

**MINISTRY OF EXTERNAL AFFAIRS
(GOVT. OF INDIA)**

**NEPAL BHARAT MAITRI EMERGENCY AND TRAUMA
CENTRE (NBMETC), KATHMANDU
NEPAL**

Tender

for

**Construction of Additional works for making Operation Theaters
(OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and
Trauma Centre (NBMETC), Kathmandu, Nepal**

VOLUME – III

SPECIAL CONDITIONS OF CONTRACT

July 2013



(Consultants & Engineers for Mega Hospitals & Laboratories)
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Tender No. HSCC/PG-III/MEA/Nepal/OT /2013

INDEX INSTRUCTION TO BIDDERS

Clause No.	Descriptions
A.	Instruction to Bidders
	GENERAL
1.0 & 1.1	Description of Works
1.2	The Principle Employer/ Employer
1.3	Time of completion
2.0	Information to be submitted
3.0	Cost of Bidding
4.0	Site Visit
B.	Bid Documents
5.0	Content of Bid Documents
6.0	Clarification on Bid Documents
7.0	Amendment of Bid Documents
C.	Preparation of Bids
8.0	Language of Bid
9.0	Documents Comprising the Bid
10.0	Bid Prices
11.0	Bid Validity
12.0 & 13.0	Bid Security
14.	Format and Signing of Bid

Clause No.	Descriptions
D.	Submission of Bid
15.0	Sealing, Marking & Submission
16.0	Deadline for Submission of Bids
17.0	Late Bids
18.0	Modification and Withdrawal of Bid
E.	Bid Opening and Evaluation
19.0	Bid Opening
20.0	Process to be Confidential
21.0	Clarification of Bids
22.0	Determination of Eligibility & Responsiveness
23.0	Correction of Errors
24.0	Evaluation and Comparison of Bids
F.	Award of Contract
25.0	Award Criteria
26.0	Consultant's Right to Accept any Bid, to Reject any or all Bids
27.0	Notification of Award
28.0	Signing of Agreement
29.0	Performance Security

SPECIFIC CONDITIONS OF CONTRACT

Clause No.	Descriptions
30.0	Definitions
31.0	Insurance of Works
32.0	Guarantees
33.0	Certificates and Payments
34.0	Settlement of Disputes - Arbitration
35.0	Address
36.1	Variation in Price
36.2	Subsequent Legislation
37.0	Taxation
38.0	Co-ordination Meeting
39.0	Special Applications
39.1	Site Information
39.2.1	Contractors Working Area
39.2.2	Contractors Temporary Structures
39.2.3	Procurement of Various Materials
39.2.4	Water Supply & Power Supply
39.2.5	Telecommunications
39.2.6	Temporary Fencing
39.2.7	Testing of Materials
39.2.8	Approval of Samples Prior to Use

Clause No.	Descriptions
39.3	Drawing to be Supplied by Consultant
39.4	As Made Drawings
39.5	Progress Photographs
39.6	Programme of Work and Progress Report
39.7	Metric Units
40.0	Rates/Prices
41.0	Compliance for Statutory Obligations
42.0	Unpriced Bids

ADDITIONAL SPECIFIC CONDITIONS OF CONTRACT

Clause No.	Descriptions
1.0	General
2.0	Scope of Contract
3.0	Stores and Materials
4.0	Supply of Equipment
5.0	Working Drawings etc.
6.0	Completion Drawings
7.0	Operation and Service Manuals
8.0	Inspection at Contractor's Premises
9.0	Subcontracting
10.0	Materials Submittals
11.0	Samples and Prototypes
12.0	Testing and Commissioning
13.0	Provisional Taking Over & Final Performance & Capacity Test
14.0	Operation of OTs
15.0	Guarantee and Defects Liability Period
16.0	Measurement of Works
17.0	Variation in Quantities
18.0	Performance Guarantee

Clause No.	Descriptions
19.0	Painting
20.0	Safe Custody and Storage
21.0	Terms of Payment
22.0	Training of Personnel
ANNEXURE A	Form of Agreement
ANNEXURE B	Proforma for Performance Bank Guarantee
ANNEXURE C	Proforma for Advance Bank Guarantee
ANNEXURE D	Proforma for Bid Security Bank Guarantee

INSTRUCTIONS TO BIDDERS

A. GENERAL

1.1 Description of Works

The scope of work involves Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal.

1.2 The Employer

Ministry of External Affairs, Govt of India, South Block, New Delhi shall be the principal Employer / Employer / owner for the works. All documents relating to any statutory authority for obtaining necessary clearance etc is to be signed/endorsed by principal employer/owner.

1.3 The Consultant

HSCC (India) Ltd.), E-6A, Sector-I, Noida-201301 (UP)

1.4 In these documents wherever the word Tender/ Tenderer/ Tendering has been used. The same may be considered synonymous with Bid/ Bidder/ Bidding.

1.5 Time for Completion

The successful Bidder shall complete the Works within 4 **Calendar months** from Consultant's order to commence the Work.

2.0 Information to be submitted

2.1 Bids submitted shall include the following information:

- (a) Copies of original documents defining the constitution, legal status, place of registration and principal place of business of the company or firm
- (b) A work plan clearly bringing out how the Bidder proposes to carry out the work to achieve the quality and the time schedule

The work plan shall clearly spell out with specific details the following:

- i. Detailed programme in the form of a PERT/CPM network clearly bringing out details of start & completion of all important activities and also programme showing material & labour resources at Nepal related to the above PERT/CPM network.

- ii. List of equipment along with details proposed to be used on the Works.
- iii. List and bio data of Engineers and other important staff members proposed to be employed on the Works.
- V. Any other documents related to works permit if required at Nepal.

3.0 Cost of Bidding

- 3.1 The Bidder shall bear all costs associated with the preparation and submission of his Bids and "The Consultant" will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.

4.0 Site Visit

- 4.1 The Bidder is advised to acquaint himself with the job involved, visit the Site & examine site conditions, climatic conditions, labour, power, water, material availability, transport and communication facilities, environmental regulations, laws and bye-laws of Statutory bodies of Govt. of Nepal and the Govt. of India and collect all information that will be necessary for preparing the Bid and entering into a Contract.

The cost of visiting the Site and collecting information for the purpose of submission of the Bid shall be to the Bidder's account.

- 4.2 The Bidder and any of his personnel or agents will be granted permission by the Employer to enter upon the Site for the purpose of such inspection, but only upon the express condition that the Bidder, his personnel or agents will release and indemnify the Employer and Employer's Personnel and agents from and against all liability in respect thereof and will be responsible for personnel injury (Whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expense however caused, which, but for the exercise of such permission would not have arisen.

