

**National Highways & Infrastructure Development Corporation
Limited
Ministry of Road Transport & Highways
(Govt. of India)**



NIT No. NHIDCL/Sikkim/NH-10/MAIN/2018

E-TENDER

**PERIODICAL RENEWAL FOR RANGPO-GANGTOK SECTION
FOR KM 52+000 TO KM 80+000 (EXCLUDING KM 63.00 TO
KM 66.00 AND KM 69.00 TO KM 72.00) OF NH-10 INCLUDING
RAISING IN 200 M LENGTH IN SINKING AREA IN KM 80 IN
THE STATE OF SIKKIM.**

Sep, 2018

**NATIONAL HIGHWAYS & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD
3RD FLOOR, PTI BUILDING, 4-PARLIAMENT STREET,
New Delhi – 110001**

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SECTION-I

E-BID NOTICE

NATIONAL HIGHWAYS & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD
3RD FLOOR, PTI BUILDING, 4-PARLIAMENT STREET,
New Delhi – 110001

NIT No. NHIDCL/Sikkim/NH-10/MAIN/2018

Date: 07.09.2018

E-Tender (Notice Inviting Bid)

On behalf of the MD, NHIDCL, New Delhi E- tender is invited from the eligible bidders for the following work on NH-10 (Rangpo-Gangtok Section) in the state of Sikkim.

Sl. No	Name of work	Estimated Value excluding applicable taxes (Rs. in Lacs (INR))	Earnest Money @ 2% at the time of tender	Cost of the Tender Document (Non refundable) Including Trade Tax @ 12.36% extra.	Time of completion
1	PERIODICAL RENEWAL FOR RANGPO-GANGTOK SECTION FOR KM 52+000 TO KM 80+000 (EXCLUDING KM 63.00 TO KM 66.00 AND KM 69.00 TO KM 72.00) OF NH-10 INCLUDING RAISING IN 200 M LENGTH IN SINKING AREA IN KM 80 IN THE STATE OF SIKKIM.”.	1175	Rs. 23.5 lacs	25000.00	6 Month

- (i) The Bidders are advised to inspect the site & satisfy themselves.
- (ii) The document containing the instructions to Bidders and form of Contract shall be available on e-tendering portal of the NHIDCL or from www.eprocure.gov.in & www.nhidcl.com
- (iii) The bid documents (“**Bid Documents**”) are available for view and downloading from the e-tendering portal of NHIDCL or www.eprocure.gov.in & www.nhidcl.com (“**said websites**”) by the Bidders without any cost. However, to participate in bidding, Bidders are required to pay a non-refundable fee of Rs. [25000/-] (Rupees Twenty Five Thousand Only) towards cost of documents which shall be submitted along with the Bid Documents in the manner specified in Section II (ii)(C) of the Instructions to Bidder by way of a Demand Draft of Rs. [25000/-] (Rupees Twenty Five Thousand Only), drawn on any

Nationalized Indian Bank /State Bank of India or its subsidiaries/IDBI/ICICI/ Export Import Bank/Foreign Bank with counter Guarantee from any Nationalized Indian Bank or State Bank of India or its subsidiaries /any RBI approved Scheduled Commercial Bank having net worth of more than Rs. 500 crore (Rupees Five Hundred crores) from its Indian Operations ***in favour of "MD, National Highways & Infrastructure Development Corporation Ltd. ", payable at New Delhi*** payable as cost of document, should be of date on or prior to last date of sale of Bid Document and **payable at New Delhi.**

The amendments/clarifications to the Bid Document if any shall be hosted on said websites.

- (iv) Pre-bid meeting NIL
- (v) **The Bids shall be submitted online in the prescribed format given on the said websites before the date and time as mentioned below. No other mode of submission is acceptable.** Only the Bidders whose Technical Bid is found to be responsive shall be invited to participate in on-line bidding (herein after referred as Financial Bidding) as mentioned in Instruction to Bidders ("ITB").
- (vi) The last date for online submission of the Bids is **03.10.2018 up to 11:00 hrs.** ("Bid Due Date") as mentioned above. The Last date & time submission of e- bids in physical form on **03.10.2018 up to 11:00 hrs** at NHIDCL, Corporate Office, New Delhi. The Technical Bids would be opened online on **04.10.2018 at 11:30 hrs.** at the Corporate Office of National Highways & Infrastructure Development Corporation Ltd. The representative of the Bidder, who chooses to attend, may attend the online opening of the Technical Bids on the date and time as mentioned above. However, such representatives shall be allowed to attend the opening of the Technical Bids, only, if such person presents the letter of authority issued in his name by the Bidder on the letter head of the Bidder.
- (vii) **Submission of the Bids after the Bid due Date and time shall not be permitted.** Time being displayed on e-tendering portal of NHIDCL ("**Standard Time**") shall be final and binding on Bidder. Bids are required to be submitted by Bidders, only as per the Standard Time and not the time as per their location/country.
- (viii) The Bidders are advised to submit their Technical Bids well before the Bid Due Date. The Authority shall not be responsible for any delay in submission of Bids for any reason including server and technical problems. NHIDCL reserves the right to accept or reject any or all Bids without assigning any reason thereof.

- (ix) In case of any problem with the submission of the Bid, the Bidder may have the assistance of help desk or use the help manual given on the said website.
- (x) Address for Communication:

Sandeep Kumar
General Manager (Technical)
National Highway & Infrastructure Development Corporation Ltd.
PTI Building, 3rd Floor,
4, Parliament Street,
New Delhi-110001
E-mail: gmt1@nhidcl.com
Tele Phone: 011-23461616

(SECTION-II)

INSTRUCTION TO BIDDERS & APPENDIX TO BID

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Section - II

Instructions to Bidders (ITB)

A. General

1. Scope of Bid

- 1.1.1 The Employer (as defined in the Appendix to ITB) invites bids for “as described in these documents and referred to as “the works”. The name and identification number of the works is provided in the Appendix to ITB.
- 1.2 The successful Bidder will be expected to complete the Works by the intended Completion Date specified in the Contract Data (Part I General Conditions of Contract).
- 1.3 Throughout these bidding documents, the terms “bid” and “tender” and their derivatives (bidder/tenderer, bid/tender, bidding/tendering, etc.) are synonymous.

2. Source of Funds

- 2.1 The expenditure on this project will be met by National Highways & Infrastructure Development Corporation Ltd. (NHIDCL).

3. Eligible Bidders

- 3.1 This Invitation for Bids is open to all bidders as defined in the Appendix to ITB.
- 3.2 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices by the Central Government, the State Government or any public undertaking, autonomous body, authority by whatever name called under the Central or the State Government.

4. Qualification of the Bidder

- 4.1 Deleted
- 4.2 All bidders shall include the following information and documents with their bids in Section-2, Qualification Information unless otherwise stated in the Appendix to ITB:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Bid to commit the Bidder;
 - (b) Total monetary value of civil engineering construction works performed for each of the last three years;
 - (c) Experience certificate in works of a similar nature and size for each of the last seven years with certificates from the concerned officer of the rank of Executive Engineer or equivalent;
 - (d) Evidence of availability (either owned or leased or rented) of items of construction equipment named in Clause 4.4 B(b) (i).
 - (e) Details of the technical personnel proposed to be employed for the Contract having the qualifications defined in Clause 4.4 B(b) (ii) .
 - (f) Reports on the financial standing of the Bidder, and a certificate from Chartered Accountant as a proof of turnover for the past three years;
 - (g) Deleted
 - (h) Deleted
 - (i) Deleted
 - (j) information regarding any litigation or arbitration during the last five years in which the Bidder is involved, the parties concerned, the disputed amount, and the matter;
 - (k) Deleted
 - (l) Deleted.
- 4.3 Bids from joint venture are not allowed.

4.4 A. To qualify for award of the contract, each bidder in its name should have the following; -

- (a)** achieved an average annual financial turnover (in all classes of civil engineering construction works only) amount indicated in Appendix to ITB or NIT during last three year ending 31st March of the previous financial year duly certified by Chartered Accountant.
- (b)** satisfactorily completed (not less than 90% of contract value), as a prime contractor (or as a nominated subcontractor duly approved by Employer, provided further that all other qualification criteria are satisfied) similar works during last seven years ending last day of month previous to the one in which bids are invited should be either of the following:
 - i.** Three similar completed works costing not less than amount equals to Rs 470.00 lacs each.
 - ii.** Two similar completed works costing not less than amount equals to Rs. 587.50 lacs each.
 - iii.** One similar completed work costing not less than amount equals to Rs. 940 lacs.

