

## **Request for Proposals**

RFP No. 01/074-75

*Country:* Nepal

**Package No. MDS/M2/PMC/04**

### **Project Management Consulting (PMC) Service**

Project Name : Melamchi Water Supply Project  
Office Name : Melamchi Water Supply Development Board  
Office Address : 580 Devkota Marg, Mid Baneshwor, Kathmandu, Nepal

Financing Agency: Government of Nepal

**9 November, 2017**

# Request for Proposal

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# Section 1. Letter of Invitation

9 November 2017

Dear **[insert: Name of Consultant]**:

1. Government of Nepal (GoN) has allocated fund toward the cost of **Project Management Consultancy Service for Melamchi Water Supply Project, Melamchi Water Supply System Development Board (MWSDB)** and intends to apply a portion of this fund to eligible payments under this Contract.
2. The **Melamchi Water Supply Development Board (MWSDB)** now invites proposals to provide the following consulting services:

Objectives:

To assist the MWSDB to ensure i) a smooth winding up MWSP Phase I, and ii) a successful implementation of the MWSP Phase II through a high-quality project management and administration

Description:

The PMC services include:

- i) wrap up of Phase-I works,
- ii) procurement of design review and supervision consultant DR/CSC,
- iii) procurement of contracts for Tunnel, Headworks and Water Treatment Plant, Hydro - mechanical Works and other related works,
- iv) procurement of RAP, EMP, SUP works,
- v) review of the design review works of DR/CSC,
- vi) monitor and review the works of DR/CSC, and
- vii) contract management and construction administration of the entire project.
- viii) capacity building and training of MWSDB Engineers staffs)
- ix) Other related works

More details on the services are provided in the attached Terms of Reference.

3. The Request for Proposal (RFP) has been addressed to the following shortlisted consultants:
3. The Request for Proposal (RFP) has been addressed to the following shortlisted consultants:
  - i. Dohwa Engineering Co. Ltd., Korea in association with as JV FCG International Pvt. Ltd., Finland and as sub consultant with Environment & Resource Management Consultant (P) Ltd., Nepal.
  - ii. Dolsar Engineering Inc. Company, Turkey in association with as sub consultant Integrated Development & Research Services (P) Ltd., Nepal Sunder Kriti Consultant Private Limited, Nepal and Root Consultant Services Pvt. Ltd., Nepal.
  - iii. Geodata Engineering S.p.A. Italy in association with as JV Shah Technical Consultants India and as sub consultant with Sustainable Infrastructure Development Foundation P. Ltd., Nepal and Total Management Services Pvt. Ltd., Nepal.

- iv. Lahmeyer International GmbH in association with as sub consultant Total Management Services Pvt. Ltd., Nepal.
  - v. SMEC International Pty. Ltd. Australia In association with OTARD International & Engineering Consultancy Pvt. Ltd., Nepal and Building Design Authority (P) Ltd., Nepal.
  - vi. SWECO Denmark A/S in association with GEOCE Consultants (P) Ltd., Nepal
4. A consultant will be selected under Quality- and Cost-Based Selection (QCBS) and procedures described in this RFP.
  5. The RFP includes the following documents:
    - Section 1 - Letter of Invitation
    - Section 2 - Information to Consultants
    - Section 3 - Technical Proposal - Standard Forms
    - Section 4 - Financial Proposal - Standard Forms
    - Section 5 - Terms of Reference
    - Section 6 - Standard Forms of Contract.
  6. Please inform us, upon receipt:
    - (a) that you received the letter of invitation; and
    - (b) whether you submit a proposal or not

Yours sincerely,

Ram Chandra Devkota  
Executive Director  
Melamchi Water Supply Development Board  
580 Devkota Marg, Mid Baneshwor  
Kathmandu, Nepal  
Tel. No 977-1- 4468963, 4468964, 4468965  
Fax No. 977-1-4468962  
Email: - [procurement@melamchiwater.gov.np](mailto:procurement@melamchiwater.gov.np)