B. BID DOCUMENTS

5.0 Content of Bid Documents

- 5.1 The Bid Documents comprise the following:

HSCC/PG-III/MEA/Nepal/OT/2013

Page No. SCC-9

- Volume-I = Pre Qualification Document
- Volume II = General Conditions of Contract
- Volume III = Comprising :
- Instructions to Bidders
 - Specific Conditions of Contract
 - Additional Specific Conditions of Contract
 - Sample Forms of Securities
 - Sample Form of Agreement
- Volume IV = Technical Specifications
- Volume V = Price Bid (Bill of Quantities)

5.2 The Bidder is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the Bid documents. Failure to comply with the requirements of the Bid Documents will be at the Bidder's own risk. Bids, which are not substantially responsive to the requirements of the Bid documents, will be rejected. **Bidders are requested to clear their queries before submission of bids and submit bids without conditions.**

6.0 Clarification on Bid Documents

6.1 A prospective Bidder requiring any clarifications on the Bid documents may notify the Consultant in writing or by telex or cable at the Consultant's mailing address indicated in the Bid documents. A meeting of the prospective Bidders shall be held at which the Consultant will respond to any request for clarification which he receives within two weeks of the first date of the issue of the Tenders. Written copies of the Consultant's response (including an explanation of the query but without identifying the source of the inquiry) will be sent to all prospective Bidders who have received the Bid documents.

7.0 Amendment of Bid Documents

7.1 At any time prior to the dead line for submission of Bids, the Consultant may for any reason, whether at his own initiative or in response to a clarification requested by the prospective Bidder, modify the Bid documents by amendment.

7.2 The amendment will be sent to all prospective Bidders who have received the Bid documents, to arrive not later than 3 days prior to the original or extended deadline for submission of Bids, in writing or by telex or cable and will be binding upon them. Prospective Bidders should promptly acknowledge receipt thereof by telex or cable to the Consultant.

- 7.3 In order to afford prospective Bidders reasonable time in which to take an amendment into account in preparing their Bids, the Consultant may, at his discretion, extend the deadline for the submission of Bids.

C. PREPARATION OF BIDS

8.0 Language of Bid

- 8.1 The Bid prepared by the Bidders and all correspondence and documents relating to the Bid exchanged by the Bidder and the Consultant shall be written in the English Language.

9.0 Documents comprising the Bid

- 9.1 The Bid to be prepared by the Bidder shall comprise of the following: the Bid and Appendix thereto, the Bid Security, the Bill of Quantities; the Schedules of Supplementary information, and any other materials required to be completed and submitted in accordance with the instructions to Bidders embodied in these Bid documents. The Forms, Bill of Quantities and Schedules provided in these Bid documents shall be used without exception.

- 9.2 All documents issued for the purpose of Bidding as described in Clause 5.1 and amendments issued in accordance with Clause 7, shall be deemed incorporated in the Bid. Bid Documents prepared and submitted in accordance with Clause 14 and 15 shall be returned by Bidders to the Consultant along with the submission of the Bid.

10.0 Bid Prices

- 10.1 The Bidder shall fill the rates against each item of Bill Of Quantities both in words and figures in the blank spaces provided in the respective columns. Item for which no rate or price is entered by the bidder will not be paid for by the Consultant when executed and shall be deemed covered by the others rates and prices in the bill of quantities. Correction, if any, shall be made by crossing out, initialling, dating, stamping and rewriting.

- 10.2 No taxes, levies/duties including VAT, royalty of any kind shall be levied by govt. of Nepal on any activity/work carried out or any material machinery or equipments purchased locally or imported from India by the Contractor. Govt of Nepal shall also not levied any taxes or duties of any kind on such material, machinery or equipments when it is exported to India upon completion of the project. Govt of Nepal shall not levy any income tax on any Indian contractors in connection with the project. However if such material, machinery or equipment is not exported to India and sold by the contractor in Nepal then all taxes,

duties as applicable to be paid by the contractor. Contractors profit and over heads etc. or for any other cost shall be included in the rates and prices and the total amount of Bid submitted by the Bidder. The evaluation and comparison of Bids by the Consultant shall be made accordingly.

- 10.3 The rates and prices quoted by the Bidder shall be fixed for items complete in all respect for the duration of the Contract and not subject to adjustment on any account except as otherwise provided in the conditions of Contract.
- 10.4 The Bidder shall fill his most competitive rates in the first instance as no negotiations shall be made after opening of the Tenders except if required with the lowest Bidder.
- 10.5 The all inclusive price of items quoted shall take care of impact of foreign exchange rate fluctuations for imported items.
- 10.6 No Letter of Credit (LC) shall be opened either by HSCC (Consultant) or by the Employer. Any requirement of opening of LC for the imported items/equipments shall be the responsibility of the contractor.

11.0 Bid Validity

- 11.1 The Bid shall remain valid and open for acceptance for a period of **180 days** from the last date fixed for receiving the same.
- 11.2 In exceptional circumstances prior to expiry of the original Bid validity period, the Consultant may request the Bidder for a specified extension in the period of validity. The request and the responses thereto shall be made in writing or by cable or telex. A Bidder may refuse the request without forfeiting his Bid Security. A Bidder agreeing to the request will neither be required nor permitted to modify his Bid, but will be required to extend the validity of his Bid Security correspondingly.

12.0 Bid Security

- 12.1 The Bidder shall furnish, as part of his Bid, a Bid Security of the amount of **Rs. 2,60,000/- (Rupees Two Lakh Sixty Thousand Only)** for Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal..No deviation shall be permitted from this.
- 12.2 The Bid Security shall be in the form of a Demand Draft/Pay Order/Bank Guarantee in favour of **HSCC (India) Ltd. Payable at New Delhi from any Nationalised/Scheduled bank.**

- 12.3 Any Bid not accompanied by an acceptable Bid Security will be straightaway Rejected.
- 12.4 The Bid Securities of unsuccessful Bidders will be returned as promptly as possible but not later than 30 days after the expiration of the period of Bid validity prescribed by the Consultant.
- 12.5 The Bid Security of the successful Bidder will be returned upon the Bidder executing the Contract and furnishing the required Performance Security.
- 12.6 The Bid Security may be forfeited
- a) If a Bidder withdraws his Bid during the period of Bid validity.
 - b) In the case of successful Bidder, if he does not :
 - i) enter into the Contract, or
 - ii) furnish the necessary Performance Security
 - iii) agree to arithmetic corrections made as per terms of Bid documents.
- 13.0 No interest will be payable by the Consultant on the Bid Security amount cited above.

14.0 Format and Signing of Bid

- 14.1 The Tender shall be filled & signed only by the firm/ corporation in whose name the Tenders have been issued. The Bid shall be typed or written in indelible ink and duly signed by a person or persons duly authorised to being the Bidder to the Contract. Proof of authorization shall be furnished in the form of written Power of Attorney, which shall accompany the Bid.
- 14.2 All pages of Bid shall be initialled and stamped by the person signing the Bid where entries or amendments have been made.
- 14.3 The complete Bid shall be without alterations interlining and erasures except those to accord with instruction issued by the Consultant or as necessary to correct errors made by the Bidder in which case such correction shall be initialled by person signing the Bid.

D. SUBMISSION OF BID

15.0 Sealing, Marking & Submission

15.1 The Bid shall be submitted in accordance with the procedure detailed herein. Specified documents shall be enclosed in envelope of appropriate size each of which shall be sealed.

