

National Institute of Unani Medicine , Kottogapalaya, Bangalore

Tender

For

**Construction of road from main road to Regimental Therapy Block,
NIUM, Kottogapalaya, Bangalore**

Volume-II

CONDITIONS OF CONTRACT

FEBRUARY 2014



HSCC (INDIA) LTD.
(CONSULTANTS & ENGINEERS FOR MEGA HOSPITALS & LABORATORIES)
E-6(A), sector-1, NOIDA(U.P) 201301 (India)

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Tender No. HSCC/NIUM/Road/2014

SECTION I: INSTRUCTIONS TO BIDDERS

A. General

1.0 Scope of work :

1.1 National Institute of Unani Medicine, Bangalore under Ministry of Health & Family Welfare, Govt. of India represented by HSCC (I) Ltd to **invite bids for the Construction of road from main road to Regimental Therapy Block, NIUM, Kottegalaya, Bangalore and its maintenance during defect liability period.**

1.2 The successful bidder will be expected to complete the works within **01 (One) calendar month** from the date of commencement of work.

2.0 The Employer:

National Institute of Unani Medicine, Bangalore under Ministry of Health Family Welfare Government of India , represented by their consultant M/s HSCC (India) Limited (HSCC), A Government of India Enterprise, having its Corporate office at plot No. 6(A), Block-E, Sector -1, Noida, Distt. Gautam Budh Nagar (UP) and having its registered office at 105, Plot No.5, Gupta Arcade, D.D.A. Local Shopping Complex, Mayur Vihar, Phase-I, Extension, Delhi-110091 will enter into the agreement with the chosen contractor for & on behalf of Employer.

2.1 In these documents wherever the word tender/ tenderer/tendering has been used, the same may be considered synonymous with bid/bidder/bidding.

3.0 Informations to be submitted:

3.1 All bidders shall include the following information and documents with their bids:

1. Power of attorney of the signatory of the bid to commit the bidder.
2. A Work plan clearly bringing out how the bidder proposes to carry out the work to achieve the time schedule.

4.0 Cost of bidding :

The bidder shall bear all costs associated with the preparation and submission of his bid, and the Employer will in no case be responsible or liable for those costs.

5.0 Site visit :

The bidder is advised to visit and examine the Site of Works and its surroundings and obtain for himself on his own responsibility and at his own risk all information that may be necessary for preparing the bid and entering into a contract for construction of road. The cost of visiting the Site shall be at the bidder's own expense.

B. Bidding Documents

6.0 Content of bidding documents :

The set of bidding documents comprises the documents listed below :

Prequalification Document, Conditions of contract, & Bill of Quantities

7.0 Clarification of bidding documents :

A prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable (hereinafter, "cable" includes facsimile) at the Engineer's address indicated in the Invitation to Bid. The Engineer will respond to any request for clarification which he received earlier than 7 days prior to the submission of bid. Copies of the Engineer's response will be forwarded to all purchasers of the bidding documents, including a description of the enquiry

but without identifying its source.

8.0 Amendment of bidding Documents :

- 8.1 Before the deadline for submission of bids, the Engineer may modify the bidding documents by issuing addenda.
- 8.2 Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing or by cable to all purchasers of the bidding documents.
- 8.3 To give prospective bidders reasonable time to take an addendum into account in preparing their bids, the Engineer shall extend as necessary, the deadline for submission of bids in accordance with Sub-Clause 16.2.

C. Preparation of Bids

9.0 Language of bid :

All documents relating to the bid shall be in English Language only.

10.0 Documents comprising the bid :

The bid submitted by the bidder shall comprise the following:

- (a) Bid Security
- (b) Prequalification Document (Vol I)
- (c) Conditions of Contract (Vol II)
- (d) Bill of Quantities (Vol III)

and any other documents required to be completed and submitted by bidders in accordance with these instructions.

11.0 Bid prices :

- 11.1 The bidder shall fill the rates against each item of BOQ both in words and figures.
- 11.2.1 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause shall be included in the rates, prices, and total amount of bid submitted by the bidder. The evaluation and comparison of bids by the Employer shall be made accordingly.
- 11.3 The rates and prices quoted by the bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment on any account.

12.0 Currencies of bid and payment :

The rate to be quoted by the bidder shall be in Indian Rupees.

13.0 Bid validity:

- 13.1 Bids shall remain valid for a period of 120 days after the deadline for bid submission specified in Clause 16.
- 13.2 In exceptional circumstances, the bidders may be requested to extend the period of validity for a specified additional period. The request and the bidders' responses shall be made in writing or by cable. A bidder may refuse the request without forfeiting his bid security. A bidder agreeing to the request will not be required or permitted to modify his bid, but will be required to extend the validity of his bid security for the period of the extension, and in compliance with Clause 14 in all respects.

