials, labour, fuel, transportation, samples, testing, etc.
  - b. All taxes such as sales tax, Value Added Tax (VAT), GST, import/ export customs duties, excise duties, octroi, royalty, service tax or any other tax, duty or levy on material, labour, fuel and works contract tax, education cess, staff/ labour welfare cess, etc. in force or likely to be levied during the currency of the Contract, including the extended period, if any and Defects Liability Period.
  - c. Miscellaneous expenses towards insurances, permits, etc.
  - d. Rates for working at all levels, for all heights, depths, leads, level differences, etc., as per the requirements of the design, unless mentioned otherwise.
  - e. Providing all necessary, barricades, hoists, ladders, stagings, scaffoldings, tools, tackles, instruments, equipments, etc. in all the works, as per the requirements of the design and as directed by the Engineer-in-Charge.
  - f. All other costs and expenses, etc. as stipulated in the Tender Document
- 27.2 These rates shall remain firm and final for the duration of the entire Contract period including the extended period, if any and upto completion of the Defects Liability Period, and no escalation in these rates shall be payable on any account whatsoever.

## **28. Income Tax and other Taxes**

- 28.1 Income Tax, Works Contract Tax and other taxes as applicable for the works will be deducted by the Employer from all the interim bills and the final bill of the Contractor, and remitted to the Government account, in accordance with the latest laws of Nepal.
- 28.2 It will be the responsibility of the Contractor to indicate the various taxes to be deducted, as applicable for the works, while submitting his Interim and Final Bills. All penalties, interests, charges, etc. if levied by the Government/ Authorities on account of any misrepresentation/ ignorance regarding such taxes to be deducted from his bills, shall be borne by the Contractor. The Contractor shall also be responsible for compliance of local laws including deductions/ deposit of TDS and other taxes etc. by the specialized Agencies engaged by him as Sub-contractors for the execution of the works.
- 28.3 The Contractor shall be required to get himself registered within the prescribed time limit with the local Authorities in Kathmandu/ Nepal under their Income Tax Department, VAT, Labour & Welfare Cess, Employees Provident Fund (EPF), Employees' State Insurance Corporation laws (ESIC), etc. The other charges including the penalty/ fines for delay in registration, if any, shall be borne by the Contractor.
- 28.4 The Contractor shall submit alongwith each running account bill, documentary evidence in token of having deposited latest EPF dues with the EPF organization including ESIC etc. He shall also ensure that EPF dues etc. are deposited with the concerned Authorities by his specialized Agencies/ Sub-contractors.

## **29. Mobilisation Advance**

- 29.1 The mobilization advance (interest free) upto a maximum of 10% of the Contract value shall be paid to the Contractor on submission of non-revocable Bank Guarantee of an amount equal to 110% of the amount of advance alongwith the Performance Guarantee from a Scheduled Bank, as per enclosed format.
- 29.2 The recovery of mobilization advance shall be made on pro-rata basis from the Contractor's running account bills. The advance shall however be fully recovered after 80% of the work (in terms of value) is completed or 80% of the original stipulated Contract period is over, whichever is earlier. In case the balance mobilization advance still remains unrecovered on expiry of 80% of the original Contract period the Contractor shall refund the amount by Demand Draft/ Banker's cheque immediately, failing which, the balance amount alongwith penal interest @ 12% for the delayed period shall be realized by invoking the Mobilisation Advance Bank Guarantee(s).
- 29.3 The Bank Guarantee shall be released when the mobilization advance is recovered.

## **30. Payment of Bills**

- 30.1 The Contractor shall prepare and submit Interim Bills, not more than once a month, supported by detailed measurements for the works executed by him, to the Engineer-in-Charge.-
- 30.2 Upon presentation of the Interim Bill, the Architect shall verify the Bill of the Contractor in detail and issue a certificate of payment to the Employer, who shall make the payment to the Contractor within 30 (thirty) days of the issue of the Certificate. Payment of running bill shall be made by Account Payee cheque(s) only.
- 30.3 The Contractor shall submit the Final Bill to the Architect within 30 (thirty) days of the Virtual Completion of the work as certified by the Engineer-in-Charge. No claims shall be made by the Contractor after submission of the Final Bill.
- 30.4 The Architect shall check the Final Bill of the Contractor, verify the payment due to him and issue the Final Certificate of payment to the Employer upon which the Employer shall make the final payment to the Contractor within 60 (sixty) days. The settlement of the Final Bill shall be subject to the furnishing of clearance certificates by the Contractor from various Tax Authorities, as applicable

## **31. Measurements of Work done**

- 31.1 All measurements shall be taken jointly by the Engineer-in-Charge and by the Contractor from time-to-time during the progress of the work and such measurements shall be signed and dated by the Engineer-in-Charge and the Contractor in token of their acceptance. If the Contractor objects to any of the measurements recorded, a note shall be made to that effect with reason and signed by both the parties.
- 31.2 If for any reason the Contractor is not available, and the work of recording measurements is suspended by the Engineer-in-Charge, the Engineer-in-Charge/ Employer shall not entertain any claim from Contractor for any loss or damages on this account. If the Contractor does not remain present at the time of such measurements after the Contractor has been given a notice in writing three days in advance or fails to countersign or to record objection within a week from the date of the measurement, then such measurements recorded in his absence by the Engineer-in-Charge shall be deemed to be accepted by the Contractor.
- 31.3 The Contractor shall, without extra charge, provide all assistance with every appliance, labour and other things necessary for measurements.
- 31.4 Except where any general or detailed description of the work expressly shows to the contrary, measurements shall be taken in accordance with the procedure set forth in the specifications notwithstanding any provision in the relevant Standard Method of measurement or any general or local custom. In the case of items which are not covered by specifications, measurements shall be taken in accordance with the relevant standard

method of measurement issued by the Bureau of Indian Standards and if for any item no such standard is available, then a mutually agreed method shall be followed.