(The similar work constitutes maintenance/construction of bituminous road work)

(Escalation factor as specified in the appendix to ITB shall be used to bring the value of such completed works at the level of current financial year i.e.2018-19)

- (c)** Deleted
- (d)** Deleted
- (e)** Deleted

4.4 B (a) Each bidder must produce:

- (i)** An affidavit on a Stamp Paper, duly attested from the Notary Public, that the information furnished with the bid documents is correct in all respects; and
 - (ii)** Such other certificates as defined in the Appendix to ITB.
 - (iii)** Failure to submit the certificates/documents as specified above or in Appendix to ITB shall make the bid non-responsive.
- (b)** Each bidder must demonstrate:
- (i)** Evidence of availability (either owned or leased or rented) of the key equipments for this work as stated in the Appendix to ITB.
 - (ii)** Availability for this work of personnel with adequate experience as stated in the Appendix to ITB.
 - (c)** Deleted
 - (d)** Deleted

4.4.C Deleted

4.5.1 Sub-Contractors' experience and resources shall not be taken into account in determining the bidder's compliance with the qualifying criteria except to the extent stated in 4.4 A above.

4.6 Bidder who meets the minimum qualification criteria will be qualified only if their available bid capacity is more than the total bid value. The available bid capacity will be calculated as under: (Replaced).

Assessed available Bid capacity = (A*N*2 - B)

Where

A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the year indicated in Appendix) taking into account the competed as well as works in progress.

N = Number of years prescribed for completion of the works for which bids are invited.

B = Value (updated to the price level of the year indicated in Appendix) of existing commitments and on-going works to be completed during the next years (period of completion of the works for which bids are invited).

Note: *The statement showing the value of existing commitment and on-going works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Engineer in Charge, not below the rank of an Executive Engineer or equivalent.*

- 4.7** Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:
- (i) made misleading or false representations in the forms, statements, affidavits and attachments submitted in proof of the qualification requirements; and/or
 - (ii) Record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures etc. or debarring from NHIDCL work etc.
 - (iii) Tempered the bid document in any manner.

5. One Bid per Bidder

- 5.1** Each Bidder shall submit only one Bid for the work. A Bidder who submits more than one Bid will cause the proposals with the Bidder's participation to be disqualified.

6. Cost of Bidding

- 6.1** 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.

7. Site Visit

- 7.1** The Bidder, at his own cost, responsibility and risk, is encouraged to visit, examine and familiarise himself with the Site of Works and its surroundings including source of earth, water, road aggregates etc. and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense. He may contact the person whose contact details are given in the Appendix to ITB.

B. Bidding Documents

8. Content of Bidding Documents

- 8.1** The set of bidding documents comprises the documents listed below and addenda issued in accordance with Clause 10:

Volume- I:-

- 1 Notice Inviting Tender
- 2. Instructions to Bidders
- 3. Qualification Information
- 4 Forms of bid and Bank Guarantee
- 5 Conditions of Contract
(Part I General Conditions of Contract, and Contract Data; Part II Special Conditions of Contract)
- 6 Scope of Work
- 7 Specifications
- 8 Implementation Manual & Maintenance Intervention Level

Volume - II:-

- 9 Bill of Quantities

- 8.2** One set of the bidding documents will be issued to the bidder against the payment.
- 8.3** The bidder is expected to examine carefully all instructions, conditions of contract, contract data, forms, terms, and specifications, bill of quantities, forms and drawings in the Bid Document. Failure to comply with the requirements of Bid Documents shall be at the bidder's own risk. Pursuant to clause 26 hereof, bids, which are not substantially responsive to the requirements of the Bid Documents, shall be rejected.

9. Clarification of Bidding Documents

- 9.1** A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by cable ("cable" includes facsimile) at the Employer's address indicated in the Notice Inviting Tenders. The Employer will respond to any request for clarification received earlier than 2 days prior to the deadline for submission of bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry, but without identifying its source.
- 9.2.1** If a pre-bid meeting is to be held, the bidder or his official representative will be invited to attend it. Its date, time and address are given in the Appendix to ITB.
- 9.2.2** The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 9.2.3** The bidder is requested to submit any questions in writing or by cable so as to reach the Employer not later than one week before the meeting.
- 9.2.4** Minutes of the meeting, including the text of the questions raised (without identifying the source of the enquiry) and the responses given will be transmitted without delay to all purchasers of the bidding documents. Any modifications of the bidding documents listed in Clause 8.1, which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to Clause 10 and not through the minutes of the pre-bid meeting.
- 9.2.5** Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

10. Amendment of Bidding Documents

- 10.1** Before the deadline for submission of bids, the Employer may modify the bidding documents by issuing addenda.
- 10.2** Any addendum thus issued shall be part of the bidding documents and shall be communicated in writing by registered post or by cable to all purchasers of the bidding documents. Prospective bidders shall acknowledge receipt of each addendum by cable to the Employer. The Employer will assume no responsibility for postal delays. Addendum will also be available on the website.
- 10.3** To give prospective bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer shall extend, as necessary, the deadline for submission of bids, in accordance with Clause 20.2.

C. Preparation of Bids

11. Language of Bid

- 11.1** All documents relating to the Bid shall be in the language specified in the Appendix to ITB.

12. Documents Comprising the Bid

Documents to be submitted online along with the Technical Bid:

The Bidders shall upload scanned copy(ies) of the following documents along with its Technical Bid.

- (i) A demand draft of Rs. [25000/-] (Rupees Twenty Five Thousand Only) in favour of MD, NHIDCL payable at New Delhi towards cost of the Bid Documents. The date of the demand draft should be of the date on or prior to the Bid Due Date.
- (ii) **A demand draft/Bank Guarantee of Rs. 23,50,000/- (Rs. Twenty Three Lacs Fifty Thousand Only) in favour of NHIDCL, payable at New Delhi towards Bid Security/Earnest Money**

12.1 The documents submitted physically by the Bidder shall consist of following:

- (i) For bidding documents downloaded from the website, the demand draft for the cost of the bidding documents must be placed in a separate cover, marked " cost of bidding document downloaded from the internet." **and such demand draft for the cost of bid document must be prepared on or before the last date of sale of bid document as mentioned in Bid Notice.**
- (ii) Earnest Money in a separate cover marked 'Earnest Money';
- (iii) Qualification information, supporting documents, affidavit and undertaking as specified in Clause 4;
- (iv) Undertaking that the bid shall remain valid for the period specified in clause 15.1;
- (v) Any other information/documents required to be completed and submitted by bidders, as specified in the Appendix to ITB, and
- (vi) An affidavit affirming that information he has furnished in the bidding document is correct to the best of his knowledge and belief.
- (vii) Deleted

12.2 Each part shall be separately sealed and marked in accordance with Sealing and Marking instructions in clause 19.

12.3 The following documents, which are not submitted with the bid, will be deemed to be part of the bid.

Section	Particulars
1	Notice Inviting Tender
2	Instruction to the bidders
3.	Conditions of Contract
4.	Contract Data
5.	Scope of work
6.	Technical Specifications

13. Bid Prices

13.1 The Contract shall be for the whole Works, as described in Clause 1. 1 based on the priced Bill of Quantities submitted by the Bidder.

- 13.2** The bidder shall quote percentage (%) above or below of total BOQ price.
- 13.3** All duties, taxes (except service tax), royalties and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the rates, prices, and total Bid price submitted by the Bidder. The service tax shall be reimbursed (if applicable) subject to production of proof of such payment by the contractor.
- 13.4** The rates and prices quoted by the Bidder shall be fixed for the duration of the Contract and shall not be subject to adjustment.
- 14. Currencies of Bid and Payment**
- 14.1** The unit rates and the prices shall be quoted by the bidder entirely in Indian Rupees. All payments shall be made in Indian Rupees.
- 15. Bid Validity**
- 15.1** Bids shall remain valid for a period of **120 days** after the deadline date for bid submission specified in Clause 20. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 15.2** In exceptional circumstances, prior to expiry of the original time limit, the Employer may request that the bidders may 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 a period of the extension, and in compliance with Clause 16 in all respects.
- 16. Earnest Money / Bid Security**
- 16.1** The Bidder shall furnish, as part of the Bid, Earnest Money/Bid Security, in the amount as specified in the Appendix to ITB.
- 16.2** The Earnest Money shall, at the Bidder's option, be in the form of Bank Guarantee/Demand Draft of any scheduled commercial bank approved by RBI having a net worth of not less than **Rs. 500 crore** as per the latest annual report of the bank. In case of foreign bank (issued by a branch in India) the net worth in respect of the Indian operation shall only be taken into account. It shall be valid for **45 days** beyond the validity of the bid.
- 16.3** Any bid not accompanied by an acceptable Earnest Money, unless exempted in terms given in the Appendix to ITB, shall be rejected by the Employer as non-responsive.
- 16.4** The Earnest Money of unsuccessful bidders will be returned **within 28 days** of the end of the Bid validity period specified in Sub-Clause 15.1.
- 16.5** The Earnest Money of the successful Bidder will be discharged when the Bidder has signed the Agreement and furnished the required Performance Security.
- 16.6** The Bid Security / Earnest Money will be forfeited:
- a) if the Bidder withdraws the Bid after its submission during the period of Bid validity;
 - b) if the Bidder does not accept the correction of the bid price, pursuant to Clause 27; or
 - c) in the case of a successful Bidder, if the Bidder fails within the specified time limit to
 - i. sign the Agreement; and/or
 - ii. Furnish the required Performance Security.