14.0 Bid security:

- 14.1 The bidder shall furnish, as part of his bid, a security amount of Rs. 30560/- (Rupees Thirty Thousand Five Hundred Sixty Only). The bid security shall be valid up to 120 days after the deadline for bid submission specified in Clause 16.
- 14.2 The bid security shall be in the form of a Pay order/ Demand Draft from a Nationalized/Scheduled bank in favour of “**HSCC (I) Ltd, ” payable at Noida/Delhi.**
- 14.3 In case the bid security submitted in the form of Bank Guarantee from a Nationalized/Scheduled bank to be prepared in favour of “**HSCC (I) Ltd, ” payable at Noida/Delhi.**
- 14.4 The cost of tender documents shall be Rs. 1000/- (One Thousand Only) to be deposited before purchase of tender documents either in cash or in the form of demand draft from a Nationalized/Scheduled bank in favour of “**HSCC (I) Ltd, ” payable at Noida/Delhi.**
- 14.3 Any bid not accompanied by an acceptable bid security shall be rejected.
- 14.4 The bid security of unsuccessful bidders will be returned within 28 days of the end of the bid validity period specified in Sub-Clause 13.1.
- 14.5 The bid security of the successful bidder will be discharged when the bidder has signed the Agreement and furnished the required performance security.
- 14.6 The bid security shall be forfeited :
- (a) if the bidder withdraws his bid during the period of bid validity;
 - (b) if the bidder does not accept the correction of his bid price, pursuant to Clause 23; or
 - (c) in the case of a successful bidder, if he fails within the specified time limit to :
 - (i) sign the Agreement ; or
 - (ii) furnish the required performance security.
- 14.7 No interest will be payable on the bid security amount cited above.

15.0 Sealing, marking and submission of bid :

- 15.1 The bid shall be submitted in accordance with the procedure detailed herein. Documents shall be enclosed in separate envelopes of appropriate size each of which shall be sealed.
- (i) Envelope No. 1 shall contain the bid security and tender document fees in case of downloaded of tender as indicated in clause 14 of these instructions to bidders.
 - (ii) Envelope No. 2 shall contain the covering letter and original bid document consist of Prequalification document (Vol I), Conditions of Contract (Vol II) and all Amendments if any duly signed and stamped and the other bid documents as indicated at Clause 3.1. Non submission of any document may lead to rejection of bid.
 - (iii) Envelope No. 3 shall contain only the bill of quantities (Vol III) and rates/prices duly filled in and signed and stamped without any conditions whatsoever. Bids containing any conditions in Envelope no. 3 are liable to be summarily rejected. Any variation between the rates mentioned in figures and words the rates in words shall prevail.

The contractor must fill up the prices both in words and figures. All numbers of cutting to be signed & stamped by the bidder. Only summary of all quoted price shall be announced during opening of price bids.

Please note that the price should not be indicated in any of the documents enclosed in envelope 1 & 2

All bidders are required to submit unconditional bids. Conditional bids if submitted may be rejected and no correspondence in this regard shall be entertained.

- 15.2 The bidder shall seal the bid.
- 15.3 All the three envelopes shall be sealed and enclosed in fourth envelope and addressed to the Manager (Civil), HSCC (I) Ltd, E-6A, Sector-I, Noida-201301.
- 15.4 All the above envelope shall bear the following identification.

Name of work: - Construction of road from main road to Regimental Therapy Block, NIUM, Kottegalpalaya, Bangalore

- 15.5 All the envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened, if required.
- 15.6 All recipients for the purpose of submitting a bid, shall treat the contents of the documents as private and confidential.

16.0 Deadline for submission of bids :

- 16.1 Bids must be received by the Employer (NIUM) at the address specified above not later than the designated date and time.
- 16.2 The Employer (NIUM) may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 8, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will then be subject to the new deadline.

17.0 Late bids:

Any bid received after the deadline prescribed in Clause 16.0 will be returned unopened to the bidder.

18.0 Modification and withdrawal of bids:

- 18.1 The bidder may modify or withdraw his bid by giving notice in writing before the deadline prescribed in Clause 16.
- 18.2 The bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 15, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL", as appropriate.
- 18.3 No bid shall be modified after the deadline for submission of bids.
- 18.4 Withdrawal of bid between the deadline for submission of bids and the expiration of the original period of bid validity specified in the Form of Bid shall result in the forfeiture of the bid security pursuant to Clause 14.

D. Tender Opening and Evaluation

19.0 Bid opening:

- 19.1 Bids shall be opened in the office of HSCC (I) Ltd, E-6A, Sector-1, Noida, half an hour after the prescribed time for tender submission in presence of the bidders representatives who may wish to be present.

Envelope No.1: Shall be opened first. If the bid Security and tender document fee (in case of download of the tender) is not found as prescribed, the bid shall be summarily rejected.

Envelope No.2: Shall then be opened. Bids of parties who do not accept the conditions laid down in the bid documents and not fulfilling prequalification criteria shall be rejected.

Envelope No. 3 : Shall contain the sealed price bid only. Whose bids are found to be complied as per envelope-1 & 2 & substantially responsive and meets prequalification criteria shall be opened at a subsequent date to be intimated in advance to such eligible bidders.

19.2 The Engineer will examine the bids to determine whether they are complete, whether the requisite bid securities have been furnished, whether the bids have been properly signed and whether the bids are generally in order.

19.3 Telegraphic/ fax offer will be treated as defective/ invalid and rejected. Only detailed complete bids received prior to the closing time and date will be taken as valid.

19.4 The bidders names, general technical details, the presence of the requisite bid security and such other details as the Engineer, at his discretion may consider appropriate will be announced at the bid opening.

19.5 The bid of any bidder who has not complied with any of the instructions contained herein may not be considered.

20.0 Process to be confidential:

20.1 Information relating to the examination, clarification, evaluation, and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Engineer's processing of bids or award decisions may result in the rejection of his bid.