- (i) Envelope No. 1 : Shall contain the Bid Securities as indicated in Clause 12 of these Instructions to Bidders.
- (ii) Envelope No. 2 : Shall contain covering letter and the other Bid documents duly signed including the following :
 - (a) Power of attorney of person authorised to sign the Bid. In case the Bid is submitted by a joint venture, each of the partners of the joint venture to sign the Bid on their behalf and the Bid of the joint venture shall authorise the person signing the Bid to do so on their behalf.
 - (b) Original Bid documents (all pages) (Volume I, II ,III,IV) duly signed and stamped.
 - (c) Documents regarding constitution of Bidder as indicated in Clause 2.1 of these Instructions to Bidders.
 - (d) Certificate of Registration.
 - (e) S/I/T/C Schedule and Schedule for man power to be deployed at Site.
- (ii) Envelope No. 3 : Shall contain only the Bill of Quantities and rates/prices (Volume V) 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.

The Contractor must fill up price against each item of BOQ (Volume V) both in words and figures in the blank spaces provided in the respective columns. The rates written in words shall prevail in case of any variation between the rates mentioned in figure and words.

Please note that the price should not be indicated in any of the documents enclosed in Envelope no. 1&2. Non-compliance shall entail rejection of the Bid.

15.2 The Bidder shall seal the Bid.

15.3 All the above three envelopes shall be sealed in a fourth envelope and addressed to :

**Dy. General Manager (Civil),
HSCC (India) Ltd.),
E-6A, Sector-I, Noida-201301 (UP)**

- 15.4 All the above envelope shall bear the following identification:
- Name of work : **Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal.**
- 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 **Dy. General Manager (Civil), HSCC (India) Ltd.), E-6A, Sector-I, Noida-201301 (UP)** not later than **designated date and time.**
- 16.2 The Consultant may, at his discretion, extend the deadline for submission of Bids through the issuance of an amendment in accordance with Clause 7.
- 17.0 Late Bids**
- 17.1 Any Bid received by the Consultant after the prescribed deadline for submission will liable to be rejected and will be returned unopened to the Bidder.
- 18.0 Modification and Withdrawal of Bid**
- 18.1 The Bidder may modify or withdraw his Bid after Bid submission, provided that modification or notice of withdrawal is received in writing by the Consultant prior to the prescribed deadline for submission of Bids.
- 18.2 The Bidder's modification or notice of withdrawal shall be prepared, sealed, marked and despatched in accordance with the provisions for the submission of Bids. Notice of withdrawal may also be sent by telex or cable but shall be followed by a signed confirmation copy, postmarked not later than the deadline for submission of Bids.
- 18.3 No Bid may be modified subsequent to the dead line for submission of Bids.
- 18.4 No Bid may be withdrawn in the interval between the deadline for submission of Bids and the expiration of the period of validity of the Bid

specified. Withdrawal of a Bid during this interval may result in the forfeiture of the Bid Security.

E. BID OPENING AND EVALUATION

19.0 Bid Opening

19.1 Bids shall be opened at **HSCC (India) Ltd.), E-6A, Sector-I, Noida-201301 (UP)** half an hour after the prescribed time for Bid submission in the presence of the Bidders' representatives who may wish to be present.

Envelope No. 1 : Shall be opened first. If the Bid Security is not found as prescribed, the Bid shall be summarily rejected.

Envelope No. 2 : Shall be opened next. Bids of parties who do not accept the conditions laid above in the Bid documents are also liable to be rejected. (volume I,II,III,IV)

19.2. The Consultant 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 stamped 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 of the Bids will be taken as valid.

19.4 The Bidder's names, general technical details, the presence of the requisite Bid Security and such other details as the Consultant, at his discretion may consider appropriate will be announced at the Bid opening.

Envelope No. 3 : Containing the sealed Price Bid (Volume-V), shall be opened for those bidders whose bid is found to be generally in order and substantially responsive, either at the bid opening or at a subsequent date to be intimated in advance to such eligible Bidders.

19.5 Only summary of prices quoted by the Bidders will be read out.

19.6 The Bid of any Bidder who has not complied with any of the instructions contained herein may not be considered.

19.7 Bids shall be addressed and submitted to the following

Dy. General Manager (Civil),
HSCC (India) Ltd.),
E-6A, Sector-I, Noida-201301 (UP)

20.0 Process to be Confidential

- 20.1 After the public opening of Bids, information relating to the examination, clarification, evaluation and comparisons of Bids and recommendations concerning the Award of Contract shall not be disclosed to Bidders or other persons not officially concerned with such process.
- 20.2 Any effort by the Bidder to influence the Consultant in the process of examination, clarification, evaluation and comparison of Bids and decision concerning Award of Contract may result in the rejection of the Bidder's Bid.

21.0 Clarification of Bids

- 21.1 To assist in the examination, evaluation and comparison of Bids, the Consultant may ask Bidders individually for clarification of their Bids, including breakdowns of unit prices. The request for clarification and the response shall be in writing or cable or telex, but no change in the price or substance of the Bid shall be sought, offered or permitted except as required to confirm the correction or arithmetical errors discovered by the Consultant during the evaluation of the Bids in accordance with Clause 24 hereof.

22.0 Determination of Eligibility & Responsiveness

- 22.1 The Consultant will determine whether the Bid is substantially responsive to the requirements of the Bid documents.

For the purpose of this Clause, a substantially responsive Bid is one which conforms to all the terms, conditions and specifications of the Bid documents without any deviation or reservation.

- 22.2 A Bid, which in relation to the cost estimates of the Consultant is unrealistically priced and which cannot be substantiated satisfactorily by the Bidder may be rejected as non responsive.
- 22.3 Every effort has been taken to put forth general specifications in these bid documents. If inadvertently, any of the specification drawn happens to match with the specifications of any one particular firm's product only, in respect of critical parameters, than it will not automatically mean that this particular firm's offer is only technically suitable. In general, the specifications offered by other firms will be assessed in their own entirety to ascertain whether or not the broad functions in general expected of the requirement are available with reasonable

tolerance on the desired requirements of the purchaser and accordingly the offers would be considered based on prudent assessment and sole discretion of the Consultant.

23.0 Correction of Errors

23.1 Bids, determined to be substantially responsive will be checked by the Consultant for any arithmetical errors in computation and summation. Errors will be dealt by the Consultant as follows :

- a) Where there is discrepancy between rates indicated in figures and in words, rates in words will govern.
- b) Incorrectly added totals will be corrected.
- c) In case of any clerical error between rates indicated in figures and words, the rate in words would prevail. In case there is any inconsistency between the rate and the value extended (after multiplication with the tender quantity),The rate quoted shall multiplication with the tender quantity),the rate quoted shall prevail.

23.2 If a Bidder does not accept the correction of errors as outlined above, his Bid will be rejected.

24.0 Evaluation and Comparison of Bids

24.1 Only such of the Bids as have been determined to be substantially responsive to the requirements of the Bid documents, in accordance with Clause 22 will be evaluated. Other non-responsive Bids will be rejected.

24.2 Bidders shall note that no preference of any nature will be given to any Bidder notwithstanding any custom, usage or instructions to the contrary.