17. Alternative Proposals by Bidders

- 17.1 Bidder shall submit offers that fully comply with the requirement of the bidding document including conditions of contract, conditional offer or alternate offer will not be considered further in the process of tender evaluation

18. Format and Signing of Bid

- 18.1 The Bidder shall submit his bid on **E-portal and also in the physical form with one set of the bid comprising of the documents as described in Clause 12 of these instruction to bidders, bound with the volume containing technical bid.**
- 18.2 The Bid shall be typed or written in ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All pages of the Bid shall be signed by the person or persons signing the Bid. The scanned signatures are not acceptable. It will make the bid non-responsive.
- 18.3 The Bid shall contain no overwriting, alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be made by scoring out the cancelled portion, writing the correction and signing and dating it along with the stamp by the person or persons signing the Bid.

D. Submission of Bids

19. Sealing and Marking of Bids

- 19.1 The Bidder shall submit his bid on **E-portal and also in the physical form** with one set of the bid comprising of the documents as described in Clause 12 of these instruction to bidders, bound with the volume containing technical bid.
- 19.2 The envelope containing the Technical bid.
- a) be addressed to the Employer at the address provided in the Appendix to ITB;
 - b) bear the name and identification number of the Contract as defined in clause 1.1; and
 - c) Provide a warning not to open before the specified time and date for Bid opening as defined in clause 23.1.
- 19.3 In addition to the identification required in Sub-Clause 19.2, each of the envelopes shall indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared late, pursuant to Clause 21, or is declared non-responsive pursuant to Clause 23.
- 19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or pre-mature opening of the bid.

20. Deadline for Submission of Bids

- 20.1 Complete Bids (including Technical and Financial) must be received by the Employer at the address specified in the Appendix to ITB not later than the date and time indicated in the Appendix to ITB. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the Bids will be received up to the specified time on the next working day.
- 20.2 The Employer may extend the deadline for submission of bids by issuing an amendment in accordance with Clause 10, 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.

21. Late Bids

- 21.1 Any Bid received by the Employer after the deadline prescribed in Clause 20 will be returned unopened to the Bidder.

22. Modification and Withdrawal of Bids

- 22.1 Bidders may modify or withdraw their bids by giving notice in writing before the deadline prescribed in Clause 20.
- 22.2 Each Bidder's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 18 & 19, with the outer and inner envelopes additionally marked **"MODIFICATION" or "WITHDRAWAL"**, as appropriate.
The envelopes for modifications on 'Technical Bid' and 'Financial Bid' shall be submitted in separate sealed envelopes and marked as 'Modifications of Technical Bid' or 'Modifications of Financial Bid', as the case may be.
- 22.3 No bid may be modified after the deadline for submission of Bids.
- 22.4 Withdrawal or modification of a Bid between the deadline for submission of bids and the expiration of the original period of bid validity specified in Clause 15.1 above or as extended pursuant to Clause 15.2 shall result in the forfeiture of the Bid security pursuant to Clause 16.
- 22.5 Bidders may only offer discounts to, or otherwise modify the prices of their Bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

23. Bid Opening

Bid opening shall be carried out in two stages. Firstly, 'Technical Bid' of all the bids received (except those received late) shall be opened on the date and time mentioned in the Appendix to ITB. 'Financial Bid' of those bidders whose technical bid has been determined to be substantially responsive shall be opened on the same date, which will be notified to such bidders.

- 23.1 The Employer will open the envelope marked the "Technical Bid" of all the bids received (except those received late), including modifications of Technical Bid made pursuant to Clause 22 in the presence of the bidders/bidders' representatives who choose to attend at the time, date and place specified in the Appendix to ITB. In the event of the specified date for the submission of bids being declared a holiday for the Employer, the Bids will be opened at the appointed time and location on the next working day.
- 23.1.1 Envelopes marked 'withdrawal' shall be opened and read. Bids for which acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.
- 23.1.2 Bidder's names, withdrawals, 'modification of technical bid', the presence of bid security and such other details, as the Employer may consider appropriate will be announced by the Employer at the opening of the Bids.
- 23.2 In all other cases, the amount of Earnest Money, forms and validity shall be announced. Thereafter, the Employer at the opening as the Employer may consider appropriate, will announce the bidders' names and such other details.
- 23.3 The Employer will prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Clause 23.1.
- 23.4 (i) The bids accompanied with valid bid security will be taken up for evaluation with respect to the Qualification Information and other information furnished in Part I of the bid pursuant to Clause 12.1.
(iii) Deleted
(iv) Deleted

- (v) As soon as possible, the Evaluation Committee will finalize the list of responsive bidders whose financial bids are eligible for consideration.
 - (vi) The Employer shall inform the bidders, whose technical bids are found responsive, of the date, time and place of opening of the financial bids. The bidders so informed, or their representative, may attend the meeting of opening of financial bids
- 23.5 The Employer shall inform the bidders, whose technical bids are found responsive, of the date, time and place of opening of the financial bids. The bidders so informed, or their representative, may attend the meeting of opening of financial bids.
- 23.6 At the time of the opening of the 'Financial Bid', the names of the bidders whose bids were found responsive in accordance with clause 23.5 will be announced. The financial bids of only these bidders will be opened. The remaining bids will be returned unopened to the bidders. The responsive bidders' names, the Bid prices, the total amount of each bid, any discount/rebate, modification of financial bids pursuant to clause 22 and such other details as the Employer may consider appropriate will be announced by the Employer at the time of bid opening. Any Bid price, which is not read out and recorded, will not be taken into account in Bid Evaluation.
- 23.7 The Employer shall prepare the minutes of the opening of the Financial Bids.
- 24. Process to be Confidential**
- 24.1 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 attempt by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his Bid
- 25. Clarification of Bids and Contacting the Employer**
- 25.1. To assist in the examination, evaluation, and comparison of Bids, the Employer may, at his discretion, ask any Bidder for clarification of his-Bid, including breakdowns 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 Employer in the evaluation of the Bids in accordance with Clause 27.
- 25.2 Subject to sub-clause 25.1, no Bidder shall contact the Employer on any matter relating to his bid from the time of the bid opening to the time the contract is awarded. If the Bidder wishes to bring additional information to the notice of the Employer, he should do so in writing.
- 25.3 Any effort by the Bidder to influence the Employer in the Employer's bid evaluation, bid comparison or contract award decisions may result in the rejection of the Bidders' bid.
- 26. Examination of Bids and Determination of Responsiveness**
- 26.1 During the detailed evaluation of "Technical Bids", the Employer will determine whether each Bid (a) meets the eligibility criteria defined in Clauses 3 and 4; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the bidding documents. During the detailed evaluation of the "Financial Bids", the responsiveness of the bids will be further determined with respect to the remaining bid conditions, i.e., priced bill of quantities, technical specifications and drawings.
- 26.2 A substantially responsive "Financial 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 Employer's rights 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.

- 26.3** If a "Financial Bid" is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

27. Correction of Errors

- 27.1** Financial Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:
- a) where there is a discrepancy between the rates in figures and in words, the rate in words will govern; and
 - b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern.
- 27.2** The amount stated in the Financial Bid will be corrected by the Employer in accordance with the above procedure for the correction of errors and shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security shall be forfeited in accordance with Sub-Clause 16.6(b).

28. Evaluation and Comparison of Financial Bids

- 28.1** The Employer will evaluate and compare only the bids determined to be substantially responsive in accordance with Clause 26.
- 28.2** In evaluating the bids, the Employer will determine for each Bid the evaluated Bid price by adjusting the Bid price after making any correction for errors pursuant to Clause 27;
- 28.3** **If the Bid of the successful Bidder is seriously unbalanced** in relation to the Engineer's/Employer's estimate of the cost of work to be performed under the contract, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the Employer may require that the amount of the performance security set forth in Clause 33 be increased and an additional performance security may be obtained at the expense of the successful Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract. **The amount of the additional increased performance security shall be equal to the seriously unbalanced amount beyond 15% of estimated cost, which shall be final, binding and conclusive on the bidder.**
- 28.4** A bid, which contains several items in the Bill of Quantities which are unrealistically priced low and which cannot be substantiated satisfactorily by the bidder, may be rejected as non-responsive.