21.1 Clarification of bids :

21.1 To assist in the examination, evaluation, and comparison of bids, the Engineer may, at his discretion, ask any bidder for clarification of his bid, including break down of unit rates. The request for clarification and the response shall be in writing or by cable, but no change in the price or substance of the bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Engineer in the evaluation of the bids in accordance with Clause 23.

22.0 Examination of bids and determination of responsiveness :

22.1 Prior to the detailed evaluation of bids, the Engineer will determine whether each bid (a) meets the eligibility criteria; (b) has been properly signed; (c) is accompanied by the required securities; (d) is substantially responsive to the requirements of the bidding documents; and (e) provides any clarification and/or substantiation that the Engineer may require.

22.2 A substantially responsive bid is one which conforms to all the terms, conditions, and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the bidding documents, the Engineer's right or the bidder's obligations under the contract or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive bids.

22.3 If a bid is not substantially responsive, it will be rejected by the Engineer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

23.0 Correction of errors :

23.1 Bids determined to be substantially responsive shall be checked by the Engineer for any arithmetic errors in computation and summation. Errors will be dealt by the Engineer as per following:

(a) When there is a difference between the rates in figures and in words, the rates, which correspond to the amounts worked out by the tenderer, shall be taken as correct.

b) When the amount of an item is not worked out by the tenderer or it does not correspond with the rate written either in figures or in words, the rate quoted by the tenderer in words shall be taken as

correct.

- c) When the rate quoted by the tenderer in figures and in words tallies but the amount is not worked out correctly, the rate quoted by the tenderer shall be taken as correct and not the amount.

If the bidder does not accept the corrected amount of bid, his bid will be rejected, and the bid security may be forfeited in accordance with Sub-Clause 14.0.

24.0 Currency for bid evaluation :

Bids shall be evaluated as quoted in Indian Rupees in accordance with Clause 12.

25.0 Evaluation and comparison of bids :

- 25.1 The Engineer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 22.

- 25.2 In evaluating the bids, the Engineer will determine for each bid the Evaluated Bid Price by adjusting the Bid Price after making any correction for errors pursuant to Clause 23.

E. Award of Contract

26.0 Award Criteria :

- 26.1 Subject to Clause 27, the Employer intends to award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has offered the Lowest Evaluated Bid Price.

27.0 Employer's right to accept any bid and to reject any or all bids :

- 27.1 Notwithstanding Clause 26, the Engineer on behalf of the Employer reserves the right to accept or reject any bid, and to cancel the bidding process and reject all bids, at any time prior to the award of contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the ground for the Employer's action.

28.0 Notification of award :

- 28.1 Prior to expiration of the period of bid validity prescribed, the Employer/Consultant (HSCC) will notify the successful bidder by cable confirmed by registered post /courier letter that his bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall name the sum which the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

- 28.2 The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security in accordance with the provision of Clause 29.

- 28.3 Upon furnishing by the successful bidder of a performance security, the Engineer on behalf of the Employer will promptly notify the other bidders that their bids have been unsuccessful.

29.0 Performance Security:

- 29.1 Within 15 days of receipt of the notification of award from the Employer/ Consultant (HSCC), the successful bidder shall furnish to the Consultant (HSCC), a performance security in the form of a bank guarantee from any of the scheduled bank in favour of HSCC (I) Ltd **for an amount equivalent to 5% of the Contract Price**. The validity of the Performance Security shall be upto the end of the Defect Liability Period with 3 months claim period after expiry of defect liability period

- 29.2 Failure of the successful bidder to comply with the requirements of Sub-Clause 29.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the bid security.

29.3 Signing of Agreement

Upon the receipt of the notification of Award by the successful Bidder, the successful Bidder shall fill the Agreement in accordance with form of Agreement included in the Bid documents and submit the same to the Engineer within two weeks of the date of receipt of notification of Award. The Engineer shall return the draft duly approved within one day from the date of receipt of the draft and the successful Bidder shall get the same engrossed, have the correct amount to stamp duly adjudicated by Superintendent of Stamps and thereafter return the same duly signed and executed on behalf of the successful Bidder, all at his own cost within 3 days from the receipt of the approved draft. The signing of agreement may be made together or separately for sections with respective client / HSCC Ltd, on behalf of the client

Section 2. Conditions of Contract

A. General 1.0 Definitions :

1.1 Terms which are defined in the Contract Data are not defined in the Conditions of Contract but keep their defined meanings. Capital initials are used to identify defined terms.

Acceptance is the date when the Contract came into existence upon receipt by the Contractor of the Letter of Acceptance issued by the Employer.

The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works.

The Completion Date is the date when the Engineer notifies that the works can be used by the Employer.

The Employer is National Institute of Unani Medicine, Bangalore (NIUM) ,

The Consultant is M/s. HSCC (I) Ltd. (HSCC).

The Contract is the contract between the Employer of the one part and the Contractor of the other.

The Contract Data defines the documents and other information which comprise the Contract.

The Contractor is a person or corporate body whose bid to carry out the Works has been accepted by the Employer.

The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.

The Contract Price is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

Days are calendar days; months are calendar months.

A Defect is any part of the Works not completed in accordance with the Contract.

The Engineer is the person named in the Contract Data who is responsible for supervising the Contractor, administering the Contract, certifying payments due to the Contractor, issuing and valuing Variations to the Contract, awarding extensions of time etc.

Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The Initial Contract Price is the Contract Price at the date of the Employer's written acceptance of the Contractor's Bid.