24.3 Evaluation of the Bids will take into account, in addition to the Bid amounts, the following factors:

- a) Arithmetical errors corrected in accordance with Clause 23.
- b) Such other factors as the Consultant considers may have a potentially significant impact on Contract execution price and payments.

24.4 Offers, deviations and other factors, which are in excess of the requirements of the Bid documents or otherwise result in the accrual of

unsolicited benefits to the Consultant, shall not be taken into account in Bid evaluation.

- 24.5 Price adjustment provisions applying to the period of execution of the Contract shall not be taken into account in Bid evaluation except to the extent specifically stated in the Contract.

F. AWARD OF CONTRACT

25.0 Award Criteria

- 25.1 Subject to Clause 26, Consultant will Award the Contract after prior approval to the Bidder whose Bid has been determined to be eligible and to be substantially responsive to the Bid documents and who has offered the lowest evaluated Bid of the Bill of Quantities, provided further that the Bidder has the capability and resources effectively to carry out the Contract Works.

26.0 Consultant's Right to Accept any Bid, to Reject any or all Bids

- 26.1 Notwithstanding Clause 25, the Consultant reserves the right to accept or reject any Bid including the lowest and to annul the Bidding process and reject all Bids, at any time prior to Award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligations to inform the affected Bidder or Bidders of the grounds for the Consultant's action.

27.0 Notification of Award

- 27.1 Prior to the expiration of the prescribed period of Bid validity, the Consultant will notify the successful Bidder by cable or telex or letter confirmed in writing by registered letter that his Bid has been accepted.
- 27.2 The notification of Award will constitute the formation of the Contract.
- 27.3 Upon the furnishing by the successful Bidder of a Performance Security in accordance with the provisions of Clause 29, the Consultant will promptly notify the unsuccessful Bidders that their Bids have been unsuccessful.

28.0 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 Consultant within two weeks of the date of receipt of notification of

Award. The Consultant 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.

29.0 Performance Security

29.1 Within 15 days of receipt of the notification of Award from the Consultant, the successful Bidder shall furnish to the Consultant a Security in the form of a Bank Guarantee from Nationalised/Scheduled bank for an amount of 10 percent of the Contract sum. The validity of the Performance Security shall be upto the end of the Defect Liability Period.

29.2 In cases, where the aggregate of expected Contract payment would at any time exceed the Consultant's estimate of actual work performed by more than the amount of Performance Security specified in Clause 29.1 such Security shall be increased accordingly at the expense of the successful Bidder.

29.3 Failure of the successful Bidder to lodge the required Bank Guarantee shall constitute sufficient grounds for the annulment of the Award and forfeiture of the Bid Security.

SPECIFIC CONDITIONS OF CONTRACT

The Conditions of Contract shall be GENERAL CONDITIONS OF CONTRACT in Volume II (hereinafter called the General Conditions) as modified or added to by the following Specific Conditions of Contract, which shall be read and construed with the General Conditions as if they were incorporated therewith.

Insofar as any of the Conditions of Specific Conditions of Contract conflict or be inconsistent with any of the General Conditions, the conditions of Specific Conditions of Contract shall prevail.

30.0 Definitions

- a) "PRINCIPAL EMPLOYER/ EMPLOYER " means **Ministry of External Affairs, Govt of India, South Block, New Delhi**
- b) "Consultant" means **Dy. General Manager(Civil) of HSCC (India) Ltd.** or any officer nominated by the Chairman-cum-Managing Director, HSCC (India) Ltd. to act as Consultant from time to time.
- c) "Month" and "Year" and all dates shall be calculated according to the Gregorian Calendar.

31.0 Insurance of Works

All Insurances referred to in General Conditions shall be effected with an Indian Insurance Company incorporated and registered in India. All insurances and labour license to be submitted before commencement of works.

32.0 Guarantees

Performance Guarantees, , Retention money Guarantee and any insurance policies entered into by the Contractor under the terms of the Contract, shall stipulate that the proceeds of any claim shall be payable to **Ministry of External Affairs, Govt of India, South Block, New Delhi.**

33.0 Certificates and Payments

- a) Deleted

- b) The Contractor shall submit to the Consultant after the end of each month a detailed statement including measurements showing the estimated contract value of the Permanent Works executed up to the end of the month together with particulars of other amounts to which he is entitled under the Contract.
- c) The statement shall be submitted on a printed proforma (prepared at the cost of the Contractor) approved by the Consultant along with soft copy of the same in a CD.
- d) The Contractor shall be paid monthly, on the certification of the Engineer, the amount due to him which shall be the sum of the following amounts :
 - i) Subject to and in accordance with these Specific Conditions, the estimated value of the Permanent Works executed upto the end of the previous month less retention money named in the Bid, and
 - ii) Deleted
- e) Deleted
- f) Retention Money at the rate of 10% shall be deducted from each Interim Payment Certificate subject to the maximum of 5% of the contract price.
- g) The Retention Money shall, subject to Clause 60.6 (a) & 60.6 (b) of General Conditions of Contract, become due and shall be paid to the Contractor when the Consignee/Employer shall issue the Taking Over certificate notwithstanding that at such time there may be outstanding claims by the Contractor against the Consultant, provided always that if at such time there shall remain to be executed by the Contractor any Works ordered during the Defect Liability Period pursuant to Clause 49.1, 49.2, 49.3, 49.4 and 50.1 of the General Conditions hereof, the Consultant shall be entitled to withhold payment until the completion of such Works as much of the Retention Money as the Consultant may in his absolute discretion think fit.
- h) Payment against each monthly R/A bills upon each of the Consultant's certificates shall be made by **the Consultant** within 30 days after such certificate has been issued by the Consultant.
- i) The Consultant may at any time make any corrections or modifications to any certificate, which shall have been issued by him and shall have power to withhold any certificate if the Works or any parts thereof are not being carried out to his satisfaction.

- j) The responsibility for making the payments or meeting other obligations to the Contractor in respect of all Works as certified by the engineer shall be that of the Consultant and not of the employer.
- k) After completion of work and prior to final payment, the contractor shall furnish to the Consultant, a release of claim against the Consultant arising out of contract, other than claims specifically identified, evaluated and excepted from the operation of the release by contractor.

34.0 Settlement of Disputes - Arbitration

Sub Clause 67.1, 67.2, 67.3 and 67.4 of G.C.C. shall be followed.

35.0 Address

- a. The address of the Employer is as follows :

Ministry of External Affairs, Govt of India, South Block, New Delhi

- b. The address of the Engineer(Consultant) is as follows

The Dy. General Manager (Civil), HSCC (India) Ltd., Plot - 6 (A), Block - E, Sector - 1, Noida, Uttar Pradesh - 201 301.

- c. The address of the Contractor is

36.0 THE FOLLOWING SHALL BE READ IN ADDITION TO CLAUSE 34.1 TO THE GENERAL CONDITIONS

36.1 Variation in price

No Variation shall be payable in price on account of labour, material (General) , POL and / or any other account. Also no variation/escalation shall be payable on account of time over run if any in completion.