- 31.5 The Contractor shall give not less than seven days' notice to the Engineer-in-Charge before covering-up or otherwise placing beyond the reach of measurement any work, in order that the same may be measured and correct dimensions thereof be taken before the same is covered up or placed beyond the reach of measurement. If any work is covered up/ placed beyond reach of measurement without such notice or without Engineer-in-Charge's consent, the same shall be uncovered at the Contractor's expense, or in default thereof no payment or allowance shall be made for such work or the materials with which the same was executed.
- 31.6 Engineer-in-Charge may cause to check the measurements recorded jointly or otherwise as aforesaid and all provisions stipulated herein above shall be applicable to such checking of measurements.
- 31.7 It is also a term of this Contract that recording of measurements of any item of work in the measurement book and/ or its payment in the interim, on account or final bill shall not be considered as conclusive evidence as to the sufficiency of any work or material to which it relates nor shall it relieve the Contractor from liabilities from any over measurement or defects noticed till completion of the defects liability period.

### **32. Security Deposit**

- 32.1 At the time of making any payment to the Contractor for the work done under the contract, 5% Security Deposit shall be deducted from his bills, certified for the interim work done.
- 32.2 The Security Deposit shall be refunded to the Contractor after the expiry of the Defects Liability Period for the entire project provided the Architect and the Employer are satisfied that all defects have been rectified and there is no demand outstanding against the Contractor.

### **33. Certificate of Virtual Completion**

- 33.1 When all the works are completed, the Contractor shall give notice of such completion to the Employer/ Architect, alongwith the necessary documents including written guarantees and warranties required under the Contract, such as the completion certificate, no dues certificates etc. from the various Authorities.
- 33.2 Within 30 (thirty) days of receipt of such notice alongwith the required documents, the Architect shall inspect the works and furnish to the Contractor a list of defects to be rectified or deficiencies for correction by the Contractor.
- 33.3 After rectification of defects, the Architect shall issue a Virtual Completion Certificate.

### **34. Extension of Time and Liquidated Damages**

- 34.1 If the Contractor fails to execute the works and clear the site on or before the time of completion, he shall, without prejudice to any other right to the Employer on account of such breach, pay compensation to the Employer, to the extent stipulated as liquidated damages, a sum at the rate of 1% (one per-cent) of the Contract value per week of delay upto a maximum of 10% of the Contract value. The decision of the Architect in this regard shall be final and binding on the Contractor.
- 34.2 If the execution of the work is delayed due to reasons beyond the control of the Contractor, such delay may entitle the Contractor to a reasonable extension of time to be decided by the Employer/ Architect. However, these reasons should satisfy the Employer for granting extension and it shall not be automatic.

### **35. Performance Guarantee**

- 35.1 The Contractor shall submit an irrevocable Performance Guarantee of 5% (Five percent) of the tendered amount in addition to other deposits mentioned elsewhere in the Contract for his proper performance of the Contract Agreement, (not withstanding and/or without prejudice to any other provisions in the Contract) within 21 days from the date of issue of the

Letter of Intent/ Acceptance. This period can be further extended by the Employer on written request of the Contractor stating the reason for delays in procuring the Bank Guarantee, to the satisfaction of the Employer. This Guarantee shall be in the form of Banker's Cheque/ Demand Draft of any Scheduled Bank or Guarantee Bonds of any Scheduled Bank, in accordance with the proforma annexed hereto. In case a fixed deposit receipt of any Bank is furnished by the Contractor to the Employer as part of the performance guarantee and the Bank is unable to make payment against the said fixed deposit receipt, the loss caused thereby shall fall on the Contractor and the Contractor shall forthwith on demand furnish additional security to the Employer to make good the deficit.

- 35.2 The Performance Guarantee shall be initially valid unto completion of the Defects Liability period plus 90 days beyond that in case the time for completion of work gets enlarged, the Contractor shall get the validity of Performance Guarantee extended to cover such enlarged time for completion of work. After recording of the completion certificate for the all works by the Engineer-in-charge, the performance guarantee shall be returned to the Contractor, without any interest.
- 35.3 The Engineer-in-charge shall not make a claim, under the performance guarantee except for amounts to which the Employer is entitled under the Contract (not withstanding and/ or without prejudice to any other provisions in the Contract Agreement) in the event of:
- a. Failure by the Contractor to extend the validity of the Performance Guarantee as described herein above, in which event the Employer may claim the full amount of the Performance Guarantee.
  - b. Failure by the Contractor to pay to the Employer any amount due, either as agreed by the Contractor or determined under any of the Clauses/ Conditions of the Agreement, within 30 days of the service of notice to this effect by Employer.
- 35.4 In the event of the Contract being determined or rescinded under provision of any of the Clause/ Condition of the Agreement, the performance guarantee shall stand forfeited in full and shall be absolutely at the disposal of the Employer.