The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Engineer by issuing an Extension of time.

Plant is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical function.

The Site is the area defined as such in the Contract Data.

The Start Date is given in the Contract Data. It is the date when the Contractor can commence work on the Contract.

It does not necessarily coincide with any of the Site Possession Dates.

A Subcontractor is person or corporate body who has a contract with the Contractor to carry out a part of the work in the Contract.

Temporary Works are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.

A Variation is an instruction given by the Engineer which varies the Works.

The Works are what the Contract requires the Contractor to construct, install, and hand over to the Employer.

2.0 Interpretation :

In interpreting these Conditions of Contract, singular also means plural, male also means female, and vice versa. Headings and cross-references between clauses have no significance. Words have their normal meaning under the language of the Contract unless specifically defined.

3.0 Language and law :

The language of the Contract and the law governing the Contract are stated in the Contract Data.

4.0 Engineer's decisions :

The Engineer is to decide contractual matters between the Employer and the Contractor fairly and impartially.

5.0 Delegation :

The Engineer may delegate any of his duties and responsibilities to other people after notifying the Contractor and may cancel any delegation after notifying the Contractor.

6.0 Communications :

Communications between parties which are referred to in the conditions are effective only when in writing.

7.0 Removal of personnel

If the Engineer asks the Contractor to remove a person who is a member of his staff or his work force and states his reasons the Contractor is to ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

8.0 Contractor's risks :

8.1 All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

Excepted Risks are :

- a. (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (iii) ionising radiations, or contamination by radio - activity from any nuclear fuel, or from any

- (iv) nuclear waste from the combustion of nuclear fuel, radio - active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed,
- b. loss or damage due to the use or occupation by the Employer of any section or part of the Permanent Works, except as may be provided for in the Contract.
- c. loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible.

9.0 Insurance :

- 9.1 The following insurance cover is to be provided by the Contractor in the joint names of the Employer(NIUM) and the Contractor for the period from the Start Date to the end of the Defects Notice Period or of the last Defects Correction Period whichever is the later :
 - (a) cover against damage to other people's property caused by the Contractor's acts or omissions;
 - (b) cover against death or injury caused by the Contractor's acts or omissions to
 - (i) anyone authorised to be on the Site ;
 - (ii) third parties who are not on the Site ;
 - (c) cover against damage to the Works and materials during construction.
- 9.2 Policies and certificates for insurance are to be produced by the Contractor to the Engineer for approval before the Start Date given in the Contract Data and subsequently as the Engineer may require.
- 9.3 If the Contractor does not produce any of the policies and certificates required, the Employer may effect the insurance for which the Contractor should have produced the policies and certificates and recover the premiums it has paid from payments due to the Contractor till the said insurance by agency regularized by agency.
- 9.4 Alterations to the terms of an insurance may be made either with the approval of the Engineer or as a result of general changes imposed by the insurance company with which the insurance policy is effected.
- 9.5 Both parties are to comply with conditions of the insurance policies.

10.0 Indemnities :

- 10.1 The Contractor is liable for and indemnifies the Employer against losses, expenses and claims for loss or damage to physical property, personal injury, and death caused by his own acts or omissions.
- 10.2 The Contractor idemnifies the Employer against claims for damage caused by the movement of his Equipment or Temporary Works outside the Site.

11.0 Queries about the contract data :

The Engineer is to give instructions clarifying queries about the Contract Data.

12.0 Contractor to execute the works :

The Contractor is to construct road from main road to Regimental Therapy Block, NIUM, Kottegalpalaya, Bangalore in accordance with the Specification and terms& conditions of contract..

13.0 The works to be completed by the intended completion date :

The Contractor may begin the Works on the Start Date and is to carry out the Works in
HSCC, NOIDA

accordance with the program submitted by him, as updated with the approval of the Engineer, and complete them by the Intended Completion Date i.e 1 (One) calendar month.

14.0 Approval of samples of all the BOQ items to be taken from client before execution of item.

15.0 Safety :

The Contractor is responsible for the safety of all activities on the Site.

16.0 Possession of the site :

The Employer is to give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data, the Employer is deemed to have delayed the start of the relevant activities.

17.0 Access to the site :

The Contractor is to allow the Engineer and any person authorized by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

18.0 Instructions :

The Contractor shall carry out all instructions of the Engineer.

19.0 Procedure for disputes :

If any dispute or difference of any kind what so ever shall arise between the Employer and the contractor or the Engineer and the contractor in connection with or arising out of the Contract, or

the execution of the works, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the contract, it shall, in the first place, be referred to and settled by the Engineer who shall, within a period of ninety days after being requested by either party to do so, give written notice of his decision to the Employer and the Contractor. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of the works with due diligence whether he or the Employer requires arbitration or not. If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of ninety days from receipt of such notice, the said decision shall remain final and binding upon the Employer and the Contractor. If the Engineer shall fail to give notice of his decision, as aforesaid within a period of ninety days after being requested, or if either the Employer or the Contractor be dissatisfied with any such decision, then and in any such case either the Employer or the Contractor may within ninety days after receiving notice of such decision or within ninety days after the expiration of the first named period of ninety days as the case may be require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision if any of the Engineer has not become final and binding as aforesaid, shall be finally settled under the Indian Arbitration and Conciliation Act, 1996 or any statutory modification or re - enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. Such arbitration shall be settled by Sole arbitrator who shall be appointed by Chairman cum Managing Director, HSCC. The arbitration shall take place in New Delhi unless both parties agree otherwise. Neither party shall be limited in the proceedings before the arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference referred to the arbitrator as aforesaid. The reference to arbitration may proceed notwithstanding that the works shall not then be or be alleged to be complete provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.