36.2 Subsequent Legislation

If, after the date seven days prior to the latest date for submission of Bids for the Works, there occurs changes to any National or State Statute, Ordinance, Decree or other law or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such statute ordinance, etc. which causes additional or reduced cost, the same shall be certified by the engineer and shall be paid by or credited to the Consultant and the Contract Price adjusted accordingly. Notwithstanding the foregoing such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the price adjustments formula in accordance with the provisions of Sub-Clauses (1) & (2) of this Clause.

The following items are not to be included in the price adjustment calculations:

- a. Liquidated Damages.
- b. Retention money withheld and released.
- c. Advance payments in the form of loan and their repayments.
- d. Value of any additional or varied work valued at current price.
- e. Payment to nominated subcontractors included as "Provisional sums" or "Prime cost" items in the Contract Price.

37.0 Taxation

No taxes, levies/duties including VAT, royalty of any kind shall be levied by govt. of Nepal on any activity/work carried out or any material machinery or equipments purchased locally or imported from India by the Contractor. Govt of Nepal shall also not levied any taxes or duties of any kind on such material, machinery or equipments when it is exported to India upon completion of the project. Govt of Nepal shall not levy any income tax on any Indian contractors in connection with the project. However if such material, machinery or equipment is not exported to India and sold by the contractor in Nepal then all taxes, duties as applicable to be paid by the contractor.

38.0 Co-ordination Meeting

The Contractor shall be required to attend co-ordination meetings with the employer, the Consultant and the other Contractors during the period of Contract as instructed by the Consultant. All costs incidental

to such interaction shall be to the Contractor's account and no claim will be entertained by the Consultant on this account.

39.0 Special Applications

39.1 Site Information

39.1.1 The proposed Site is located at **Nepal Bharat Maitri Emergency and Trauma centre (NBMETC), Kathmandu, Nepal.**

39.1.2 Proper arrangement of security, safety, transportation, manpower, lighting arrangement to be maintained during execution of works at night.

39.1.3 The entire works will be liable to be inspected by Chief Technical Examiner i.e. CTE. The contractor will provide all necessary help required for in this connection. The contractor will have to comply with the observations/suggestions of the CTE in respect of quality, specifications, workmanship in his scope of work, if any,. No extra payment will be made on this account however, any recovery arising out of the CTE's observation will be borne by the contractor.

39.1.4 Any damage to the site, building, fittings, fixtures etc. during execution of the works shall be got repaired/replaced by the contractor at his own cost to the satisfaction of the Employer/Consultant.

39.1.5 Any openings in walls, floor, ceiling slab, chasing/drilling in walls etc., if required to be made for the execution of works shall be got done by the contractor at his own cost. However after completion of the works the same shall be got repaired by the contractor at his own cost to the satisfaction of the Employer/Consultant.

39.1.6 All the foundations etc. required for installation of equipments and completing the works shall be provided by the contractor at his own cost.

39.1.7 Power distribution cables from the distribution panel, water distribution line wherever required and drain lines wherever required upto and from each equipment, shall be provided by the contractor at no extra cost. Only the main incoming power supply upto the power distribution panel and main water supply line shall be provided to the Contractor.

39.2.1 Contractor's Working Area

Suitable working area will be provided by the Employer to the Contractor. The Contractor may have to carry out some cutting / filling work for making his working area. The cost of all such Works shall be deemed to have been included in the rates and prices quoted for the Works and no extra payment shall be made on this account.

39.2.2 Contractor's Temporary Structures

The Contractor may, at his own expense and subject to the approval of the Employer/Consultant and statutory authorities, construct offices, stores, Workshop in the area allocated to him and remove the same as per the orders of the Employer/Consultant on completion of Works. The Contractor shall furnish such details of his Temporary Works as may be called for by the Employer/Consultant and the Contractor shall satisfy the Employer/Consultant as to their safety and efficiency. Employer/Consultant may direct those Temporary work which he considers unsafe or inefficient be removed and replaced in a satisfactory manner. The Contractor shall immediately follow Employer's/Consultant's directions/instructions.

The Contractor shall make his own arrangement at his own expense for labour camp / accommodation of his labour and staff and their conveyance to Site as no workers/ staff shall unless with the specific approval of the Employer/Consultant be allowed to stay within the Site. Gate passes shall be issued by the Employer/Consultant to authorise the Contractor's staff and workers to enter the Site.

39.2.3 Procurement of Various Materials

The Consultant will not supply any construction materials required for the Works under this Contract. The Contractor must, therefore, make his own arrangements for timely procurement of various materials including steel and cement. Prior approval of each and every material including steel cement, aggregate, bricks etc or any other fittings & fixtures to be taken from Consultant before its procurement to site.

39.2.4 Water Supply & Power Supply

The Contractor shall make his own arrangement for water supply at Site for drinking as well as construction purposes from the source provided by the client. The Contractor shall also make his own arrangements for power supply at Site for construction purposes and general use from the source provided by the client. Non-availability of power supply and/or water from whatever source shall not entail any additional claims or extension of Contract period in this account. The contractor will provide water & electricity to the Consultant's office free of cost for the required quantity by the Consultant's site office.

39.2.5 Telecommunications

The Contractor shall apply to the P&T authorities for the necessary telephone and communication lines at his cost.

39.2.6 Temporary Fencing

The Contractor shall at his own expense, erect and maintain in good condition temporary fences and gates along the boundary of the areas assigned to him for the purpose of execution of the Works.

The Contractor shall, except when authorised by the Employer/Consultant, confine his men, materials and plant within the Site of which he is given possession. The Contractor shall not use any part of the Site for purposes not connected with the Works unless prior written consent of the Employer/Consultant has been obtained. Access shall be made to such areas only by way of approved gateways.

39.2.7 Testing of Materials

All materials used in the works shall be subject to inspection and test. The Contractor shall carry out sampling of such materials and making of concrete test cubes as per the appropriate Indian Standards and as directed by the Consultant. The contractor shall deliver the samples of materials and concrete test cubes to the site office of the Consultant at site office/Site Testing Lab in a manner as directed by Consultant who will inspect the same and then order for testing of materials and concrete cubes..

The Contractor shall arrange for testing of materials normally in site testing lab but samples may be sent outside testing laboratories if necessary.. The delivery of the samples shall be undertaken by the Contractor. The cost and charges for sampling of materials and concrete cubes and delivering the same to the office of the Consultant and/or other places including all incidentals in connection with the same as directed by the Consultant and the testing charges there of shall be borne by the Contractor and shall be deemed to be included in the rates and prices quoted in the Bill of Quantities. The results of the tests carried out shall be binding on the Contractor who shall comply with any rectification measures that the Consultant may deem fit and order to be executed by the Contractor as a result of testing.

39.2.8 Approval of Samples prior to use

The Contractor shall submit the samples of all materials (Whether in list of approved make or not in list of approved make) he proposes to use in the Works for prior approval of the Consultant. A sample room shall be maintained at Site in which all approved samples shall be kept for comparison with materials being used at Site. Any materials not conforming to the approved samples shall be rejected.