## **36. Suspension of Work**

- 36.1 The Contractor shall, on the written order of the Employer/ Architect suspend the progress of the works or any part thereof for such time or times and in such manner as the Employer/ Architect may consider necessary and shall, during such suspension, protect properly and secure the work, so far as is necessary in the opinion of the Employer/ Architect. No compensation would be paid to the Contractor on this account

## **37. Time and extension for delay**

- 37.1 The time allowed for execution of the Works or the extended time in accordance with these conditions shall be the essence of the Contract. The execution of the works shall commence from such time period as mentioned in Letter of Intent/ Acceptance.
- 37.2 Request for re-scheduling of milestones and extension of time, to be eligible for consideration, due to reasons beyond the control of Contractor, shall be made by the Contractor in writing within fourteen days of the happening of the event causing delay on the prescribed form. The Contractor shall also indicate in such a request the period for which extension is desired. In such a case, the Employer may give a fair & reasonable extension of time and re-schedule the milestones for completion of work. Such extension shall be communicated to the Contractor in writing by the Employer.

## **38. Force Majeure**

In the event of Force Majeure i.e. unforeseeable events such as war, floods, earthquake, fire, explosion, riots, civil disorder and other adverse weather conditions etc. which are beyond the reasonable control of the Parties, cannot be prevented or overcome and which prevent either Party from meeting their obligations under this Contract, the contractual obligations as

far as affected by such event shall be suspended for as long as the Force Majeure continues provided that the other Party is notified within two weeks after occurrence of the Force Majeure. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder. In the event of Force Majeure, either Party shall be entitled to prolongation of this Contract equal to the delay caused by such Force Majeure. The Contractor shall be granted necessary extension of time to cover the delay was caused by Force Majeure and compensated for any financial repercussions by the Employer. The amount of such compensation shall be decided by the Employer, whose decision in this matter shall be final and binding on the Contractor.

**39. Defects Liability Period**

- 37.1 The Defects Liability Period shall commence from the date of Virtual Completion issued by the Architect. The duration of the Defects Liability Period shall be 12 (twelve) months.
- 37.2 The Contractor shall be responsible to make good and remedy at his own expense any defect, other faults which may appear during the Defects Liability Period arising in the work executed by the Contractor.

**40. Contractor Liable for Damages, defects during Maintenance Period**

- 40.1 If the Contractor/ his labour shall break, deface, injure or destroy any part of building/ service lines where they may be working or if any damage shall happen to the work while in progress, from any cause whatever or if any defect, shrinkage or other faults appear in the work within 12 months after a virtual completion certificate, arising out of defect or improper materials or workmanship, the Contractor shall upon receipt of the notice make the same good at his own expense or in default the Engineer-in-Charge cause the same to be made good by other workmen and deduct the expense from any sums that may be due or at any time thereafter may become due to the Contractor, or from his security deposit.

**41. Foreclosure of Contract due to Abandonment of Work**

- 41.1 If at any time after acceptance of the tender, Employer shall decide to abandon or substantially reduce the scope of the works for any reason whatsoever, the Contractor shall act accordingly in the matter. The Contractor shall have no claim to any payment of compensation whatsoever, on account of any profit or advantage which he might have derived from the execution of the works in full but which he did not derive in consequence of the foreclosure of the whole or part of the works.
- 41.2 The Contractor shall be paid at Contract rates full amount for works executed and measured at site in addition, a reasonable amount as certified by the Engineer-in-Charge for the items hereunder mentioned which could not be utilized on the work to the full extent in view of the foreclosure
- i. Employer shall have the option to take over Contractor's materials or any part thereof either brought to site or of which the Contractor is legally bound to accept delivery from suppliers (for incorporation in or incidental to the work) provided, however, Employer shall be bound to take over the materials or such portions thereof as the Contractor does not desire to retain. For materials taken over or to be taken over by Employer, cost of such materials as detailed by Engineer-in-Charge shall be paid. The cost shall, however take into account purchase price & cost of transportation
  - ii. Reasonable compensation for transfer of tools & plant from site to Contractor's permanent stores or to his other works, whichever is less. If tools & plant are not transported to either of the said places, no cost of transportation shall be payable
  - iii. Reasonable compensation for repatriation of Contractor's site staff and imported labour to the extent necessary
- 41.3 The Contractor shall, if required by the Engineer-in-Charge furnish to him books of account, wage books, time sheets and other relevant documents and evidence as may be necessary to enable him to certify the reasonable amount payable under this condition.

41.4 The reasonable amount of items on (ii) & (iii) above shall not be in excess of 2% of the cost of the work remaining incomplete on the date of closure, i.e. total stipulated cost of the work as per accepted tender less the cost of work actually executed under the Contract and less the cost of Contractor's materials at site taken over by the Employer as per item (i) above. Provided always that against any payments due to the Contractor on this account, the Employer shall be entitled to recover any outstanding balances due from the Contractor for advance paid in respect of any tool, plants and materials and any other sums which at the date of termination were recoverable by the Employer from the Contractor under the terms of the Contract.