B. Time Control

20.0 Program :

- 20.1 Within the time stated in the Contract Data, the Contractor shall submit to the Engineer for his approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 20.2 The Contractor is to submit to the Engineer an updated program as required by the Engineer.
- 20.3 The Engineer's approval of the program does not alter the Contractor's obligations. The Contractor may revise the program and submit it to the Engineer again at any time. A revised program is to show the effect of Variations.

21.0 Extension of the intended completion date :

- 21.1 The Engineer is to extend the Intended Completion Date if an event not attributable to the contractor causing delay occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date.
- 21.2 The Engineer is to decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking him to decide upon the effect of a event causing delay or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by his failure is not considered in assessing the new Intended Completion Date.

22.0 Delays ordered by the Engineer :

The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.

23.0 Management meetings :

- 23.1 The Engineer and/ the Contractor may be required the other to attend a management meeting. The business of a management meeting is to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

C. Quality Control

24.0 Identifying defects :

The Engineer is to check the Contractor's work and to notify the Contractor of any Defects which he finds. Such checking does not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work which he considers may have a Defect.

- 25.0 Tests : Tests of all materials will be carried out as per BIS. Incase it is not available in BIS the same shall be carried out as per decision given by engineer based on existing general practice which will be binding to the agency. The material which is not passing to BIS or any other test will be rejected or may be accepted with reduced rates as per decision taken by engineer.**

26.0 Correction of defects :

- 26.1 The Engineer is to give notice to the Contractor of any Defects of which he is aware before the end of the Defects Notice Period, which begins at Completion.
- 26.2 Every time notice of a Defect is given, a Defects Correction Period for the notified defect beings. The Contractor is to correct the notified defect within the Defects Correction Period. The length of the Defects Correction Period is one year as also stated in the Contract Data.

- 26.3 The Contractor is to correct defects which he notices himself before the end of the Defects Notice Period.
- 26.4 The Engineer is to certify that all Defects have been corrected when all known Defects have been corrected. If the Engineer considers that correction of a Defect is not essential he can request the Contractor to submit a quotation for the corresponding reduction in the Contract Price or an earlier Intended Completion Date or both. If the Engineer accepts the quotation, the corresponding change in the Contract Data is a Variation.

27.0 Uncorrected defects after completion date :

- 27.1 After completion the Engineer may arrange for a third party to correct a Defect if the contractor has not corrected it within the Defects Correction Period.
- 27.2 The Engineer is to give the Contractor at least 28 days notice of his intention to use a third party to correct a Defect. If the Contractor does not correct the Defects himself within this notice period, the Engineer may have the Defect corrected by the third party. The cost of the correction will be deducted from the Contract Price.

D. Cost Control

28.0 Bill of quantities :

- 28.1 The Bill of Quantities is to contain items for the work to be done by the Contractor.
- 28.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

29.0 Changes in the quantities:

- 29.1 Final work done may exceed to any extent item wise as well as total work value wise.
- 29.2 If requested by the Engineer, the Contractor is to provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.

30.0 Variations :

- 30.1 All Variations are to be included in updated programs produced by the Contractor.

31.0 Payments for variations :

If the contract does not contain any rates or prices applicable to the varied work, the rates and prices in the contract shall be used as basis for valuation so far as may be reasonable, failing which , after due consultation by the engineer with the contractor, suitable rates or prices shall be agreed upon between the engineer and the contractor. In the event of disagreement, the engineer shall fix such rates or prices as are, in his opinion, appropriate based on CPWD norms and shall notify the contractor accordingly.

32.0 Cash flow forecasts :

- 32.1 The contractor shall provide cash flow forecast at the start of work to the Engineer. When the program is updated, the Contractor is to provide the Engineer with an updated cash flow forecast.

33.0 Payment certificates :

- 33.1 The contractor shall submit to the Engineer monthly statements of the value of the work completed less the cumulative amount certified previously on a printed proforma (prepared at the cost of Contractor).
- 33.2 The Engineer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

33.3 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

34.0 Payments :

Payment against each monthly RA bills upon each of the engineers certificates shall be made by the Employer/Consultant (HSCC) within 30 days after such certificates issued by the Engineer i.e. HSCC (I) Ltd.

However, 75% of the estimated amounts as determined by the Engineer of the payment due against the monthly running bill shall be paid within 10(ten) working days from the date of submission of the bill by the contractor and after certification by the Engineer representative at site/H.O in the approved format and complete in all respects accordingly payment shall be made by the **Employer/Consultant (HSCC)**.

To facilitate interim payments, the contractor shall submit a detailed price breakup of the items required to be executed for the project, for the approval of the Engineer. The payment shall be released as per the terms of the payment given in the tender document.

35.0 Taxes:

Taxes shall be deducted as applicable.

36.0 Cost of Labour :

The Contractor shall be deemed to have allowed in his Tender Price for the full cost of labour having due regard to the provision of all labour legislation of the Central and State Government which are in force on the date of the tender and which are applicable to labour engaged for the Contract.

37.0 Retention Amount :

37.1 The retention money @ 5% of gross value of each RA bill shall be deducted from the contractor bill by the Employer as stated in the Contract Data until Completion of the whole of the Works.