## Section 2. Information to Consultants

### 1. Introduction

- 1.1 The Client named in the Data Sheet will select a consultant among those listed in the Letter of Invitation, in accordance with the method of selection specified in the Data Sheet.
- 1.2 The consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Data Sheet for consulting services required for the assignment named in the Data Sheet. The proposal will be the basis for contract negotiations and ultimately for a signed contract with the selected consultant.
- 1.3 The assignment shall be implemented in accordance with the phasing indicated in the Data Sheet. When the assignment includes several phases, the performance of the consultant under each phase must be to the Client's satisfaction before work begins on the next phase.
- 1.4 The consultants must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain first-hand information on the assignment and on the local conditions, consultants are encouraged to visit the Client before submitting a proposal and to attend a pre-proposal conference if one is specified in the Data Sheet. Attending the pre-proposal conference is optional. The consultants' representative should contact the officials named in the Data Sheet to arrange for their visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 1.5 The Client will provide the inputs specified in the Data Sheet, assist the consultant in obtaining licences and permits needed to carry out the services, and make available relevant project data and reports.
- 1.6 Please note that (i) the costs of preparing the proposal and of negotiating the contract, including a visit to the Client, are not reimbursable as a direct cost of the assignment; and (ii) the Client is not bound to accept any of the proposals submitted.
- 1.7 GoN (or Donor Agency) policy requires that consultants provide professional, objective, and impartial advice and at all times hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Client.
  - 1.7.1 Without limitation on the generality of this rule, consultants shall not be hired under the circumstances set forth below:
    - a. A consultant which has been engaged by the Client to provide

goods or works for a project, and any of their affiliates, shall be disqualified from providing consulting services for the same project. Conversely, consultants hired to provide consulting services for the preparation or implementation of a project, and any of their affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the consultant's earlier consulting services) for the same project.

- b. Consultants or any of their affiliates shall not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultants.
- 1.7.2 As pointed out in para. 1.7.1 (a) above, consultants may be hired for downstream work, when continuity is essential, in which case this possibility shall be indicated in the Data Sheet and the factors used for the selection of the consultant should take the likelihood of continuation into account. It will be the exclusive decision of the Client whether or not to have the downstream assignment carried out, and if it is carried out, which consultant will be hired for the purpose.
  - 1.7.3 Any previous or ongoing participation in relation to the assignment by the consultant, its professional staff or affiliates or associates under a contract with the GoN may result in rejection of the proposal. Consultants should clarify their situation in that respect with the Client before preparing the proposal.
  - 1.8 It is the GoN's policy to require its implementing agencies, as well as consultants under GoN (or Donor Agency) financed contracts, to observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the GoN:
    - a. defines, for the purposes of this provision, the terms set forth below as follows:
      - i. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution; and
      - ii. "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practices among consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the borrower of the benefits of free and open competition.
    - b. will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;
    - c. will cancel the consultant's contract if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the consultant or the Client during the selection process or the execution of that contract;

- d. will debar a consultant for a stated period of time, to be awarded a contract if it at any time determines that the consultant has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract; and
  - e. will have the right to require that, a provision be included requiring consultants to permit the Client inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Client.
- 1.9 Consultants shall not be under a debarment for corrupt and fraudulent practices issued by GoN accordance with the above sub para. 1.8 (d).
- 1.10 Consultants shall furnish information as described in the Financial Proposal submission form (Section 4A) on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal, and to execute the work if the consultant is awarded the contract.
- 1.11 Consultants shall be aware of the provisions on fraud and corruption stated in the Standard Contract under the clauses indicated in the Data Sheet.
- 2. Clarification and Amendment of RFP Documents**
- 2.1 Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the Data Sheet before the proposal submission date. Any request for clarification must be sent in writing by paper mail, cable, telex, facsimile, or electronic mail to the Client's address indicated in the Data Sheet. The Client will respond by cable, telex, facsimile, or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited consultants who intend to submit proposals.
- 2.2 At any time before the submission of proposals, the Client may, for any reason, whether at its own initiative or in response to a clarification requested by an invited consultant, amend the RFP. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex, facsimile, or electronic mail to all invited consultants and will be binding on them. The Client may at its discretion extend the deadline for the submission of proposals.
- 3. Preparation of Proposal**
- 3.1 Consultants are requested to submit a proposal Sub- Clause 1.2 written in the language(s) specified in the Data Sheet.
- Technical Proposal**
- 3.2 In preparing the Technical Proposal (TP), consultants are expected to examine the documents constituting this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.
- 3.3 While preparing the Technical Proposal, consultants must give particular attention to the following:

- i. If a consultant considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise by associating with individual consultant(s) and/or other consultants or entities in a joint venture or sub-consultancy, as appropriate. Consultants may associate with the other consultants invited for this assignment only with approval of the Client as indicated in the Data Sheet. Consultants must obtain the approval of the Client to enter into a joint venture with consultants not invited for this assignment. **Foreign consultants are encouraged to seek the participation of local consultants by entering into a joint venture with, or subcontracting part of the assignment to, national consultants.**
  - ii. For assignments on a staff-time basis, the estimated number of professional staff-months is given in the Data Sheet. The proposal shall, however, be based on the number of professional staff-months estimated by the consultant. For fixed-budget-based assignments, the available budget is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.
  - iii. It is desirable that the majority of the key professional staff proposed be permanent employees of the consultant or have an extended and stable working relationship with it.
  - iv. Proposed professional staff must, at a minimum, have the experience indicated in the Data Sheet, preferably working under conditions similar to those prevailing in Nepal.
  - v. Alternative professional staff shall not be proposed, and only one curriculum vitae (CV) may be submitted for each position.
  - vi. Reports to be issued by the consultants as part of this assignment must be in the language(s) as specified in the Data Sheet.
- 3.4 The Technical Proposal shall provide the following information using the attached Standard Forms (Section 3):
- i. A brief description of the consultant's organization and an outline of recent experience on assignments (Section 3B) of a similar nature. For each assignment, the outline should indicate, *inter alia*, the client, location and duration of the assignment, contract amount, and consultant's involvement.
  - ii. Any comments or suggestions on the Terms of Reference and on the data, a list of services, and facilities to be provided by the Client (Section 3C).
  - iii. A description of the methodology and work plan for performing the assignment (Section 3D).
  - iv. The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member, and their timing (Section 3E).