## **42. Determination of Contract**

42.1 Subject to other provisions contained in this clause, the Employer may, without prejudice to his any other right or remedy against the Contractor in respect of any delay, inferior workmanship, any claims for damages and/ or any other provisions of this Contract or otherwise and whether the date of completion has or has not elapsed, by notice in writing absolutely determine the Contract in any of the following cases :

- a. If the Contractor having been given a notice in writing by the Employer/ Engineer-in-Charge to rectify, re-execute or replace any defective work or that the work is being performed in an inefficient or otherwise improper or un-workman like manner shall omit to comply with the requirement of such notice for a period of seven days thereafter.
- b. If the Contractor being a company shall pass a resolution or the court shall make an order that the company shall be wound up or if a receiver or a manager on behalf of a creditor shall be appointed or if circumstances shall arise which entitle the court or the creditor to appoint a receiver or a manager or which entitle the court to make a winding up order.
- c. If the Contractor has, without reasonable cause suspended the progress of the work or has failed to proceed with the work with due diligence so that in the opinion of the Employer (which shall be final and binding) he will be unable to secure completion of the work by the date for completion and continues to do so after a notice in writing of fifteen days from the Engineer-in-Charge.
- d. If the Contractor fails to complete the work within the stipulated date or items of work with individual date of completion, if any stipulated, on or before such date(s) of completion and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer-in-Charge.
- e. If the Contractor persistently neglects to carry out his obligations under the Contract and/ or commits default in complying with any of the terms and conditions of the Contract and does not remedy it or take effective steps to remedy it within fifteen days after a notice in writing is given to him in that behalf by the Engineer-in-Charge.
- f. If the Contractor sublets his Contract, or attempt to do so, or become insolvent.
- g. If the work is not started by the Contractor within 1/8<sup>th</sup> of the stipulated time.

42.2 When the Contractor has made himself liable for action under any of the cases aforesaid, the Employer shall have powers :

- a. To determine or rescind the Contract as aforesaid (of which termination or rescission notice in writing to the Contractor shall be conclusive evidence). Upon such determination or rescission, the Earnest Money Deposit, Security Deposit already recovered and Performance Guarantee under the Contract shall be liable to be forfeited and shall be absolutely at the disposal of the Employer.
- b. After giving notice to the Contractor to measure up the work of the Contractor and to take such whole, or the balance or part thereof, as shall be un-executed out of his hands and to give it to another Contractor to complete the work. The Contractor, whose Contract is determined or rescinded as above, shall not be allowed to participate in the tendering process for the balance work.

42.3 In the event of above courses being adopted by the Employer, the Contractor shall have no claim to compensation for any loss sustained by him by reasons of his having purchased or procured any materials or entered into any engagements or made any advances on account or with a view to the execution of the work or the performance of the Contract. And in case action is taken under any of the provision aforesaid, the Contractor shall not be entitled to recover or be paid any sum for any work thereof or actually performed under this Contract unless and until the Engineer -in-Charge has certified in writing the performance of such work and the value payable in respect thereof and he shall only be entitled to be paid the value so certified.

#### **43. Contractor's Liability to pay compensation even if Contract is not determined**

47.1 In any case in which any of the powers conferred upon the Employer as per the Determination Clause thereof, shall have become exercisable and the same are not exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions hereof and such powers shall notwithstanding be exercisable in the event of any future case of default by the Contractor and the liability of the Contractor for compensation shall remain unaffected. The Employer, if he so desires after giving a notice in writing to the Contractor, take possession of, use as on hire (the amount of the hire money being also in the final determination of the Employer) all or any tools, plant, materials and stores, in or upon the works, or the site thereof belonging to the Contractor, or procured by the Contractor and intended to be used for the execution of the work/ or any part thereof, paying or allowing for the same in account at the Contract rates, or, in the case of these not being applicable, at current market rates to be certified by the Engineer-in-Charge, whose certificate thereof shall be final, and binding on the Contractor to remove such tools, plant, materials, or stores from the premises (within a time to be specified in such notice) in the event of the Contractor failing to comply with any such requisition, the Employer may remove them at the Contractor's expense or sell them by auction or private sale on account of the Contractor and his risk in all respects and the certificate of the Engineer-in-Charge as to the expenses of any such removal and the amount of the proceeds and expenses of any such sale shall be final and conclusive against the Contractor.

#### **44. Cancellation of Contract in full or part**

44.1 If the Contractor :

- i. commits default to complying with any of the terms and conditions of the Contract and does not remedy it or take effective steps to remedy it within 7 days after a notice in writing is given to him in that behalf by the Engineer-in-Charge; or
- ii. fails to complete the works or items of work with individual dates of completion, on or before the date(s) of completion, and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer-in-Charge; or
- iii. shall obtain a Contract with Employer as a result of wrong tendering or other non-bonafide methods of competitive tendering; or
- iv. shall at any time be adjudged insolvent; or
- v. being a company, shall pass a resolution or the Court shall make an order for the winding up of the company, or a receiver or manager on behalf of the debenture holders or otherwise shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or manager

the Employer may without prejudice to any other right or remedy which shall have accrued or shall accrue hereafter to Employer, by a notice in writing to cancel the Contract as a whole or only such items of work in default from the Contract.

44.2 The Employer shall on such cancellation have powers to take possession of the site & any materials, plant, implements, stores, etc. thereon and/ or carry out the incomplete work by any means at the risk and cost of the Contractor.

44.3 On cancellation of the Contract in full or in part, the Engineer-in-Charge shall determine what amount, if any, is recoverable from the Contractor for completion of the works or part of the

works or in case the works or part of the works is not to be completed, the loss or damage suffered by Employer. In determining the amount, credit shall be given to the Contractor for the value of the work executed by him up to the time of cancellation, the value of Contractor's materials taken over and incorporated in the work and use of plant and machinery belonging to the Contractor.