37.2 On Completion of the whole of the Works, half the total amount retained is repaid to the Contractor and balance half when the Defects Notice Period has passed and the Engineer has certified that all Defects notified by him to the Contractor before the end of this period have been corrected. The second half of the retention may be paid against submission of Bank Guarantee approved by the Engineer from any nationalized bank if applicable.

38.0 Liquidated damages :

38.1 If the contractor fails to complete execution of works within the relevant time as specified in the Contract Data / Extended date, the contractor shall pay the employer the relevant sum of Rs. 1000/- per day subject to maximum 5% of contract value as stated in the Contract Data as liquidated damages for every day or part of a day which shall elapse between the relevant time of completion and the date stated in Taking over certificate

39.0 Securities:

39.1 The performance payment securities are to be provided to the Employer by the Start Date and are to be issued in a form and by a bank acceptable to the Employer. payable.

39.2 If there is no reason to call the performance security, the performance security is to be returned by the Employer within 14 days of the last Defects Correction Period.

39.3 The Employer is to notify the Contractor of any claim made against the institution issuing the security.

- 39.4 The Employer may claim against the surety if any of the following occurs for 42 days or more
- (a) the Contractor is in breach of the Contract and the Employer has notified him that he is
 - (b) the Contractor has not paid an amount due to the Employer.

40.0 Cost of repairs :

Loss or damage to the Works or materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods is to be mended by the Contractor at the Contractor's cost if the loss of damage arises from the Contractor's acts or omissions.

E. Finishing the Contract

41.0 Completion :

The Engineer is to issue a certificate certifying Completion to the Contractor and the Employer when he decides that the work is completed.

42.0 Taking over :

The Employer takes over the Works within seven days of the Engineer issuing a certificate of Completion.

43.0 Final account :

- 43.1 The Contractor is to furnish to the Engineer a detailed account of the total amount which he considers is payable to him under the Contract before the end of the Defects Notice Period. The Engineer is to certify any final payment which is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer is to issue a schedule which states the scope of the corrections or additions which are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer is to decide on the amount payable to the Contractor.

44.0 Remedies and Powers due to Default of Contractor:

- 44.1 If the contractor shall become bankrupt or if the Engineer shall certify in writing to the Employer that in his opinion the contractor:
- a) has abandoned the contract, or
 - b) without reasonable excuse has failed to commence the work or has suspended the progress of the works for twenty eight(28) days after receiving from the Engineer written notice to proceed, or
 - c) has failed to remove materials from the Site or to pull down and replace work twenty eight(28) days after receiving from the Engineer written notice that the said materials or work had been condemned and rejected by the Engineer under these conditions, or
 - d) despite previous warnings by the Engineer, in writing, is not executing the works in accordance with the contract, or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or
 - e) has to the detriment of good workmanship, or in defiance of the Engineer's instructions to the contrary, sublet any part of the contract, then all the events mentioned in this clause 54.1 shall for the avoidance of doubt be a breach of this contract and the Employer may, after giving fourteen(14) days notice to the contractor, enter upon the site and the works and expel the contractor there from without thereby voiding the contract, or releasing the Contractor from any of his obligations or liabilities under the contract, or affecting the rights and powers conferred on the Employer or the Engineer by the contract, and may himself complete the works or may employ any other contractor to complete the works. The Employer or such other contractor may use for such completion so much of the constructional plant, Temporary works and materials, which have been or are deemed to be reserved exclusively for the execution of works under the

provisions of the contract, as he or they may think proper, and the Employer may, at any time sell any of the said constructional plant, Temporary works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the contractor under contract.

45.0 Valuation at date of forfeiture:

The Engineer shall as soon as may be practicable after any such entry and expulsion by the Employer, fix and determine ex-parte, or by or after reference to the parties, or such investigation or enquiries as he may think fit to make or institute, and shall certify what amount, if any, had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the contractor in respect of work then actually done by him under the contract and the value of any of the said unused or partially used materials, any constructional plant and any Temporary works.

46.0 Payment after forfeiture:

If the Employer shall enter and expel the contractor under this clause, he shall not be liable to pay to the contractor any money on account of the contract until the expiration of the Defects Notice period and thereafter until the costs of execution and maintenance, damages for delay in completion, if any, and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The contractor shall then be entitled to receive only such sum or sums, if any as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the contractor on due completion by him then the Contractor shall, upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the contractor to the Employer and shall be recoverable accordingly.

47.0 Property:

47.1 All materials on the Site, Plant, and Equipment owned by the Contractor, Temporary Works and Works are deemed to be the Property of Employer and are at his disposal if the Contract is terminated because of a fundamental breach of Contract by the Contractor.

48.0 Frustration:

48.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor the Engineer is to certify that the Contract has been frustrated. The Contractor is to make the Site safe and stop work as quickly as possible after receiving this certificate and is to be paid for all work carried out before receiving it and for any work carried out afterwards to which he was committed.