- v. CVs recently signed by the proposed professional staff and the authorised representative submitting the proposal (Section 3F). Key information should include number of years working for the consultant/entity and degree of responsibility held in various assignments.
- vi. Estimates of the total staff input (professional and support staff; staff time) needed to carry out the assignment, supported by bar chart diagrams showing the time proposed for each professional staff team member (Sections 3E and 3G).
- vii. A detailed description of the proposed methodology, staffing, and monitoring of training, if the Data Sheet specifies training as a major component of the assignment.
- viii. Any additional information requested in the Data Sheet.

3.5 The Technical Proposal shall not include any financial information.

**Financial Proposal**

- 3.6 In preparing the Financial Proposal (FP), consultants are expected to take into account the requirements and conditions outlined in the RFP documents. The Financial Proposal should follow Standard Forms (Section 4). It lists all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at headquarters), and (b) reimbursable expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, communication (Telephone, Fax etc.), surveys, and training, if it is a major component of the assignment. If appropriate, these costs should be broken down by activity and, if appropriate, into foreign and local expenditures.
- 3.7 The Financial Proposal should clearly estimate, as a separate amount, the local taxes (including social security), duties, fees, levies, and other charges imposed under the applicable law, on the consultants, the sub-consultants, and their personnel (other than nationals or permanent residents of Nepal), unless the Data Sheet specifies otherwise.
- 3.8 Consultants may express the price of their services in the currency acceptable to the Client. The consultants may not use more than three foreign currencies. The Client may require consultants to state the portion of their price representing local cost in Nepalese Rupees if so indicated in the Data Sheet.
- 3.9 Commissions and gratuities, if any, paid or to be paid by consultants and related to the assignment will be listed in the Financial Proposal submission form (Section 4A).
- 3.10 The Data Sheet indicates required validity period of the proposals. During this period, the consultant is expected to keep available the professional staff proposed for the assignment. The Client will make its best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the

consultants who do not agree have the right not to extend the validity of their proposals.

#### 4. Submission, Receipt, and Opening of Proposals

- 4.1 The original proposal (TP and, if required, FP; see Para 1.2) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the consultant itself. Any such corrections must be initialled by the persons or person who sign(s) the proposals.
- 4.2 An authorized representative of the Consultants shall initial all pages of the original Technical and Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal.
- 4.3 For each proposal, the consultants shall prepare the number of copies indicated in the Data Sheet. Each Technical Proposal and Financial Proposal shall be marked "**ORIGINAL**" or "**COPY**" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original governs.
- 4.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "**Technical Proposal**," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "**FINANCIAL PROPOSAL**" and warning: "**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**" Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Data Sheet and be clearly marked, "**DO NOT OPEN, EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE.**"
- 4.5 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in the Data Sheet. Any proposal received after the closing time for submission of proposals shall be returned unopened.
- 4.6 After the deadline for submission of proposals, the Technical Proposal shall be opened immediately by the evaluation committee. The Financial Proposal shall remain sealed and deposited with the Client's Procurement Unit until all submitted proposals are opened publicly.

#### 5. Proposal Evaluation

##### General

- 5.1 From the time the bids are opened to the time the contract is awarded, if any consultant wishes to contact the Client on any matter related to its proposal, it should do so in writing at the address indicated in the Data Sheet. Any effort by the consultant to influence the Client in the Client's proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the consultant's proposal.
- 5.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation, is concluded.