29. Price Preference

- 29.1** Deleted

F. Award of Contract

30. Award Criteria

- 30.1** Subject to Clause 32, the Employer will award the Contract to the Bidder whose Bid has been determined:
- i. To be substantially responsive to the bidding documents and who has offered the lowest evaluated Bid price.
 - ii. Deleted.

31. Employer's Right to accept any Bid and to reject any or all Bids

- 31.1** Notwithstanding Clause 30, 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 grounds for the Employer's action.

32. Notification of Award and Signing of Agreement.

- 32.1** The bidder whose Bid has been accepted will be notified of the award by the Employer prior to expiration of the Bid validity period by cable, telex or facsimile confirmed by registered letter. This letter (hereinafter and in the Part I *General Conditions of Contract* called the "Letter of Acceptance") will state the sum that the Employer will pay to the Contractor in consideration of the execution, completion and maintenance of the Works, and of routine maintenance of roads by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").
- 32.2.** The notification of award will constitute the formation of the Contract, subject only to the furnishing of a performance security in accordance with the provisions of Clause 33.
- 32.3.** The Agreement will incorporate all agreements between the Employer and the successful Bidder. It will be signed by the Employer and the successful Bidder after the performance security is furnished.
- 32.4** Upon the furnishing by the successful Bidder of the Performance Security, the Employer will promptly notify the other Bidders that their Bids have been unsuccessful.

33. Performance Security

- 33.1** **Within 10 (ten) days** after receipt of the Letter of Acceptance, the successful Bidder shall deliver to the Employer a Performance Security of Ten percent of the Contract Price, for the period of **28 days** after the expiry of defect liability period of 12 **months** plus additional security for unbalanced Bids in accordance with Clause 28.3 of ITB and Clause 47 Part I General Conditions of Contract and sign the contract.
- 33.2** The performance security shall be in the form of a Bank Guarantee Demand Draft in the name of the Employer, from a Bank as applicable in case of earnest money / bid security defined in Appendix to ITB.
- 33.3** Failure of the successful bidder to comply with the requirement of sub-clause 33.1 shall constitute sufficient ground for cancellation of the award and forfeiture of the bid security.

34. Advances

- 34.1** Deleted.

35. Corrupt or Fraudulent Practices

The Employer will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question and will declare the firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract with National Highways & Infrastructure Development Corporation Ltd. / State PWD and any other agencies, if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contractor, or in execution.

The Employer requires the bidders/Contractors to strictly observe the laws against fraud and corruption enforced in India, namely, Prevention of Corruption Act, 1988.

Appendix to ITB

The Employer should fill out this Appendix to ITB before issuing the bidding documents
The insertions should correspond to the information provided in the Invitation for Bids.

Instructions to Bidders Clause Reference

- (1.1) The Employer is Chairman National Highways & Infrastructure Development Corporation Ltd.
- (1.1) **Periodical Renewal for Rangpo-Gangtok section for Km 52+000 to Km 80+000(Excluding Km 63.00 to Km 66.00 and Km 69.00 to Km 72.00) of NH-10 including raising in 200 m length in Sinking area in Km 80 in the state of Sikkim..**
- (4.2) Deleted
- (4.4 A) a The value shall be Rs. 392 Lacs (Three Fifty Two Lacs only).
- (4.4 A) (b) The value shall be as mentioned in NIT.

Escalation factor (for the cost of works completed during the last 7 years) may be taken as follows:

Year Before	Multiplying Factor
One.....	1.10
Two	1.21
Three	1.33
Four	1.46
Five.....	1.61
Six	1.77
Seven.....	1.94

- (4.4. B) (b)(i) The key equipments to be deployed on contract work.

Name of the Equipment	Quantity
HMP 40 to 60 TPH (Minimum)	1
Tandem Roller	1
Static Roller	1
JCB	1
Paver Finisher Mechanical	1

Note: The bidder must produce the documentary evidence in support of his (owning/leased or rented) for the above equipments.

4.4 B (b) (ii) The Number of Technical personnel, Qualifications and Experience will be as follows:

The Technical Personnel are:

Sl. No.	Personnel	Minimum Qualification and Experience	Particular Experience (minimum requirement)	No. of Persons
1.	Site Engineer	Diploma in Civil + 3 Years Exp. Or B.E. in Civil Engineering + 1 year experience	Highway construction works, billing and survey work.	2
2.	Material Engineer	Diploma in Civil + 3 Years Exp. Or B.E. in Civil Engineering + 1 year experience	Material Testing for Highway Construction Works	1

(4.6) Deleted

(7.1) The contact person is: Branch Officer, NHIDCL, Gangtok.

(9. 2.1) Place, Time and Date for pre-bid meeting are: NIL

(11.1) Language of the bid is: English

(16.1) The amount of Earnest Money shall be as mentioned in NIT.

Bank Guarantee/Demand Draft must be in favour of: **MD, National Highways & Infrastructure Development Corporation Ltd.** , New Delhi.

- (16.2) A. The bid security shall be in the form of a Bank Guarantee or Demand Draft receipts, in the name of the Employer, from following banks would be accepted:-
- i. State Bank of India or its subsidiaries,
 - ii. Any Indian Nationalised Bank
 - iii. IDBI or ICICI / ICICI Bank
 - iv. A Foreign Bank (issued by a branch outside India) with a counter guarantee from SBI or its subsidiaries or any Indian Nationalised Bank.
 - v. Any Scheduled Commercial Bank approved by RBI having a net worth of not less than Rs. **500 crores** as per the latest Annual Report of the Bank. In the case of a Foreign Bank (issued by a branch in India), the net worth in respect of the Indian operations shall only be taken into account.
- B. The acceptance of the guarantees shall also be subject to the following conditions:-
- i. The capital adequacy of the Bank shall not be less than the norms prescribed by RBI.
 - ii. The bank guarantee issued by a Cooperative Bank shall not be accepted.

(20.1) The Employer's address for the purpose of any clarification is as under:-

Managing Director,
National Highways & Infrastructure
Development Corporation Ltd.
3RD FLOOR, PTI BUILDING, 4-
Parliament Street,
New Delhi – 110001

(20.1) The deadline for on line submission of bids shall be:
Time 1100 hrs IST
As prescribed in Bid Notice Date 03-10-2018

(23.1) The date, time and place for opening of the E-Technical Bids are:
(A) Technical Bid

Date 04-10-2018 Time 1100 hrs IST As prescribed in Bid Notice

Place NHIDCL,,Corporate Office, New Delhi - 110001

(B) Financial Bid (For qualified bidder as)

Date:
Time
Place

Date & time shall be communicated to qualified bidders.

(33.1) The amount and validity period of the performance guarantee is: Amount: 10 % of the contract price.

Validity Period: (i) Performance security shall be valid until a date **28 days** after the expiry of Defect Liability **Period of 12 months the date of** completion of work.

SECTION - III

QUALIFICATION INFORMATION

The information to be filled in by the Bidder in the following pages will be used for purposes of post qualification as provided for in Clause 4 of the Instructions to Bidders. This information will not be incorporated in the Contract.

1. For Individual Bidders

- 1.1. Constitution or legal status of Bidder
[Attach copy]

Place of registration:

Principal place of business:

Power of attorney of signatory of Bid *[Attach]*

- 1.2. Total value of Civil Engineering construction Work performed in the last three years (in Rs. Lakhs)
refer ITB Clause 4.4 A(a)
(Attach certificate from Chartered Accountant)

2015-2016-----
2016-2017-----
2017-2018-----

- 1.3 Work performed as prime contractor, work performed in the past as a nominated sub- contractor duly approved by Employer will also be considered , provided further that all other qualification criteria are satisfied (in the same name) on works of a similar nature during the last seven years to qualify as per ITB Clause 4.4 A (b).

Project Name	Name of the Employer*	Description of work	Contract No.	Value of Contract (Rs. Crore)	Date of issue of work order	Stipulated period of completion	Actual date of completion*	Remarks explaining reasons for delay & work Completed

** Attach certificate(s) from the rank of Executive Engineer or equivalent*

Note: In case of nominated sub-contractor – a certificate from the rank of Executive Engineer or equivalent of the Prime Employer should be obtained from whom an approval for subcontractor has been obtained.

- 1.4. Availability of Key Equipment essential for carrying out the Works [Ref. Clause 4.4(B) (b) (i)]. The Bidder should list all the information requested below.

Item of Equipment	Requirement		Availability Proposals			Remarks
	No.	Capacity	Owned/Leased rented	Nos./Capacity	Age/Condition	

Evidence of the availability of the equipment must be furnished.

- 1.5. Qualifications and experience of Key Personnel required for administration and execution of the Contract [Ref. Clause 4.4(B) (b) (ii)]. Attach biographical data for technical personnel (Refer also to Cl. 4.3 (e) of Instruction to Bidders).**

(Refer also to Sub Clause 9.1 of the Conditions of Contract).