Section 3. Contract Data

Items marked "N/A" do not apply in this Contract

The following documents are also part of the Contract :

	Clause Reference (Conditions of contract)
*The Contractor's Bid and Letter of Acceptance	[1]
*The Conditions of Contract	[1]
*The Program	[20]
*The Bill of Quantities	[28]
The Employer Is : National Institute of Unani Medicine, Bangalore	
The Engineer is : General Manger (Projects) or any other officer nominated from time to time by Chairman Cum Managing Director(CMD)/Director of HSCC (I) Ltd. Plot 6(A),Block-E, Sector-1,Noida, Distt. Gautam Budh Nagar, Uttar Pradesh-201301.	
*The Start Date is as notified in the letter of Acceptance	
*The Intended Completion Date for the whole Work is 01 calendar month from Date of Award.	[13]
*The Contractor is to submit the program for the works within 15 days of being notified of the acceptance of his bid.	[20]
*The contractor is to submit the updated program at the interval of 15 days	[20.3]
*The Site is located at NIUM, Kottegalapaya, Bangalore	[1]
*The Defects Notice Period is ONE YEAR	[26]
*The Defects Correction Period is 30 days.	[26,27]
*The language of the Contract is English	[3]
*The law which applies to the Contract is the law of the Union of India, Jurisdiction is High Court of Delhi only	[3]
*Arbitration procedure to be used shall be Arbitration and Conciliation Act 1996 or the latest amended.	[19]
*Appointing Authority for the arbitrator	[19]
*Place where arbitration will take place : New Delhi.	[19]
*The currency of the contract is the Indian Rupees.	
*The proportion of payments retained is 5%. Limited to 5% of contract value.	[37]
*The liquidated damages for the whole of the work are Rs. 1,000/- per day.	[38]
*Maximum liquidated damages shall be 5% of the HSCC, NOIDA	

Contract price. [38]

*The amounts and currencies of the performance guarantee are [39]

Amount : 5% of Contract price
Currency : Indian Rupees

FORM OF AGREEMENT

1. This Agreement made the _____ day of _____ 2013 between National Institute of Unani Medicine, Bangalore , under Ministry of Health & Family Welfare , (hereinafter called "The Employer") represented by M/s HSCC (India) Limited, E-6(A), Sector - 1, Noida (UP) - 201301 who enters into this Agreement of the one part and M/s _____ (hereinafter called "the Contractor") of the other part.

1.1 Whereas the Employer is desirous that certain Works should be executed by the Contractor, viz **Construction of road from main road to Regimenal Therapy Block, NIUM, Kottegalapalaya, Bangalore and its maintenance during defect liability period for National Institute of Unani Medicine, Bangalore and its maintenance during defect liability period ("the works")** and has accepted a bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

Now this Agreement witnesseth of follows :

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz :
 - (a) The Letter of Acceptance and Correspondences ;
 - (b) The said bid ;
 - (c) The Conditions of Contract ;
 - (d) The Priced Bill of Quantities ;
 - (e) Any other relevant documents referred to this Agreement or in the aforementioned documents
3. In consideration of the payments to be made by the Employer/Consultant to the Contractor as herein after mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer/Consultant hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or only such sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

Signed, Sealed, and Delivered by the Said _____
HSCC, NOIDA

Binding Signature of HSCC (I) Ltd on behalf of Employer (NIUM)

Binding Signature of Contractor _____

in the presence of

Witness (1) :

Witness (2) :

**PROFORMA FOR PERFORMANCE BANK GUARANTEE
(On a stamp paper of appropriate value from any Nationalised Bank or Scheduled Bank)**

To,

**HSCC (I) Ltd
E-6A,Sector-1
Noida-201301**

Dear Sir,

In consideration of NIUM , Bangalore (hereinafter called Employer) which expression shall include his successor and assigns represented by his Consultant M/s. HSCC (I) Ltd., Plot - 6 (A), Block - E, Sector - I, Noida, Uttar Pradesh - 201 301 (hereinafter called HSCC) having awarded to M/s _____ (hereinafter referred to as the said Contractor or `Contractor' which expression shall whenever the subject to context so permits include its successors and assigns) a contract No. _____ in terms inter alia, of the HSCC Letter No. _____ dated _____ and the General Conditions of Contract and upon the condition of the contractor's furnishing security for the performance of the contractor's obligations and discharge of the contractor's liability under and in connection with the said contract upto a sum of Rs. _____ (Rupees _____ only) amounting to _____ percent of the total contract value.

1. We, _____ (hereinafter called `The Bank' which expression shall include its successors and assigns) having our branch office at _____ and Registered/Head Office at _____ a company registered under the Companies Act, 1956) hereby jointly and severally undertake to guarantee the payment to the Employer in rupees forthwith on demand in writing and without protest or demur or any and all moneys any wise payable by the contractor to the Employer under in respect of or in connection with the said contract inclusive of all the Employer's losses and damages and costs, (inclusive between attorney and client) charges and expenses and other moneys any wise payable in respect of the above as specified in any notice of demand made by the Employer to the Bank with reference to this guarantee upto an aggregate limit of Rs. _____ (Rupees _____ only).
2. We _____ Bank Ltd. further agree that The Employer shall be sole judge of and as to whether the said contractor has committed any breach or breaches of any of the terms and conditions of the said contract and the extent of loss, damage, cost, charges and expenses caused to or suffered by or that may be caused to or suffered by The Employer/ HSCC on account thereof and the decision of The Employer that the said Contractor has committed such breach or breaches and as to the amount or amounts of loss, damage, costs, charges and expenses caused to or suffered by The Employer from time to time shall be final and binding on us.
3. The Employer shall be at liberty without reference to the Bank and without affecting the full liability of the Bank hereunder to take any other security in respect of the Contractor's obligations and liabilities hereunder or to vary the contract or the work to be done thereunder vis-a-vis the Contractor or to grant time or indulgence to the Contractor or to reduce or to increase or otherwise vary the prices of the total contract value or to release or to forbear from enforcement of all or any of the security and/or any other security(ies) now or hereafter held by The Employer and no such dealing(s) reduction(s) increase(s) or other indulgence(s) or arrangements with the Contractor or release or forbearance whatsoever shall absolve the bank of the full liability to The Employer hereunder or prejudice the rights of The Employer against the bank.
4. This guarantee shall not be determined or affected by the liquidation or winding up, dissolution, or change of constitution or insolvency of the Contractor but shall in all respects and for all purposes be binding and operative until payment of all monies payable to The Employer in terms thereof.