39.3 Drawings to be supplied by Consultant

The Consultant shall supply to the Contractor from time to time during the progress of the Works such further drawings as will be necessary in his opinion for the proper and adequate execution and maintenance of the Works in accordance with the design and or any modification thereof as decided by the Consultant and the Contractor shall carry out the work in accordance with the said drawings. Any further drawing/detailing required shall be made by the Contractor at his own expense and all drawings to be supplied in hard and soft copies both.

39.4 "AS MADE" Drawings

The Contractor shall supply two complete sets of "As Made" Drawings on polyester tracing film 75 micron thick and also on computer floppy / CD and three prints showing details of all the Works as executed. The drawings and prints shall be delivered to the Consultant within one month of completion of the various Sections of the work or at such other times as directed by the Consultant. The drawings shall be fully dimensioned with the Consultant's standard title block or as approved by the Consultant. The cost of making the "As Made" drawings shall be deemed to be included in the rates quoted in the Bill of Quantities.

39.5 Monthly Progress Photograph

The Contractor shall supply to the Consultant a CD, negative and three prints of colour progress photographs of such portions of the work in progress or completed works every month end or as directed by the Consultant. The CD, negative and the photographs shall become the property of the Consultant. The photographs shall be of approximate size 169 mm x 115 mm each. The photographs shall be mounted in albums approved by Consultant and shall be suitably inscribed and captioned. The albums in a chronological order shall be handed over to the Consultant. No CD prints or the negatives may be supplied to any persons without the authority of the Consultant. All photographs to be taken from digital camera and software to be provided for transformation it to the computer. The photographs may be up to 100 nos per month as required by Consultant

39.6 Programme of Work and Progress Reports

The Contractor shall submit to the Consultant within four weeks of the Award of the Contract, six copies of detailed Schedule showing in an approved form the estimated dates of commencement and completion of different parts of the Works including the expected dates for completion of the various Sections of the Works. The detailed Schedule shall be such as it can be updated quarterly or as directed by the Consultant. Six copies of the revised Schedule shall be supplied to the Consultant as and when it is revised.

The Contractor shall submit to the Consultant before the second day of every week, a progress report for the preceding week showing the upto date progress and progress during the preceding week on all items of each section of the Works in relation to and in consideration of the detailed Schedule.

39.7 Metric Units

Metric units have been used in the specifications and on all the drawings.

If any materials described in the Contract or ordered by the Consultant are described by dimensions in the metric units and the Contractor can not in accordance with the Contract, procure such materials in the measure specified in sufficient time to avoid delay in the performance of his other obligations under the Contract, but can obtain such materials in other measure to dimensions approximating to those described in the Contract or ordered by the Consultant, then the Contractor shall henceforth give notice to the Consultant of these facts stating the dimensions to which such materials are procurable in the other measure. As soon as practicable after the receipts of any such notice the Consultant shall give an order to the Contractor which shall either

- (a) Direct the Contractor to supply such materials to the dimensions stated in his said notice to be procurable instead of the dimensions described in the Contract or originally ordered by the Consultant, or
- (b) Direct the Contractor to make some other variation whereby the need to supply such materials to the dimensions described in the Contract or originally ordered by the Consultant will be avoided.

39.8 Contractor shall carryout inspection, testing, checks and and shall maintain records of inspection, testing & checks of material, works and activities related to construction works in the ISO 9001 quality system formats, checklists etc. to be given by consultant during execution period. After getting approval from the Consultant, The contractor shall print at his own cost all forms, tables, formats etc.

40.0 Rates/Prices

The quoted rates/prices for the items shall be complete in all respect including all labour, material, plant and machinery, tools and tackles, all taxes, duties, levies, octroi, statutory levies applicable from time to time

and others as specified in SCC etc. The Contractor should quote his rates/prices accordingly for the complete items in all respects.

41.0 Compliance of Statutory Obligations

The Contractor shall comply all the statutory obligations and obtain all required clearances to implement the project without any financial repercussions to HSCC/Client and ensure all follow up actions with the local authorities in this respect for smooth completion of the project.

42.0 Unpriced Bids

The unpriced copies of the purchase orders of major items/equipments and of subcontracts placed by the Contractor shall be furnished to the Consultant.

ADDITIONAL SPECIFIC CONDITIONS OF CONTRACT

SPECIFIC CONDITIONS OF CONTRACT RELATING TO Construction of Additional Works for making Operation Theatres (OTs) functional.

1.0 General

- 1.1 The following additional specific conditions and specifications shall be read in conjunction with instructions to bidders, General and Specific conditions of Contract. If there are any provisions in these additional specific conditions and specifications which are at variance with the provisions in the above mentioned documents, the provisions in these additional specific conditions and specification shall take precedence.

2.0 Scope of Contract

- 2.1 Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal. as detailed in specifications, Bill of Quantities & drawings etc.

3.0 Stores and Materials

- 3.1 The contractor shall provide everything necessary for the proper execution of the work according to the intent and meaning of the drawings, Bill of Quantities and specifications taken together whether the same may or may not be particularly shown or described therein provided that the same can be reasonably inferred therefrom. In case of any discrepancy in the drawings or between the drawings, Bill of Quantities and specifications, the more stringent shall be followed. The decision of the Consultant in this regard will be final and binding upon the contractor.

4.0 Supply of Equipment/materials

Equipment/materials shall be strictly as per the specifications/standards given in the bid documents and approved by the Employer.

- 4.1 The contractor shall submit manufacturers test certificates of all the equipment supplied.
- 4.2 The contractor shall submit the original "Excise Paid Certificates", and exit Gate passes form manufacturer's factory/works clearly bearing the batch numbers and date of despatch.

5.0 Working Drawings etc.

- 5.1 The Contractor shall within 20 days of signing of the contract prepare and submit to the Consultant for approval, 2 sets of detailed working/shop drawings for the systems/ equipment indicating the layout of equipments, fabrication details, foundation details of equipments, electrical drawings, piping layout drawings indicating position/location of valves etc. and other drawings as required for the execution of the works under the contract.
- 5.2 The shop drawings shall also contain details of construction, size, arrangement, operating clearances, performance characteristics, and capacity of all items of equipment, as also details of all related items of work by other disciplines.
- 5.3 If the Consultant makes any amendment in the above drawings, the Contractor shall supply two fresh sets of drawings with the amendments duly incorporated, along with the drawings on which corrections were made. After final approval has been obtained from the Consultant, the Contractor shall submit a further six sets of shop drawings for the exclusive use of and retention by the Consultant.
- 5.4 The shop Drawings shall be submitted for approval sufficiently in advance of planned delivery and installation of any material, to allow Consultant ample time for scrutiny. No claims for extension of time shall be entertained because of any delay in the work due to failure to produce shop drawings in time.
- 5.5 Approval rendered on shop drawings shall not be considered as a guarantee of measurements or of building conditions. Where drawings are approved, said approval does not mean that drawings have been checked in detail nor does it in any way relieve the Contractor from his responsibility of furnishing materials or performing work and giving the performance of the Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal. as required by the Contract.