Position	Name	Qualification	Year of Experience (General)	Years of experience in the proposed position
Etc.				

Note: The biographical Data should be signed (in original) by the technical personnel and authorized signatory who has signed the bid

- 1.6. Information on litigation/ arbitration history in which the Bidder is involved.**

Other Party(ies)	Employer	Cause of Dispute	Amount involved	Remarks showing Present Status

- 2. Bidders should provide the following affidavits/ undertakings as per formats enclosed hereafter: -**

- (i) Affidavit (it should be on stamp paper attested by Notary)
- (ii) Undertaking regarding minimum investment of cash
- (iii) Undertaking that the Bids shall remain valid for the period specified in Clause 15.1.

AFFIDAVIT

1. I, the undersigned, do hereby certify that all the statements made in the required attachments are true and correct.
2. The undersigned also hereby certifies that neither our firms M/s _____ have abandoned any work on National Highways in India nor any contract awarded to us for such works have been rescinded, during last five years prior to the date of this bid.
3. The undersigned hereby authorize(s) and request(s) any bank, person, firm or corporation to furnish pertinent information deemed necessary and requested by the Department to verify this statement or regarding my (our) competence and general reputation.
4. The undersigned understand and agrees that further qualifying information may be requested, and agrees to furnish any such information at the request of the Department Project implementing agency.

(Signed by an Authorized Officer of the Firm)

Title of Officer

Name of Firm

DATE

UNDERTAKING

I, the undersigned do hereby undertake that our firm M/s _____ would invest a minimum cash up to 25% of the value of the work during implementation of the Contract.

(Signed by an Authorized Officer of the Firm)

Title of Officer

Name of Firm

DATE

UNDERTAKING

I, the undersigned do hereby undertake that our firm M/s _____ agree to abide by this bid for a period _____ days for the date fixed for receiving the same and it shall be binding on us and may be accepted at any time before the expiration of that period.

(Signed by an Authorized Officer of the Firm)

Title of Officer

Name of Firm

DATE

SECTION-IV

FORMS OF BID & BANK GUARANTEE

(The Appendix forms part of Bid. Bidders are required to fill up all the blanks in the form of Bid and Appendix thereto)

To

MD,
National Highways & Infrastructure
Development Corporation Ltd.
3rd Floor, PTI Building
4-Parliament Street
New Delhi – 110001

DESCRIPTION OF WORKS: Periodical Renewal for Rangpo-Gangtok section for Km 52+000 to Km 80+000(Excluding Km 63.00 to Km 66.00 and Km 69.00 to Km 72.00) of NH-10 including raising in 200 m length in Sinking area in Km 80 in the state of Sikkim..

Reference letter No.

Dear Sir,

Having examined the Bid Documents, Instructions to Bidders, Scope of works, General Conditions of Contract, Special Conditions of Contract, Maintenance Standards and Technical Specifications, Bill of Quantities, schedules for the execution of the above named works, we, the undersigned offer to execute and complete such works and remedy and defects therein in conformity with the said bid documents for the sum of Rs. _____ (Rupees _____) or such other sum as may be ascertained in accordance with the said Bid documents.

2. We undertake, if our Bid is accepted, to commence the work within seven (7) days of receipt of the order to commence, and to completed and deliver the sections and whole of the works comprised in the Contract within the period stated in the bid hereto.
3. If our Bid is accepted, we will furnish Performance Security (i.e.) in the form of a Bank Guarantee to be jointly and severally bound on us, in accordance with the Conditions of Contract.
4. We agree to abide by this Bid for the period of one hundred twenty (120) days from the date of Bid opening and it shall remain binding upon us and may be accepted at any time before the expiry of that period.

We confirm our agreement to treat the Bid documents and other records connected with the works as secret and confidential documents and shall not communicate information contained therein to any other person other than the person authorized by the Employer or use such information in any manner prejudicial to the safety and integrity of the works. Unless and until an agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us, but without prejudice to your right to withdraw such acceptance without assigning any reasons thereof.

We understand that you are not bound to accept the lowest or any bid you may receive.

Dated this _____ day of _____ 2018

Signature _____ in the capacity of _____ duly authorized **

To sign Bid for an on behalf of _____
(In block capital letters)

Address : _____

Signature of Witness _____

Name of witness _____

Address of witness _____

** Certified copy of Power of Attorney/authorization for signature shall be furnished by the bidder.

FORM OF BANK GUARANTEE FOR BID SECURITY

WHEREAS _____ (Name of Tenders) (hereinafter called the Tenders) wishes to submit his tender for Urgent repair work of NH- _____ (from Km. _____ to km. _____) in the state/s of _____ herein called "the Tender" KNOW ALL MEN by these present that we _____ (Name of Bank) of _____ (Name of country) having our registered office at _____ (hereinafter called the 'Bank') are bound unto the National Highways & Infrastructure Development Corporation Ltd. (hereinafter called "the Employer") in the sum of the Rs. _____ (Rupees

_____) *for which payment can truly be made to the said Employer. The Bank bind themselves, their successors and assigns by these presents with the common seal of the Bank this day _____ of 2018 and undertake to pay the amount of _____ Rs. _____ to the employer upon receipt of this written demand without the employer having to substantiate his demand.

The conditions of this obligation are:

If the tenderer withdraws his tender during the period of Tender validity specified in the Form of Tender.

Or

If the Tenderer having been notified of the acceptance of his Tender by the Employer during the period of tender validity.

Fails or refuses to execute the Form of Agreement in accordance with the instructions to bidders, if required; or

Fails or refuses to furnish the Performance Security, in accordance with the Instruction to Bidders.

We undertake to pay Employer up to the above amount upon receipt of his first written demand, without the employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to his owing to the occurrence of any one of the above conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including the date 45 days beyond the validity of the bid as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, at any time prior to the closing date for submission of the Tenders Notice of which extension to the Bank is hereby waived. Any demand in respect of this guarantee should reach the Bank not later than the above date of expiry of this guarantee.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Consultant and notwithstanding any security or other guarantee that the Client may have in relation to the Consultant's liabilities.

This guarantee shall also be operable at our Branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment there under claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

The liability of Bank under this Guarantee shall not be affected by any change in the constitution of the consultant or the bank.

SIGNATURE OF AUTHORISED REPRESENTATIVE OF THE BANK _____
NAME AND DESIGNATION _____
SEAL OF THE BANK _____
SIGNATURE OF THE WITNESS _____
NAME OF THE WITNESS _____
ADDRESS OF THE WITNESS _____
BANK GUARANTEE FOR PERFORMANCE SECURITY

FORM OF BANK GUARANTEE FOR PERFORMANCE SECURITY

To

MD,
National Highways & Infrastructure
Development Corporation Ltd. 3RD
FLOOR, PTI BUILDING, 4-
Parliament Street,
New Delhi – 110001

WHEREAS..... (Name and address of contractor) hereinafter called “the contractor” has undertaken, in pursuance of Contract No. Dated to execute..... (Name of Contract and brief description of Works) (Hereinafter called “the contract”).

AND WHEREAS it has been stipulated by you in the said contract that the Contractor shall furnish you with a Bank Guarantee by a Nationalized/Scheduled bank of India for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREOF we hereby affirm that we are the guarantor and responsible to you on behalf of the Contractor, up to a total of Rs..... (Amount of guarantee) (Rupees..... (In words), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of (Amount of guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract or of the works to be performed there under or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The Bank also agrees that the Client at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Consultant and notwithstanding any security or other guarantee that the Client may have in relation to the Consultant's liabilities.

This guarantee shall also be operatable at our..... Branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment there under claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

The liability of Bank under this Guarantee shall not be affected by any change in the constitution of the consultant or the bank.

This guarantee shall be valid until 28 days from the date of expiry of the Defects Liability Period of 12 months.

Signature and seal of the Guarantor.....

Name of the Bank

Address.....

Date.....

In the presence of

1.....
(Name of Occupation)

2.....
(Name of Occupation)

An amount shall be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract including additional security for unbalance bids, if any and denominated in Indian Rupees.

Give names of all partners if the contractor is a Joint Venture

FORM OF AGREEMENT

AGREEMENT

This agreement made the _____ day of _____ 2015 _____ between the National Highways & Infrastructure Development Corporation Ltd. , New Delhi (hereinafter called "the Employer" of the one part and _____ (here in after called "the Contractor") of the other part.

AND WHEREAS the Employer invited bids from eligible bidders of the execution of certain works, viz. **Periodical Renewal for Rangpo-Gangtok section for Km 52+000 to Km 80+000(Excluding Km 63.00 to Km 66.00 and Km 69.00 to Km 72.00) of NH-10 including raising in 200 m length in Sinking area in Km 80 in the state of Sikkim..**

AND WHEREAS pursuant to the bid submitted by the Contractor, vide _____ (here in after referred to as the "BID" or "OFFER") for the execution of works, the Employer by his letter of acceptance dated _____ accepted the offer submitted by the Contractor for the execution and completion of such works and the remedying of any defects thereon, on terms and conditions in accordance with the documents listed in para 2 below.