- 44.4 Any excess expenditure incurred or to be incurred by Employer in completing the works or part of the works or the excess loss or damages suffered or may be suffered by Employer as aforesaid after allowing such credit shall without prejudice to any other right or remedy available to Employer in law be recovered from any moneys due to the Contractor on any account, and if such moneys are not sufficient, the Contractor shall be called upon in writing and shall be liable to pay the same within 30 days.
- 44.5 If the Contractor shall fail to pay the required sum within the aforesaid period of 30 days, the Employer shall have the right to sell any or all of the Contractors' unused materials, plant, implements, etc. and apply the proceeds of sale thereof towards the satisfaction of any sums due from the Contractor under the Contract and if thereafter there be any balance outstanding from the Contractor, it shall be recovered in accordance with the provisions of the Contract.
- 44.6 Any sums in excess of the amounts due to Employer and unsold materials, plant, etc., shall be returned to the Contractor provided always that if cost or anticipated cost of completion by Employer of the works or part of the works is less than the amount which the Contractor would have been paid had he completed the works or part of the works, such benefit shall not accrue to the Contractor.

#### **45. Settlement of Disputes**

- 45.1 The disputes and differences arising out of or in connection with the design, specifications, quantities, rates, etc. shall be referred to the Architect whose decision shall be final, conclusive and binding on the Parties here to and shall be without appeal.
- 45.2 All other disputes and differences of any kind whatsoever arising out of or in connection with the Contract or the carrying out of the work shall be referred to the Engineer-in-Charge who shall state his decision in writing.

#### **46. Arbitration**

- 46.1 If any dispute, difference or question at any time arises between the Parties in respect of the meaning or interpretation of the terms and conditions of this Agreement or covering anything herein contained or arising out of this Agreement or the validity of the enforcement thereof which cannot be settled mutually, shall within 30 (thirty) days (or such longer period as may be mutually agreed upon) from the date one Party informs the other in writing that such dispute or disputes or disagreement exists, be referred to Arbitration. Within 30 (thirty) days of the said notice, one Arbitrator shall be appointed by each of the disputing Parties by notice in writing to the other. The two Arbitrators shall select an Umpire whose decision shall be final in case of difference of opinion between the two Arbitrators.
- 46.2 The Arbitration proceedings will be conducted in accordance with and be subject to the Arbitration and Conciliation Act, 1996 (of India) as amended from time to time and the decision of the Arbitrators as mentioned above shall be final and binding on the Parties.
- 46.3 The Arbitration will have its sittings at Delhi.
- 46.4 The language to be used in the Arbitral proceedings will be English.
- 46.5 The Contractor shall continue to perform his duties as far as practicable with diligence notwithstanding the fact that a dispute has been referred to Arbitration or any dispute or difference has arisen. It is also the term of Agreement that if the Contractor does not make any demand for Arbitration in respect of any item in writing within 60 (sixty) days of receiving intimation from the Employer that the final bill is ready for payment, the claim of the Contractor will be deemed to have been waived and absolutely barred and the Employer shall be discharged and released of all liabilities under the Agreement in respect of these claims.

#### **47. Safety Procedure**

- 47.1 The Contractor shall incorporate in his operation the requirements of all the 'Safety Codes' issued by the Bureau of Indian Standards, National Building Code, and the regulations of local Authorities. In case, there are variations in the requirements of BIS Codes, National Building Code and the regulations of local Authorities, the more stringent regulations shall be deemed to apply.
- 47.2 The Contractor shall properly design scaffolding, ladders, hosting arrangements, cranes, etc. as applicable, to ensure safety of workmen as well as works. All scaffolds, ladders and other safety devices shall be maintained good condition.
- 47.3 All necessary personal safety equipment shall be kept available for the use of the personnel employed on the Site and maintained in good condition by the Contractor for immediate use. The Contractor shall take adequate steps to ensure proper use of equipment by those concerned.
- 47.4 Adequate precautions shall be taken by the Contractor to prevent danger from electrical works/ equipment.
- 47.5 No materials on the Site of works shall be so stocked or placed by the Contractor which causes any danger or inconvenience to anyone
- 47.6 All consequences, damages or losses arising by reasons of any violation of the safety requirement shall be met by the Contractor. The Contractor shall be bound to pay compensation to the persons for the injuries sustained of death owing to neglect of the safety precautions, should any claim proceedings be filed against the Employer. The Contractor hereby agrees to indemnify the Employer against the same.

## 8. NOTES AND DEFINITIONS

### A. NOTES TO THE GENERAL CONDITIONS OF CONTRACT

1. Wherever the words "Government" or "Government of India" or "CPWD" appear, the same shall be read as "The Embassy of India, Kathmandu, Nepal".
2. Wherever the words "President of India" or "President" or "Director General" or "Additional Director General" or "Chief Engineer" appear, the same shall be read as "Employer", represented through the Head of Chancery, Embassy of India, Kathmandu, Nepal.
3. Wherever the words "Superintending Engineer" or "Executive Engineer" or "Divisional Officer" or "Sub-Divisional Officer" or "Engineer-in-Charge" appear, the same shall be read as "Architect and/ or his Engineer-in-Charge".

### B. DEFINITIONS & INTERPRETATIONS FOR THE TENDER DOCUMENT

1. "Employer" means The President of India, represented through the Head of Chancery, Embassy of India, Kathmandu, Nepal
2. "Architect" means the person appointed by the Employer to act as Architect for the purposes of this Contract, i.e. M/s Akshaya Jain & Associates.
3. "Engineer-in-Charge" means the authorised Engineer appointed by M/s Akshaya Jain & Associates, from time-to-time, to supervise the works at the site and carry out the duties and exercise such authority as may be delegated to him by the Architect.

The Architect may, from time-to-time, delegate to the Engineer-in-Charge any of the duties and authorities vested in the Architect and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Employer and the Contractor.