6.0 Completion Drawings

- 6.1 Following "AS BUILT" drawings shall be submitted by the contractor on completion of the work.
- a. Installation drawings giving complete details of the entire equipment including foundations.

- b. Electrical drawings showing cable sizes, equipment capacities, control components and control wiring.
- c. Schematic control drawings giving detailed sequence of operation and notes to explain the operation of the control circuit.
- d. Piping drawings showing all pipe sizes, valves and fittings indicating its location.
- e. Any other drawings to be supplied as per instructions of the Consultant.

The Drawings shall be cross checked and approved by the Consultant before acceptance.

7.0 Operation and Service Manuals

7.1 The contractor shall submit 3 sets of operation and service manuals in respect of the complete systems/ equipments including salient details of equipments, controls etc.

Following minimum details shall be furnished:

- i) Detailed equipment data as approved by the Consultant.
- ii) Manufacturer's maintenance and operating instruction.
- iii) Approved test readings.

The contractor shall also submit four (4) sets of technical literature on all automatic controls and complete technical literature on all equipment and materials. The contractor shall frame under glass, in the systems/ equipment room all consolidated control diagrams and all piping diagrams.

8.0 Inspection

8.1 The Consultant and his representatives shall at all reasonable time have free access to the contractor's premises/works. The contractor shall give every facility to the Consultant and his Representative and necessary help for inspection and examinations and test of the materials and workmanship.

8.2 The Consultant's Representative shall have full powers to inspect drawings of any portion of the work or examine the materials and workmanship of the works and their equipments & accessories at the contractor's works or at any other place from where the material or equipment is obtained. Acceptance of any material or equipment shall in no way, relieve the contractor of his responsibility for meeting the requirement of the specifications and giving the performance of the equipments and complete system/ equipments as per the contract.

9.0 Sub - Contracting

The contractor may subcontract the works with the written approval of the Consultant but subcontracting of any works shall not relieve the contractor from the responsibility of supplying the equipments/materials and giving the performance of Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal as per the conditions given in the contract and the overall responsibility of the contractor for compliance with the contract terms does not alter by subcontracting.

10.0 Material Submittals

The contractor shall submit material submittals for all equipments, materials and machinery for the written approval of the Consultant before placing orders. The material submittals shall comprise of at least the following :

- a. Manufacturer's technical catalogues and brochures giving technical data about performance and other parameters.
- b. Manufacturers drawings/ sketches showing construction, dimensional and installation details.
- c. Rating charts and performance curves clarifying rating of equipment selected or proposed.

11.0 Samples and Prototypes

The contractor shall submit samples of valves, controls , copper pipes , gas outlets, alarms and/ or any other parts or equipment as required by the Consultant for prior approval in writing before placing the order. The contractor shall also construct prototype or samples of work as laid down in the contract or as instructed by the Consultant. Such samples and prototypes after approval shall be retained by the Consultant and shall serve as the standards to be achieved in final construction.

12.0 Testing and Commissioning

12.1 Tests on the equipment as called for in the Specifications shall be carried out by the Contractor in accordance with the specifications, the relevant Standard Specifications and the relevant Indian and International Standards.

12.2 The initial tests shall include but not be limited to the following :

- a. To operate and check the proper functioning of all electrically operated components/equipments.
- b. To operate and check the proper functioning of all electrical panels, switch gears, safety and other controls.
- c. To check the systems against leaks in different circuits, alignment of motor, Belt adjustments etc.

- d. To check the vibration and noise levels of the equipment.
- e. Setting of all control and all such other tests which are essential for smooth functioning of the equipments, system, plant.
- f. Leakage detection test for the complete pipeline distribution system
- g. Check the operation and functioning of valves
- h. Check proper functioning of complete safety system like alarms, interlockings etc.

12.3 The Contractor shall pay for and arrange without any extra cost, all necessary balancing and testing equipment, instruments, materials, accessories, power, water, fuel and the requisite labour for testing and commissioning of various equipments and the complete System/ Equipments. Any defects in materials and/or in workmanship detected in the course of testing shall be rectified by the Contractor entirely at his own cost, to the satisfaction of the Consultant. The installation shall be tested again after removal of defects and shall be commissioned only after approval by the Consultant. All tests shall be carried out in the presence of the Consultant or the Consultant's Representative.

13.0 Provisional Taking Over

13.1 After completion of the installation of the System / Equipments and associated works the same shall be tested for its performance as per the contract. All adjustments should be made prior to this test so that proper conditions/working are achieved during this testing.

The System/ Equipments shall be provisionally taken over after successful completion of the above tests and the defects liability period shall commence after provisional taking over of the equipments/systems.

14.0 Operation and Maintenance of Nepal

14.1 After provisional taking over, the contractor shall provide maintenance services for the complete till the successful completion of Defect Liability Period. The comprehensive maintenance services during this period shall be inclusive of all spares, accessories, manpower, tools and tackle, replacement of parts, routine servicing and maintenance of equipments/system etc. complete in all respect. The consumables like water, electricity and medical gases, during this period shall be arranged and provided by the Employer/Consultant.

14.2 During providing maintenance services, the contractor shall deploy adequate skilled manpower, spare parts and tools and tackles for smooth operation and maintenance of the the said work as in scope of work. The Employer/Consultant shall have the right to ask for more manpower or ask for the replacement of existing manpower in case it is found that the operation and maintenance services provided by the contractor is not satisfactory. The decision of Employer/Consultant in this regard shall be final and binding on the contractor.

15. Guarantee and Defects Liability Period

15.1 All the equipments, components and the upgradation work of OTs as a whole shall be guaranteed for its performance and against any manufacturing defect. The defect liability shall be valid for a period of **1 year** (12 months) from the date of satisfactory completion of works and issue of provisional taking over certificate. The contractor shall guarantee that all equipments shall be free from any defect due to the defective materials and bad workmanship or any other cause and that the equipment shall work satisfactorily and that the performance and efficiencies of the equipment shall be not less than the guaranteed values. Any parts found defective during the defect liability period shall be replaced by the contractor at his own expense. The services of the contractor's personnel, if requisitioned during this period for such work, shall be made available free of any cost to the Employer/Consultant. If the defects are not remedied within a reasonable time mentioned in the written notice, the Consultant may proceed to do so at the contractors risk and expenses without prejudice to any other rights. Joint inspection report shall also be deemed as written notice for this purpose.

The contractor shall submit a Guarantee, jointly along with the Original Equipment Manufacturer/s (OEM), that they shall supply all necessary spares demanded for the routine and emergency maintenance of said work in scope of works/BOQ for a period of 10 years from the date of issue of provisional taking over certificate. A detailed list of spares will be supplied by the Contractor for the purpose of enabling the Employer/Consultant to decide spares needed for routine and emergency maintenance.

16.0 Measurement of Works

16.1 All works shall be measured in units as specified in the bill of quantities against each item. In case the method of measurement for any item is not clarified in the specifications, the same shall be measured in accordance with the relevant standards/codes.