AND WHEREAS the Contractor by a deed of undertaking dated _____ has agreed to abide by all the terms of the bid, including but not limited to the amount quoted for the execution of Contract, as stated in the bid, and also to comply with such terms and conditions as may be required from time to time.

AND WHEREAS pursuant to the bid submitted by the Contractor vide _____ (hereinafter referred to as the "the Offer"), the employer has by his letter of acceptance no. _____ - dated _____ -- accepted the offer submitted by the Contractor for the execution and completion of such works and the remedying of any defects therein, on terms and conditions in accordance in the conditions of particular application and condition included hereinafter;

AND WHEREAS the contractor has agreed to undertake such works and has furnished a performance security pursuant to clause 35 of the instructions to bidders (Section-I).

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this agreement works 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 constructed as part of this agreement viz.
 - (a) Agreement,
 - (b) Letter of Acceptance, Notice to Proceed with the Work,
 - (c) Contractor's Bid,
 - (d) Contract Data,
 - (e) Conditions of Contract including Special Conditions of Contract
 - (f) Specifications,
 - (g) Drawings
 - (h) Bill of Quantities, and
 - (i) Any other document listed in the Contract Data.
3. The foregoing documents shall be constructed as complementary and mutually explanatory one with another. Should any ambiguities or discrepancy be noted then the

order of precedence of these documents shall subject to the condition of particular applications be as listed above.

4. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the works and remedy any defects therein in conformity in all respect with the provisions of the contract.
5. the employer 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 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 here to have caused this agreement to be executed the day and year first before written.

The common seal of _____ was hereunto affixed in the presence of:

Or

Signed, sealed and delivered by the said Employer through his Authorized Representative and the said Contractor through his Power of Attorney holder in the presence of:

Binding Signature of Employer _____

For and on behalf of National Highways & Infrastructure Development Corporation Ltd. , New Delhi – 110 001

Binding Signature of Contractor _____

In the presence of

1. Name:
Address:

2. Name:
Address:

In the Presence of

1. Name:
Address:

2. Name:
Address:

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

The Common Seal of

Was hereunto affixed in the presence of:

Signed, Sealed and Delivered by the said _____

in the presence of:

Binding Signature of Employer _____

Binding Signature of Contractor _____

SECTION - V

CONDITIONS OF CONTRACT
(GCC & SPECIAL CONDITIONS OF CONTRACT)

CONDITIONS OF CONTRACT

A. GENERAL

1. Definitions

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

Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.

Compensation Events are those defined in Clause 44 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Engineer in accordance with Sub Clause 55.1.

The **Contract** is the contract between the Employer and the Contractor to execute, complete and maintain the Works. It consists of the documents listed in Clause 2.3 below.

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 and includes Technical and Financial bids.

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 **Defects Liability Period** is the period named in the Contract Data and calculated from the Completion Date.

The **Employer** is the party who will employ the Contractor to carry out the Works.

The **Engineer** is the person named in the Contract Data (or any other competent person appointed and notified to the contractor to act in replacement of the Engineer) 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, and valuing the Compensation Events.

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 listed in the Employer's Letter of Acceptance.

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.

Materials are all supplies, including consumables, used by the contractor for incorporation in the Works.

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

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

Site Investigation Reports are those which were included in the Bidding documents and are factual interpretative reports about the surface and sub-surface conditions at the site.

Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Engineer.

The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract which includes work on the Site.

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 turn over to the Employer, as defined in the Contract Data.

2. Interpretation

- 2.1. In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Engineer will provide instructions clarifying queries about the Conditions of Contract.
- 2.2. If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion date for the whole of the Works).
- 2.3. The documents forming the Contract shall be interpreted in the following order of priority:
 - (1) Agreement
 - (2) Letter of Acceptance, notice to proceed with the works
 - (3) Contractor's Bid
 - (4) Contract Data
 - (5) Conditions of Contract including Special Conditions of Contract
 - (6) Specifications
 - (7) Drawings
 - (8) Bill of quantities and
 - (9) Any other document listed in the Contract Data as forming part of the Contract.

3. Language and Law

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

4. Engineer's Decisions

- 4.1. Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

5. Delegation

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

6. Communications

- 6.1. Communications between parties which are referred to in the conditions are effective only when in writing. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

7. Sub-contracting

- 7.1. The Contractor may sub-contract any portion of work, up to a limit specified in Contract Data, with the approval of the Engineer but may not assign the Contract without the approval of the Employer in writing. Sub-contracting does not alter the Contractor's obligations.

8. Other Contractors

- 8.1. The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of other Contractors. The Contractor shall as referred to in the Contract Data, also provide facilities and services for them as described in the Schedule. The employer may modify the schedule of other contractors and shall notify the contractor of any such modification.

9. Personnel

- 9.1. The Contractor shall employ the key personnel named in the Schedule of Key Personnel as referred to in the Contract Data to carry out the functions stated in the Schedule or other personnel approved by the Engineer. The Engineer will approve any proposed replacement of key personnel only if their qualifications, abilities, and relevant experience are substantially equal to or better than those of the personnel listed in the Schedule.
- 9.2. If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or his work force stating the reasons the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

10. Employer's and Contractor's Risks

- 10.1. The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11. Employer's Risks

- 11.1. The Employer is responsible for the excepted risks which are (a) in so far as they directly affect the execution of the Works in India, the risks of war, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot commotion or disorder (unless restricted to the Contractor's employees), and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive, or (b) a cause due solely to the design of the Works, other than the Contractor's design.

12. Contractor's Risks

- 12.1. 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.

13. Insurance

- 13.1. The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage of property (except the Works, Plant, Materials and Equipment) in connection with the Contract; and
 - (d) personal injury or death.
- 13.2. Policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 If the Contractor does not provide any of the policies and certificates required, employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or if no payment is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of insurance shall not be made without the approval of the Engineer.

13.5 Both parties shall comply with any conditions of the insurance policies.

14. Site Investigation Reports

14.1 The Contractor, in preparing the Bid, shall rely on any site Investigation Reports referred to in the Contract Data, supplemented by any information available to the Bidder.

15. Queries about the Contract Data

15.1 The Engineer will clarify queries on the Contract Data.

16. Contractor to Construct the Works

16.1 The Contractor shall construct and install the Works in accordance with the Specification and Drawings.

17. The Works to be completed by the Intended Completion Date

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the programme submitted by the Contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion date.

18. Approval by the Engineer

18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for design of Temporary Works.

18.3 The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works where required.

18.5. All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Engineer before their use.

19. Safety

19.1. The Contractor shall be responsible for the safety of all activities on the Site.

20. Discoveries

20.1. Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer. The Contractor is to notify the Engineer of such discoveries and carry out the Engineer's instructions for dealing with them.

21. Possession of the Site

21.1. The Employer shall 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 and this will be Compensation Event.

22. Access to the Site

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

be carried out and to any place where materials or plant are being manufactured / fabricated / assembled for the works.

23. Instructions

- 23.1. The Contractor shall carry out all instructions of the Engineer pertaining to works, which comply with the applicable laws where the Site is located. **For execution of items pertaining to Ordinary Repair works pre-measurements shall be done jointly by contractor & Engineer upon which Engineer shall issue indents for the works. No works of ordinary repairs without prior indent shall be considered for payment.**
- 23.2. The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Employer, if so required by the Employer.

24. Disputes

- 24.1. If a dispute of any kind whatsoever arises between the employer and the Contractor in connection with or arising out of, the contract whether the execution of the works and services or after their completion and whether before or after reputation or other termination of the contract including any dispute so as to any opinion / instruction / termination, certificate or valuation of the Engineer, the matter in dispute shall in the first place be referred to the Engineer with a copy to the party for resolving the same.
- 24.2 In case the dispute is still remained unresolved then it could be settled in accordance with the Arbitration and Reconciliation Act 1996.

25. Procedure for Arbitration

- 25.1 The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

26. Deleted.

B. TIME CONTROL

27. Programme

- 27.1 Within the time stated in the Contract Data the Contractor shall submit to the Engineer for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works along with monthly cash flow forecast.
- 27.2 An update of the Programme shall be a programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work including any changes to the sequence of the activities.
- 27.3 The Contractor shall submit to the Engineer, for approval, an updated Programme at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Programme within this period, the Engineer may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.
- 27.4 The Engineer's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time. A revised Programme is to show the effect of Variations and Compensation Events.

28. Extension of the Intended Completion Date

- 28.1 The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work and which would cause the Contractor to incur additional cost.