5. 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 any wise affected or suspended by reason of any dispute or disputes having been raised by the Contractor stopping or preventing or purporting to stop or prevent any payment by the Bank to The Employer in terms hereof.
6. The amount stated in any notice of demand addressed by The Employer to the Bank as liable to be paid to The Employer by the Contractor or as suffered or incurred by The Employer on account of any losses or damages or costs, charges and/or expenses shall be conclusive evidence of the amount so liable to be paid to The Employer or suffered or incurred by The Employer as the case may be and shall be payable by the Bank to The Employer in terms hereof.
7. This guarantee shall be a continuing guarantee and shall remain valid and irrevocable for all claims of The Employer and liabilities of the contractor arising up to and until midnight of_____.
8. This guarantee shall be in addition to any other guarantee or security whatsoever that The Employer may now or at any time any wise may have in relation to the Contractor's obligations/or liabilities under and/or in connection with the said contract, and The Employer shall have full authority to have recourse to or enforce this security in preference to any other guarantee or security which The Employer may have or obtain and no forbearance on the part of The Employer in enforcing or requiring enforcement of any other security shall have the effect of releasing the Bank from its full liability hereunder.
9. It shall not be necessary for The Employer to proceed against the said Contractor before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank notwithstanding that any security which The Employer may have obtained or obtain from the contractor shall at the time when proceedings are taken against the said bank hereunder be outstanding or unrealised.
10. We, the said Bank undertake not to revoke this guarantee during its currency except with the 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.
11. We _____ the said Bank further that we shall pay forthwith the amount stated in the notice of demand notwithstanding any dispute/difference pending between the parties before the arbitrator and/or that any dispute is being referred to arbitration.
12. Notwithstanding anything contained herein above, our liability under this guarantee shall be restricted to Rs. _____ (Rupees _____) and this guarantee shall remain in force till _____ and unless a claim is made on us within 3 months from that date, that is before _____ all the claims under this guarantee shall be forfeited and we shall be relieved of and discharged from our liabilities thereunder.

Dated _____ day of _____ 2014

For and on behalf of Bank.

Issued
under
seal :

PROFORMA FOR BID SECURITY BANK GUARANTEE

(To cover payment of Bid Security and Conditions of Contract)

(On a stamp paper of appropriate value from any Nationalised Bank or Scheduled Bank)

To
HSCC (I) Ltd
E-6A,Sector-1
Noida-201301

Dear Sir,

In consideration of your agreeing to accept Bank Guarantee for Rs.
(Rupees) in lieu of payment from
M/s having its /their registered office at

.....
(hereinafter called the Bidder) towards Bid Security in respect of your Tender no.
..... calling for Tender for
at and for due fulfilment of the terms and conditions of the said
Tender, we hereby undertake and agree to indemnify and keep you indemnified to the extent of Rs
..... (Rupees
.....).

In the event of any loss or damages, costs, charges or expenses caused to or suffered by you by
reason of any breach or non observance on the part of the Bidder of any terms and conditions of the
said Tender, we shall on demand and without cavil or argument, and without reference to the Bidder,
irrevocably and unconditionally pay you in full satisfaction of your demand the amounts claimed by
you, provided that our liability under this guarantee shall not at any time exceed Rs
.....
(Rupees).

This guarantee herein contained shall remain in full force and till you finalise the Tender and select
the Tender as per your choice and it shall in the event of the said Bidder being selected and entrusted
with the said work, continue to be enforceable till the said Bidder executes the Agreement with you
and commences the work as stipulated under the terms and conditions of the said Tender have been
fully and properly carried out by the said Bidder and accordingly discharges the guarantee.

We also agree that your decision as to whether the Bidder has committed any breach or non
observance of the terms and conditions of the said Tender shall be final and binding on us.

We under take to pay the Consultant any money so demanded by the Consultant notwithstanding any dispute or disputes raised by the Contractor(s) in any suit or proceedings pending before any Court or Tribunal relating thereto, our liability under this present being absolute and unequivocal.

The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Contractor(s) shall have no claim against us for making such a payment.

This guarantee shall continue to be in full force and effect for a period of 120 days from the date of submission of Bid. Notwithstanding the above limitations, we shall honour and discharge the claims preferred by you within thirty days of expiry of this guarantee.

We shall not revoke this guarantee during its currency except with your previous consent in writing. This guarantee shall not be affected by any change in Constitution of our bank or of the Bidder firm. Your neglect or forbearance in the enforcement of the payment of any money, the payment whereof is intended to be hereby secured or the giving of time for the payment hereto shall in no way relieve us our liability under this guarantee.

Dated this day of 2014

Yours faithfully,

For

Signature & seal of the Bank (Authorised Signatory)