Any communication given by the Engineer-in-Charge to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Architect, provided that:

- a. Any failure of the Engineer-in-Charge to disapprove any work, materials or Plant shall not prejudice the authority of the Architect to disapprove such work, materials or Plant and to give instructions for the rectification thereof; and
- b. If the Contractor questions any communication of the Engineer-in-Charge, he may refer the matter to the Architect who shall confirm, reverse or vary the contents of such communication.

The Architect or the Engineer-in-Charge may appoint any number of persons to assist the Engineer-in-Charge in the carrying out of his duties. He shall notify to the Contractor the names, duties and scope of authority of such persons.

4. "Consultant" means the authorised Consultant engaged by M/s Akshaya Jain & Associates, to provide consultancy services in respect of the works, and for other disciplines as and when required.
5. "Contractor" is the successful Bidder on whom a Work order or a Letter of Intent has been issued by the Employer and the legal successors in title to such person, but not (except with consent of the Employer) any assignee of such person.
6. "Sub-contractor", as employed herein, includes those having a direct Contract with the Contractor for any part/ piece-meal work and it includes one who furnishes materials worked to a special design according to the plans or specifications of the Work but does not include one who merely furnishes materials, not so worked upon. Anyone doing work on a piece-rate basis shall be

deemed a Sub-contractor. The Contractor shall be responsible to the Employer for the work performed by its Sub-contractors to the same extent as it would be, if the work was performed by the Contractor itself.

7. The operational currency in the context of this Contract is Indian Rupees. Hence, wherever the word "Rupees" or "INR" or "Rs." appears in the Tender Document, the same shall be read as Indian Rupees. In case during execution of the works, the Employer decides to make payments in the Nepalese Currency (NC), the same shall be acceptable to the Contractor, at the prevailing exchange rate of currency in Nepal.
8. Wherever the word "CPWD" appears in the Specifications and Schedule of Quantities, the same shall be read as "Central Public Works Department, Government of India".
9. Wherever the words "BIS" or "ISI" appear, the same shall mean the "Bureau of Indian Standards". Similarly, the words "IS Code/s" or "Indian Standard/s" shall mean the relevant codes and standards (including their latest revisions/ amendments) issued by the Bureau of Indian Standards.

## 9. PROFORMAE FOR GUARANTEES

### PROFORMA OF BANK GUARANTEE (PERFORMANCE)

To,  
Head of Chancery,  
Embassy of India,  
Kathmandu,  
Nepal

Whereas the PRESIDENT OF INDIA through the Head of Chancery, Embassy of India, Kathmandu, Nepal (hereinafter called "Employer" which expression shall include its successors and assigns) having awarded a work order/ contract/ supply order No. dated (hereinafter called the contract) to M/s \_\_\_\_\_ (hereinafter called the Contractor / supplier) at a total price of INR \_\_\_\_\_ subject to the terms and conditions contained in the contract.

WHEREAS, the terms and conditions of the contract require the Contractor to furnish a bank guarantee for INR \_\_\_\_\_ (Indian Rupees \_\_\_\_\_") being 5% of the total value of the contract for proper execution and due fulfilment of the terms and conditions contained in the contract.

We, the Bank, (hereinafter called the "Bank") do hereby unconditionally and irrevocably undertake to pay to Employer immediately on demand in writing and without protest/or demur all moneys payable by the Contractor/ supplier to Employer in connection with the execution/supply of and performance of the works/ equipment, inclusive of any loss, damages, charges, expenses and costs caused to or suffered by or which would be caused to or suffered by Employer by reason of any breach by the Contractor/ supplier of any of the terms and conditions contained in the contract as specified in the notice of demand made by Employer to the bank. Any such demand made by Employer on the bank shall be conclusive evidence of the amount due and payable by the bank under this guarantee. However, the Bank's liability under this guarantee, shall be limited to INR \_\_\_\_\_ in the aggregate and the bank hereby agrees to the following terms and conditions:-

- (i) This guarantee shall be a continuing guarantee and irrevocable for all claims of Employer as specified above and shall be valid during the period specified for the performance of the contract including the period of maintenance/warranty i.e. upto \_\_\_\_\_
- (ii) We, the said bank further agree with Employer that Employer shall have the fullest liberty without our consent and without affecting in any manner our obligations and liabilities hereunder to vary any of the terms and conditions of the said contract or to extend time for performance of contract by the Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by Employer against the Contractor/supplier under the contract and forbear or enforce any of the terms and conditions relating to the said contract and we shall not be relieved from our liability by reason of any such variations or extension being granted to the Contractor or for any forbearance, act or omission on the part of Employer or any indulgence by Employer to the Contractor or by any such matter or thing whatsoever, which under the law relating to the sureties would, but for this provision, have effect of so relieving us.
- (iii) This guarantee/ undertaking shall be in addition to any other guarantee or security whatsoever Employer may now or at any time have in relation to the performance of the works/ equipment and the company shall have full re-course to or enforce this security in performance to any other security or guarantee which the Employer may have or obtained and there shall be no forbearance on the part of the company in enforcing or requiring enforcement of any other security which shall have the effect of releasing the Bank from its full liability. It shall not be necessary for Employer to proceed against the said Contractor/ supplier before proceeding against the Bank.