- 28.2. The Engineer shall decide whether and by how much to extend the Intended Completion Date within 35 days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event 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 this failure shall not be considered in assessing the new Intended Completion Date.
- 28.3. The Engineer shall within 14 days of receiving full justification from the contractor for extension of Intended Completion Date refer to the Employer his decision. The Employer shall in not more than 21 days communicate to the Engineer the acceptance or otherwise of the Engineer's decision. If the Employer fails to give his acceptance, the Engineer shall not grant the extension and the contractor may refer the matter to the Dispute Review Expert under Clause 24.1.
- 29. Deleted**
- 30. Delays Ordered by the Engineer**
- 30.1. The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.
- 31. Management Meetings**
- 31.1. Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 31.2. The Engineer shall record the business of management meetings and is to provide copies of his record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken is to be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 32. Early Warning**
- 32.1. The Contractor is to warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of works. The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate is to be provided by the Contractor as soon as reasonably possible.
- 32.2. The Contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

C. QUALITY CONTROL

33. Identifying Defects

- 33.1 The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect.

34. Tests

- 34.1 If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a Compensation Event.

35. Correction of Defects

- 35.1 The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

35.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defects within the length of time specified by the Engineer's notice.

36. Uncorrected Defects

36.1 If the Contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. COST CONTROL

37. Bill of Quantities

37.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

37.2 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.

38. Changes in the Quantities

38.1 If the final quantity of the work done exceeds due to any reason from the quantity in the Bill of Quantities for the particular item by more than 25 percent provided the change exceeds 1% of initial Contract Price, the Engineer shall adjust the rate to allow for the change, duly considering,

- (a) Justification for rate adjustment as furnished by the contractor,
- (b) Economies resulting from increase in quantities by way of reduced plant, equipment, and overhead costs,
- (c) Entitlement of the contractor to compensation events where such events are caused by any additional work

38.2. The Engineer shall not adjust rates from changes in quantities except with the Prior approval of the Employer.

38.3. If requested by the Engineer, the Contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.

39. Variations

39.1. All Variations shall be included in updated Programmes produced by the Contractor.

40. Payments for Variations

40.1. The Contractor shall provide the Engineer with a quotation (with breakdown of unit rates) for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Engineer and before the Variation is ordered.

40.2. If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in Sub Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.

40.3. If the Contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price which shall be based on Engineer's own forecast of the effects of the Variation on the Contractor's costs.

40.4. If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

- 40.5. The Contractor shall not be entitled to additional payment for costs which could have been avoided by giving early warning.

41. Cash Flow Forecasts

- 41.1. When the Programme is updated, the contractor is to provide the Engineer with an updated cash flow forecast.

42. Payment Certificates

- 42.1. The Contractor shall submit to the Engineer monthly statements of the estimated value of the work completed less the cumulative amount certified previously.
- 42.2. The Engineer shall check the Contractor's monthly statement within 14 days and certify the amount to be paid to the Contractor after taking into account any credit or debit for the month in question in respect of materials for the works in the relevant amounts and under conditions set forth in sub-clause 51 (3) of the Contract Data (Secured Advance).
- 42.3. The value of work executed shall be determined by the Engineer.
- 42.4. The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.
- 42.5. The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6. 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.

43. Payments

- 43.1. Payments shall be adjusted for deductions for advance payments, retention, other recoveries in terms of the contract and taxes at source, as applicable under the law. The Employer shall pay the Contractor the amounts certified by the Engineer within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at 12% per annum.
- 43.2. If an amount certified is increased in a later certificate as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 43.3. Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

44. Compensation Events

- 44.1. The following are Compensation Events unless they are caused by the Contractor:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
 - (b) The Employer modifies the schedule of other contractors in a way which affects the work of the contractor under the contract.
 - (c) The Engineer orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.
 - (d) The Engineer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.
 - (e) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the site.
 - (f) The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.

- (g) Other contractors, public authorities, utilities or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
 - (h) The effect on the Contractor of any of the Employer's Risks.
 - (i) The Engineer unreasonably delays issuing a Certificate of Completion.
 - (j) Other Compensation Events listed in the Contract Data or mentioned in the Contract.
- 44.2. If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date is extended. The Engineer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 44.3. As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it is to be assessed by the Engineer and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract Price based on Engineer's own forecast. The Engineer will assume that the Contractor will react competently and promptly to the event.
- 44.4. The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer.

45. Tax

- 45.1 The rates quoted by the Contractor shall be deemed to be inclusive of the sales and other levies, duties, royalties, cess, toll, taxes (except service tax) of Central and State Governments, local bodies and authorities that the Contractor will have to pay for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law. The service tax shall be reimbursed (if applicable) subject to production of proof of such payment by the contractor.

46. Currencies

- 46.1. All payments shall be made in Indian Rupees.

47. Price Adjustment - Deleted

48. Retention

- 48.1. The Employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.
- 48.2.1. The amount retained will be repaid to the Contractor when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.
- 48.3. Deleted

49. Liquidated Damages

- 49.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date (for the whole of the works or the milestone as stated in the contract data). The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages does not affect the Contractor's liabilities.
- 49.2. If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.
- 49.3. If the contractor fails to comply with the time for completion as stipulated in the tender, then the contractor shall pay to the employer the relevant sum stated in the Contract Data as Liquidated damages for such default and not as penalty for everyday or part of day which shall elapse

between relevant time for completion and the date stated in the taking over certificate of the whole of the works on the relevant section, subject to the limit stated in the contract data.

The employer may, without prejudice to any other method of recovery deduct the amount of such damages from any monies due or to become due to the contractor. The payment or deduction of such damages shall not relieve the contractor from his obligation to complete the works on from any other of his obligations and liabilities under the contract.

- 49.4. If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking - Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

50. Bonus - Deleted

51. Advance Payment

- 51.1. The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.
- 51.2. The Contractor is to use the advance payment only to pay for Equipment, Plant and Mobilization expenses required specifically for execution of the Works. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.
- 51.3. The advance payment shall be repaid with interest at the rate of SBI PLR applicable on the date of release of mobilization advance by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, or Liquidated Damages.
- 51.4. Secured Advance - Deleted.

52. Securities

- 52.1. The Performance Security (including additional security for unbalanced bids) shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in Indian Rupees. The Performance Security shall be valid until a date 28 days from the date of expiry of Defects Liability Period and the additional security for unbalanced bids shall be valid until a date 28 days from the date of issue of the certificate of completion.

53. Deleted

54. Cost of Repairs

- 54.1. 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 shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. FINISHING THE CONTRACT

55. Completion

- 55.1. The Contractor shall request the Engineer to issue a Certificate of Completion of the Works and the Engineer will do so upon deciding that the Work is completed.

56. Taking Over

- 56.1. The Employer shall take over the Site and the Works within seven days of the Engineer issuing a certificate of Completion.

57. Final Account

- 57.1. The Contractor shall supply to the Engineer a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defect Liability Certificate and certify any final payment that 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 shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate within 56 days of receiving the Contractor's revised account.

58. Operating and Maintenance Manuals

- 58.1. If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.
- 58.2. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Engineer's approval, the Engineer shall withhold the amount stated in the Contract Data from payments due to the Contractor.

59. Termination

- 59.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 59.2. Fundamental breaches of Contract include, but shall not be limited to the following:
- (a) The Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;
 - (b) The Engineer instructs the Contractor to delay the progress of the Works and the instruction is not withdrawn within 28 days;
 - (c) The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (d) A payment certified by the Engineer is not paid by the Employer to the Contractor within 56 days of the date of the Engineer's certificate;
 - (e) The Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
 - (f) The Contractor does not maintain a security which is required;
 - (g) the Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract data; and
 - (h) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this paragraph: "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

- 59.3. When either party to the Contract gives notice of a breach of contract to the Engineer for a cause other than those listed under Sub Clause 59.2 above, the Engineer shall decide whether the breach is fundamental or not.
- 59.4. Notwithstanding the above, the Employer may terminate the Contract for convenience.

- 59.5. If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

60. Payment upon Termination

- 60.1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done less advance payments received up to the date of the issue of the certificate, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor the difference shall be a debt payable to the Employer.
- 60.2. If the Contract is terminated at the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Engineer shall issue a certificate for the value of the work done, the cost of balance material brought by the contractor and available at site, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of the contract and less taxes due to be deducted at source as per applicable law.

61. Property

- 61.1. All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer, if the Contract is terminated because of a Contractor's default.

62. Release from Performance

- 62.1. 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 shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.

F. SPECIAL CONDITIONS OF CONTRACT

1. LABOUR:

The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Engineer may require.

2. COMPLIANCE WITH LABOUR REGULATIONS:

During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non- observance of the provisions stipulated in the notifications/bye laws/ Acts/Rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall have the right to deduct any money due to the Contractor including his amount of performance security. The Employer/Engineer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The employees of the Contractor and the Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK.