16.2 The Consultant may from time to time intimate to the contractor that he requires the works to be measured and the contractor shall forthwith attend

or send a qualified agent to assist the Consultant or the Consultant's Representative in taking such measurements and calculations and to furnish all particulars or give all assistance required by either of them. Should the contractor not attend or neglect or omit to send such agent, then the measurements of the works, carried out by the Consultant or his Representative shall be taken to be the correct measurements of the works, in accordance with the standard method of measurements, as in prevalent use.

The contractor or his agent may at the time of measurement take such notes and measurements as he may require. The contractor shall submit Running bills supported by detailed measurement sheets.

17.0 Variation in Quantities

17.1 The quantities for ancillary work given in the drawings and/or specifications are for the guidance of the bidder. The contractor shall, however, be paid on the basis of actual quantities of works carried out.

18.0 Performance Guarantee

18.1 The contractor shall submit a performance guarantee certificate that the equipments and the complete System & equipments shall maintain the desired performance and shall also guarantee that the capacity of various components as well as the whole system covered under scope of work, technical schedules and bill of quantities etc. shall not be less than the specified capacities. The guarantee of the specific equipment supplier alone with regard to the performance of the system shall not be acceptable. However, this does not alter the overall responsibility of the contractor for compliance with the contract terms and conditions.

19.0 Painting

19.1 All equipment and ancillary items such as pipes, supports etc., will be painted in approved manner, using standard colour scheme as approved by the Consultant.

20.0 Safe Custody and Storage

20.1 Safe custody of all materials and equipments supplied by the contractor shall be his own responsibility till the final taking over by the Consultant. He should, therefore, employ sufficient staff for watch and ward at his own expenses. The Consultant may, however, allow the contractor to use the room/any other spare able room in site premises for temporary storage of his equipment if such spaces are ready and available.

21.0 **Terms of Payment**

21.1 For purposes of estimating the contract value of works executed for certificate of payment, the following norms shall be followed:

- 1) 70 % of the BOQ contract rates on delivery of equipments at site after inspection and passing on pro-data basis.
- 2) 20% of BOQ contract rates on satisfactory certificate of client after erection and installation, testing and commissioning of equipments
- 3) 10 % of BOQ contract rates after successful completion of trial run of 30 days from the date of handover to the client.

22.0 **Training of Personnel**

The contractor shall arrange to train the Employer's personnel on the following aspects.

- a) Operation and routine maintenance of all equipments and the complete works of Construction of Additional Works for making Operation Theatres (OTs) functional at 200 Bedded Nepal Bharat Maitri Emergency and Trauma Centre (NBMETC), Kathmandu, Nepal.
- b) Adjustments of settings for controls and protective devices.
- c) Preventive maintenance.
- d) Disassembling and assembling of equipments including identification and replacement of worn out parts.

23.0 **Downtime Penalty**

The maintenance services during the period of the defect liability, the contractor shall attend to any problem/ fault arising for the said scope of works in OTs is put back to satisfactory operation within 96 Hours.

In case of failure by the contractor in restoring proper functioning of the work within 96 Hours, a downtime penalty shall be paid by the contractor @ Rs 10,000(Rs Ten Thousand) per day, for a period of 5 days; and @ Rs 20,000(Rs Twenty Thousand) per day thereafter.

FORM OF AGREEMENT

AGREEMENT

This Agreement made the _____ day of _____ 20_____ between **M/s HSCC (India) Ltd., E6A, Sector-I, Noida-201301 on behalf of Ministry of External Affairs, Govt of India, South Block, New Delhi.** after called "The Employer") represented by M/s HSCC (India) Ltd. who enters into this Agreement of the one part and M/s (hereinafter called "The Contractor") of the other part.

Whereas the Consultant is desirous that certain works should be executed by the Contractor, viz _____ ("the Works") and has accepted a Bid by the Contractor for the execution and completion of the works and the remedying of any defects therein.

Now this Agreement witnesseth as follows :

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz :
 - (a) The Letter of Award;
 - (b) The said Bid;
 - (c) The General Conditions of Contract;
 - (d) Instructions to Tenderers and Specific Conditions of Contract;
 - (e) The Specification;
 - (f) The Drawings;
 - (g) The Priced Bill of Quantities;
 - (h) Any other relevant documents referred to in this Agreement or in the aforementioned documents
3. In consideration of the payments to be made by the HSCC(India)Ltd acting as Consultant to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Consultant to execute and complete the Works and remedy any defects therein in conformity with the provisions of the Contract in all respects.
4. The Consultant hereby covenants to pay the Contractor through HSCC in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

signed, Sealed, and Delivered by the Said

Binding Signature of [HSCC India Ltd.] for and on behalf of **Ministry of External Affairs, Govt of India, South Block, New Delhi**

Binding Signature of Contractor

In the presence of

Witness (1) :

Witness (2) :

ANNEXURE - B

PROFORMA FOR PERFORMANCE BANK GUARANTEE

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

To,

M/s HSCC (India) Ltd.,
Plot No. 6(A), Block E, Sector 1,
NOIDA - 201 301.

Dear Sir,

In consideration of the (hereinafter called 'Consultant') having awarded to M/S _____ (hereinafter referred to as the said Contractor or 'Contractor' which expression shall wherever the subject or context so permits include its successors and assignees) 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 assignees) hereby jointly and severally undertake to guarantee the payment to the Consultant in rupees forthwith on demand in writing and without protest or demur or any and all moneys payable by the Contractor to the consultant in respect of or in connection with the said Contract inclusive of all the consultant's losses and damages and costs, (inclusive between attorney and client) charges and expenses and other moneys payable in respect of the above as specified in any notice of demand made by the consultant to the Bank with reference to this guarantee upto an aggregate limit of Rs. _____ (Rupees _____ only).
2. We _____ Bank Ltd. further agree that the Consultant 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 consultant on account thereof and the decision of the consultant 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 consultant from time to time shall be final and binding on us.

3. The Consultant 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 there under 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 Consultant 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 Consultant hereunder or prejudice the rights of the Consultant 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 Consultant 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 anyway 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 Consultant in terms hereof.
6. The amount stated in any notice of demand addressed by the Consultant to the Bank as liable to be paid to the Consultant by the Contractor or as suffered or incurred by the Consultant 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 Consultant or suffered or incurred by the Consultant as the case may be and shall be payable by the Bank to The Consultant in terms hereof.
7. This guarantee shall be a continuing guarantee and shall remain valid and irrevocable for all claims of the Consultant and liabilities of the Contractor arising upto and until midnight of _____.
8. This guarantee shall be in addition to any other guarantee or Security whatsoever that the Consultant may now or at any time anyway may have in relation to the Contractor's obligations/or liabilities under and/or in connection with the said Contract, and the Consultant shall have full authority to have recourse to or enforce this Security in preference to any other guarantee or Security which the Consultant may have or obtain and no forbearance on the part of the Consultant 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 Consultant 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 Consultant 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 Consultant 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 there under.

Dated _____ day of _____ 20

For and on behalf of Bank.

Issued under seal :

Deleted

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

M/s HSCC (India) Ltd.,
Plot No. 6(A), Block E, Sector 1,
NOIDA - 201 301.

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 equivocal.

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 180 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

Yours faithfully,

For