- (iv) This guarantee/ undertaking shall not be determined or affected by the liquidation or winding up, dissolution or change of constitution or insolvency of the supplier/ Contractor, but shall in all respects and for all purposes be binding and operative until payment of all moneys payable to Employer in terms thereof are paid by the Bank.
- (v) The Bank hereby waives all rights at any time inconsistent with the terms of this Guarantee and the obligations of the bank in terms hereof, shall not be otherwise effected or suspended by reasons of any dispute or disputes having been raised by the supplier/Contractor (whether or not pending before any Arbitrator, Tribunal or Court) or any denial of liability by the supplier/Contractor stopping or preventing or purporting to stop or prevent any payment by the Bank to Employer in terms hereof.
- (vi) We, the said Bank, lastly undertake not to revoke this guarantee during its currency except with the previous consent of Employer in writing. Unless a claim is made in writing within 90 days from the date of expiry of this guarantee i.e. \_\_\_\_\_ (90 days after the date of expiry) we shall be relieved from all liabilities under this guarantee thereafter.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_

For and on behalf of Bank

WITNESS

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## PROFORMA OF BANK GUARANTEE (FOR MOBILIZATION ADVANCE)

To,  
Head of Chancery,  
Embassy of India,  
Kathmandu,  
Nepal

1. In consideration of the PRESIDENT OF INDIA through the Head of Chancery, Embassy of India, Kathmandu, Nepal (hereinafter called "Employer" which expression shall unless repugnant to the subject or context include his successor and assigns) having agreed under the terms and conditions of Contract No \_\_\_\_\_ dated \_\_\_\_\_ made between \_\_\_\_\_ and the Employer in connection with \_\_\_\_\_ (hereinafter called "the said Contract") to make at the request of the Contractor a Mobilization Advance of Rs- \_\_\_\_\_ for utilizing it for the purpose of the Contract on his furnishing a guarantee acceptable to the Employer, we the \_\_\_\_\_ Bank Ltd., (hereinafter referred to the "the said Bank") and having our registered office at \_\_\_\_\_ do hereby guarantee the due recovery by the Employer of the said advance as provided according to the terms and conditions of the Contract. We \_\_\_\_\_ do hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Employer stating that the amount claimed is due to the Employer under the said Agreement. Any such demand made on the \_\_\_\_\_ shall be conclusive as regards the amount due and payable by the \_\_\_\_\_ under this guarantee and \_\_\_\_\_ agree that the liability of the \_\_\_\_\_ to pay the Employer the amount so demanded shall be absolute and unconditional notwithstanding any dispute or disputes raised by the Contractor and notwithstanding any legal proceeding pending in any court or Tribunal relating thereto. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs \_\_\_\_\_.
2. We \_\_\_\_\_ Bank further agree that the Employer shall be the sole judge of and as to whether the amount claimed has fallen due to the Employer under the said agreement or whether the said Contractor has not utilized the said advance or any part thereof for the purpose of the Contract and the extent of loss or damage caused to or suffered by the Employer on account of the said advance together with interest not being recovered in full and the decision of the Employer that the amount has fallen due from Contractor or the said Contractor has not utilized the said advance or any part thereto for the purpose of the contract and as to the amount or amounts of loss or damage caused to or suffered by the Employer shall be final and binding on us.
3. We, the said Bank, further agree that the Guarantee herein contained shall remain in full force and effect till the said advance has been fully recovered and its claims satisfied or discharged and till Employer certify that the said advance has been fully recovered from the said Contractor/and accordingly discharges this Guarantee subject, however, that the Employer shall have no claims under this Guarantee after the said advance has been fully recovered, unless a notice of the claims under this Guarantee has been served on the Bank before the expiry of the said Bank Guarantee in which case the same shall be enforceable against the Bank.
4. The Employer shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee or indemnity from time to time to vary any of the terms and conditions of the said Contract or the advance or to extend time of performance by the said Contractor or to postpone for any time and from time to time of the powers exercisable by it against the said Contractor and either to enforce or forbear from enforcing any of terms and conditions governing the said Contract or the advance or securities available to the Employer and the said Bank shall not be released from its liability under these presents by any exercise by the Employer of the liberty with reference to the matters aforesaid or by reasons of time being given to the said Contractor or any other forbearance, act or omission on the part of the Employer or any indulgence by the Employer to the said Contractor or of any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the bank from its such liability.

5. It shall not be necessary for the Employer to proceed against the Contractor before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank notwithstanding any security which the Employer may have obtained or obtain from the Contractor or shall at the time when proceedings are taken against the Bank hereunder be outstanding or unrealized.
6. We, the said Bank, lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Employer in writing and agree that any change in the constitution of the said Contractor or the said Bank shall not discharge our liability hereunder.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

For and on behalf of Bank (NAME AND DESIGNATION)

Dated:

## **10. GENERAL INSTRUCTIONS FOR SPECIFICATIONS & SCHEDULE OF QUANTITIES**

1. The works shall be carried out strictly as per the latest CPWD Specifications along with the updated correction slips issued by the CPWD from time to time. However, the works for which the Technical Specifications have been given in this Tender Document, shall be carried out accordingly and shall take precedence over the CPWD Specifications.
2. For items not covered under the Technical Specifications and the latest CPWD Specifications, the work shall be done as per the latest relevant BIS codes of practice.
3. For items not covered under the specifications mentioned in Paras 1 & 2 above, the work shall be done as per the Technical specifications of the approved manufacturers and as directed by the Architect/ Engineer-in-Charge.
4. For items not covered under the specifications mentioned in Paras 1, 2 & 3 above, the work shall be done as per sound engineering practice and as directed by the Architect/ Engineer-in-Charge, whose decision in this regard shall be final and binding on the Contractor.
5. The BOQ shall be read in conjunction with the Conditions of Contract of this Tender Document. In case of any contradiction/ variation between the two, the conditions shall prevail.
6. The Contractor shall use the approved makes of materials given in the Tender Document. The final selection of materials, out of the approved makes of materials or otherwise to be used at site, shall rest with the Architect and it shall be binding on the Contractor. The Contractor shall get the approved Makes and obtain approval of the make/ brand to be used for various items of works from the Architect, before procuring/ commencing the supply.
7. Where no specific make of material is specified in the Tender, any first class product of a reputed manufacturer shall be used provided it conforms to the requirements of the specifications. The selection shall rest entirely with the Architect/ Engineer-in-Charge whose decision in this matter shall be final.
8. Each work under this Contract shall consist of furnishing all required labour, materials, equipment, appliances, accessories and sundry fittings, etc., necessary for completion and functioning of the work/ system, for all leads and heights (unless specifically mentioned otherwise), to the full satisfaction of the Architect/ Engineer-in-Charge, whether such requirements are specifically mentioned in the nomenclature of item of works or not.
9. In case any change is required by the Architect in the makes specified in the Schedule of Quantities, the Contractor shall execute such quantities with the changed makes. The actual difference in price of such makes will be paid or recovered from him on this account, as the case may be. In such cases, the decision of the Architect/ Engineer-in-Charge shall be final and binding on the Contractor.
10. In the Schedule of Quantities, rates are deemed to imply rates for procurement of items from Nepal/ India, their supply, application/ execution, complete to the satisfaction of the Engineer-in-Charge/ Employer, and nothing extra shall be paid to the Contractor. The decision of the Architect/ Engineer-in-Charge shall be final and binding on the Contractor.
11. The Contractor shall, on completion of painting works & silicone treatment, submit to the Employer, all relevant documents related to the materials' Warranty, Test certificates, Catalogues, etc.

## TRANSPARENT SILANE BASED IMPREGNATING EMULSION

### 1. **Material**

The main application of the water-thinnable impregnating emulsion is for facade impregnation creating a water beading effect on the surface. The aqueous emulsion is characterised by its good penetration into absorbent building materials such as brickwork, concrete surfaces, roofing tiles, etc. Material stored for more than six months should not be used for work.

### 2. **Approval of Sample**

Before commencing the work with the silane emulsion, tests should be carried out at site on various surfaces to determine the optimum quantity required to fill up the micro pores of the substrate. The dilution of the emulsion on bricks should be done @ 1:24, i.e. at approximately 0.55 kg/sqm, with water whose hardness is less than 20 dH. The test should be carried out strictly as per the manufacturer's recommendations and got approved by the Engineer-in-Charge.

### 3. **Scaffolding**

Double scaffolding having two sets of vertical supports should be provided. The supports should be sound, strong, tied together with horizontal pieces over which scaffolding planks should be used.

### 4. **Preparation of Surface**

Joints should be raked out properly. Dust, loose mortar and all foreign matter should be brushed out. Any wax, oil and grease should be completely eliminated from the substrate. Efflorescence, if any, should be removed by brushing and scrapping. Any surface imperfection such as cracks should be rectified using necessary materials and cured properly before application of the emulsion. The surface should then be thoroughly washed with water, cleaned and dried. The substrates to be treated with the impregnating emulsion should be dry to ensure deep penetration of the water repellent.

### 5. **Application of the Silane based impregnating emulsion**

The emulsion should be applied strictly as per the manufacturer's specifications with brush/airless spray guns. The application should be in 2 coats, wet on wet, without drying between the coats for best effect. On vertical and sloping surfaces the solution should run down in the form of a clearly visible descending wet curtain (important for an even treatment). This is achieved by allowing the solution to flow against the surface of the building material without pressure.

### 6. **Precautionary measure**

Application of the coating should not be carried out:

- during strong wind or rain
- on a painted surface
- when the outside temperature is less than 5° C

All work should continue without stops, completing the area being treated in one operation. If the area is large, a sufficient number of workers should be employed so that a flowing edge may be maintained without forming any joints. However, it is important while making a joint, not to overlap or over-spray at the joint.

Contact with skin, eyes and clothing must be avoided and all surfaces not to be impregnated must be protected from splashes. Aluminium and glass may be corroded. Any undesirable splashes must be washed off immediately with plenty of water.

### 7. **Guarantee**

The Contractor shall furnish a written guarantee on non-judicial stamp paper certifying that the protective coating shall be free from any defects for a minimum period of 5 years

S.No	Description	Unit	Qty	Rate (INR)	Amount (INR)
1	Painting of external walls and surfaces at all heights with Asian Paints Apex Ultima Protek base coat (one coat of self-priming + one coat of undiluted coat) and two or more coats of advanced anti algal, modified acrylic, weatherproof Apex Ultima Protek with required shade of Asian paints on new work to give an even shade. The rate including materials, labour, cleaning the surface, preparation the base, exterior primer, two or more coats of Asian Paints Truecare Wall putty/ Birla White Level Plast putty and spray one coat of synthetically bound, water based acrylic smooth texture paints, scaffoldings, curing, etc. with 10 years guarantee. The work shall be carried out strictly in accordance with manufacturer's specifications	Sq.m.	8000		
2	Providing and applying two coats, wet on wet, transparent silane based emulsion and penetrative water repellent impregnation treatment of approved brand of 'Wacker/ GE Bayer Silicones' to external brick/ stone cladding concrete, masonry, copings and roof tiles surfaces, including cost of cleaning with MC-3X, preparation of substrate and scaffoldings, etc. with 5 years guarantee	Sq.m.	40000		
	TOTAL				

(Indian Rupees

only)

Contractor