- a) Workmen Compensation Act 1923: - The Act provides for compensation in case of injury by accident arising out of and during the course of employment.
- b) Payment of Gratuity Act 1972 :- Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years service or more on death, the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.
- c) Employees P.F. and Miscellaneous Provision Act 1952: The Act Provides for monthly contributions by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are:
 - (i) Pension or family pension on retirement or death, as the case may be.
 - (ii) Deposit linked insurance on the death in harness of the worker.
 - (iii) Payment of P.F. accumulation on retirement/death etc.
- d) Maternity Benefit Act 1951:- The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.
- e) Contract Labour (Regulation & Abolition) Act 1970:- The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by Law. The Principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer, if they employ 20 or more contract labour.
- f) Minimum Wages Act 1948:- The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act, if the employment is a scheduled employment. Constructions of Buildings, Roads, and Runways are scheduled employments.
- g) Payment of Wages Act 1936:- It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.
- h) Equal Remuneration Act 1979:- The Act provides for payment of equal wages for work of equal nature to Male and Female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc.
- i) Payment of Bonus Act 1965:- The Act is applicable to all establishments employing 20 or more employees. The Act provides for payments of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs.3500/-per month or less. The bonus to be paid to employees getting Rs.2500/- per month or above upto Rs.3500/- per month shall be worked out by taking wages as Rs.2500/- per month only. The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.
- j) Industrial Disputes Act 1947:- The Act lays down the machinery and procedure for resolution of Industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- k) Industrial Employment (Standing Orders) Act 1946:- It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority.
- 1) Trade Unions Act 1926: - The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities.

- m) Child Labour (Prohibition & Regulation) Act 1986:- The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in Building and Construction Industry.
- n) Inter-State Migrant workmen's (Regulation of Employment & Conditions of Service) Act 1979:- The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, traveling expenses from home upto the establishment and back, etc.
- o) The Building and Other Construction workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act of 1996 :- All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate not (exceeding 2% of the cost of construction as may be modified by the Government. The Employer of the establishment is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.
- p) Factories Act 1948:- The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

ARBITRATION (GCC Clause 25.3)

The procedure for arbitration will be as follows:

- 25.3
- (a) In case of Dispute or difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The parties shall make efforts to agree on a sole arbitrator and only if such an attempt does not succeed and the Arbitral Tribunal consisting of 3 arbitrators one each to be appointed by the Employer and the Contractor and the third Arbitrator to be chosen by the two Arbitrators so appointed by the Parties to act as Presiding Arbitrator shall be considered. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the * Council, Indian Roads Congress.
 - (b) The Arbitral Tribunal shall consist of three Arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties, and shall act a presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding arbitrator shall be appointed by the * Council, Indian Roads Congress.
 - (c) If one of the parties fails to appoint its arbitrator in pursuance of sub-clause (a) and (b) above within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the * Council, Indian Roads Congress shall appoint the arbitrator. A certified copy of the order of the Council, Indian Roads Congress, making such an appointment shall be furnished to each of the parties.
 - (d) Arbitration proceedings shall be held in India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English.

- (e) The decision of the majority of arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.
- (f) Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor by the owners shall not be withheld, unless they are the subject matter of the arbitration proceedings.

CONTRACT DATA

**Clause
Referenc
e with
respect
to
section 3**

Items marked “N/A” do not apply in this Contract

1. The Employer is [Cl.1.1]

Name : Chairman, National Highways & Infrastructure
Development Corporation Ltd. Address : 3RD FLOOR,
PTI BUILDING, 4-Parliament Street,

New Delhi – 110001

Name of authorized Representative : Branch Officer,
NHIDCL Gangtok (Sikkim)

2. The Engineer is: shall be intimated later.
3. The Defects Liability Period for all items under improvement works is 12 months from the date of completion of the work. [Cl.1.1 & 35]
4. The Start Date shall be within 7 days after the date of issue of notice to proceed with the work. [Cl.1.1]
5. The Intended Completion Date for the whole of the Works is 6 months after start of work. Milestone dates: [Cl.1.1, 17&28]

Milestone:

Duration (in months)	Schedule of Completion (percentage of work)
1	30% of total work
2	40% of total work
3	30% of total work

6. The Site is located on NH–10 Rampho-Gangtok Road in the state of Sikkim. [Cl. 1.1 &35]
7. The name and identification number of the Contract is:
Periodical Renewal for Rangpo-Gangtok section for Km 52+000 to Km 80+000(Excluding Km 63.00 to Km 66.00 and Km 69.00 to Km 72.00) of NH-10 including raising in 200 m length in Sinking area in Km 80 in the state of Sikkim. [Cl.1.1]
8. The works consist of Periodical Renewal for Rangpo-Gangtok section for Km 52+000 to Km 80+000(Excluding Km 63.00 to Km 66.00 and Km 69.00 to Km 72.00) of NH-10 including raising in 200 m length in Sinking area in Km 80 in the state of Sikkim. [Cl.1.1, 17, & 28]

The works shall, inter alia, include the following, as specified or as

(A) Road Works

Above work of existing carriageways by reconstruction, maintenance of existing bituminous surface and overlaying tack coat, DBM, BC and filling of pot holes.

(B) Other Items as mentioned in BOQ

Providing, fitting any other items as required to fulfill all contractual obligations as per the Bid documents.

- | | | |
|-----|--|------------|
| 9. | The law which applies to the Contract is the law of Union of India | [Cl. 3.1] |
| 10. | The language of the Contract document is English | [Cl. 3.1] |
| 11. | Limit of subcontracting NIL | [Cl. 7.1] |
| 12. | Deleted | [Cl. 13] |
| 13. | The following safety measures are mandatory on site: opaque barricades, safety jackets to construction staff and labour, safety tape, night marking. Debris shall be immediately cleared from site and no debris shall be allowed to remain on road for more than 1 day outside temporary working area. Engineer may impose fines/penalty on failure by the contractor /sub-contractor to enforce such safety regulations at Rs 10,000 per day subject to a ceiling of 1% of the contract price. | [Cl. 19] |
| 14. | The Site Possession Dates shall be within 7 days from the issue of notice to proceed with the work. | [Cl. 21] |
| 15. | The period for submission of the programme for approval of Engineer shall be 15 days from the issue of Letter of Acceptance. | [Cl. 27.1] |
| 16. | The period between programme updates shall be 21 days. | [Cl. 27.3] |
| 17. | The amount to be withheld for late submission of an updated programme shall be Rs. 1.00 lakhs. | [Cl. 27.3] |
| 18. | The following events shall also be Compensation Events: | [Cl. 44] |

Substantially adverse ground conditions encountered during the course of execution of work not provided for in the bidding document

- (i) Removal of underground utilities detected subsequently
- (ii) Significant change in classification of soil requiring additional mobilization by the contractor, e.g. ordinary soil to rock excavation.
- (iii) Removal of unsuitable material like marsh, debris dumps, etc not caused by the contractor
- (iv) Artesian conditions
- (v) Seepage, erosion, landslide

- (vi) River training requiring protection of permanent work
- (vii) Presence of historical, archeological or religious structures, monuments interfering with the works
- (viii) Restriction of access to ground imposed by civil, judicial, or military authority**

19. The currency of the Contract is Indian Rupees. [Cl. 46]

20. The proportion of payments retained (retention money) shall be 6% from each bill limited to 5% of initial contract price. [Cl. 48]

21. a) Maximum limit of liquidated damages for delay in completion of work. [Cl. 49]
10% of contract amount
b) Liquidity damages per day - 0.005% of contract amount.

22. Deleted. [Cl. 51]

23 The Securities shall be for the following minimum amounts equivalent as a percentage of the Contract Price: [Cl. 52]

Performance Security for 10 per cent of contract price plus Rs..... (to be decided after evaluation of the bid) as additional security in terms of ITB Clause 29.5.

The standard form of Performance Security acceptable to the Employer shall be an unconditional Bank Guarantee of the type as presented in Section 8 of the Bidding Documents

24 Deleted [Cl. 58]

25 The following events shall also be fundamental breach of contract: "The Contractor has contravened Sub-clause 7.1 and Clause 9 of GCC." [Cl. 59.2]

- 26 The percentage to apply to the value of the work not completed [3, Cl. 60] representing the Employer's additional cost for completing the Works shall be 20 per cent.

SECTION - VI

TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS

Technical specifications for road and bridge works shall be the specifications for Road and Bridge Works (Fifth Revision, 2013), along with other addendum, corrigendum issued up to 28 days before the final date of submission of bid issued by the MORT & H Govt. of India and published by IRC with a cross reference to relevant BIS for materials or other aspects not covered by IRC.

SECTION - VII

BILL OF QUANTITY