- Evaluation of Technical Proposals (QCBS, QBS,FBS, LCBS)**
- 5.3 The evaluation committee, appointed by the Client as a whole, and each of its members individually, evaluates the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria and point system specified in the Data Sheet. The evaluation committee shall compute the score obtained by each proposal by taking the average of the scores given by each member to the particular proposal. Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Data Sheet.
- 5.4 In the case of Quality-Based Selection, the highest ranked consultant is invited to negotiate its proposal and the contract on the basis of the Technical Proposal and the Financial Proposal submitted in accordance with the instructions given in Sub - Clause 1.2 and the Data Sheet.
- Public Opening and Evaluation of Financial Proposals (QCBS Only)**
- 5.5 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant and the proposed prices shall be read aloud and recorded. The Client shall prepare minutes of the public opening.
- Public Opening and Evaluation of Financial Proposals (QCBS , QBS, FBS,LCBS)**
- 5.6 After the evaluation of quality is completed, the Client shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned unopened after completing the selection process. The Client shall simultaneously notify the consultants that have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals. The opening date shall be 7 days for National level proposals and 15 days for International level proposals after the notification date. The notification may be sent by registered letter, cable, telex, facsimile, or electronic mail.
- 5.7 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant, the technical scores, and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.
- 5.8 The evaluation committee will determine whether the Financial Proposals are complete (i.e., whether they have costed all items of the corresponding Technical Proposals; if not, the Client will cost them and add their cost to the initial price), correct any computational errors, and convert prices in various currencies to the single currency specified in the Data Sheet. The official selling rates and the date used shall be as provided by the source indicated in the Data Sheet.
- 5.9 The evaluation shall exclude those taxes, duties, fees, levies, and other charges estimated as per Sub-Clause 3.7 and imposed under the applicable law; and to be applied to foreign and non-permanent resident consultants (and to be paid under the contract, unless the consultant is exempted).

- 5.10 In case of Fixed Budget Selection (FBS), the consultant's Financial Proposals with cost more than the specified fixed budget ceiling stated in Data Sheet shall be rejected.
- 5.11 In case of Least Cost Based Selection (LCBS), the consultant's proposal which has scored the minimum pass mark in the Technical proposal and is of the least cost in the financial proposal shall be invited for negotiation.
- 5.12 In case of QCBS and FBS with financial proposal within specified fixed budget ceiling, the lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the Data Sheet. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal;  $T + P = 1$ ) indicated in the Data Sheet:  $S = St \times T\% + Sf \times P\%$ . The consultant achieving the highest combined technical and financial score will be invited for negotiations.

## 6. Negotiations

- 6.1 Negotiations will be held at the address indicated in the Data Sheet. The aim is to reach agreement on all points and sign a contract.
- 6.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the consultant to improve the Terms of Reference. The Client and consultant will then work out final Terms of Reference, staffing, and bar charts indicating activities, staff, periods in the field and in the home office, staff-months, logistics, and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the "Description of Services" and form part of the contract. Special attention will be paid to getting the most the consultant can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- 6.3 The financial negotiations will include a clarification (if any) of the consultant's tax liability and the manner in which it will be reflected in the contract; and will reflect the agreed technical modifications in the cost of the services. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff (no breakdown of fees) nor other proposed unit rates in the cases of QCBS and CBS methods. For QBS, the consultant should provide the information on remuneration rates described in the Appendix to this information.
- 6.4 Having selected the consultant on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet

the objectives of the assignment. If substitution is considered then the proposed alternative candidate shall be evaluated as per the original criteria. The qualification and experience of the substitute candidate shall equal to or higher than the originally proposed candidate. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the consultant may be disqualified.

6.5 The negotiations will conclude with a review of the draft form of the contract. If negotiations fail, the Client will invite the consultant whose proposal received the second highest score to negotiate a Contract.

## **7. Award of Contract**

7.1 Pursuant to Sub-Clause 6.5, the consultant, with whom agreement is reached following negotiation, shall be selected for approval of his proposal and the Client shall notify it's intention to accept the proposal to the selected consultant and other short-listed consultants within 7 days of selection of the winning proposal.

7.2 Any consultant, who has submitted a proposal and is not satisfied with the procurement process or Client's decision provided as per Sub - Clause 7.1 and believes that the Client has committed an error or breach of duty which has or will result in loss to him then the consultant may give an application for review of the decision to the Client with reference to the error or breach of duty committed by the Client. The review application should be given within 7 days of receipt of information regarding the issue of letter by the Client notifying it's intention to accept the winning proposal pursuant to Sub Clause 7.1.

7.3 If the review application is not received by the Client pursuant to Sub-Clause 7.2 then the proposal of the Consultant, selected as per Sub-Clause 7.1 shall be accepted and the successful consultant shall be notified to come for signing the Agreement within 15 days.

7.4 If the Consultant fails to sign an agreement pursuant to Sub-Clause 7.3 then the Client will invite the consultant whose proposal received the next highest score to negotiate a contract.

7.5 If a review application is received by the Client pursuant to Clause 7.1 then the Client will clarify and respond within 5 days of receiving such application.

7.6 If the applicant is not satisfied with the decision given by the procuring entity and/ or the decision is not given by the Procuring Entity Chief within 5 days then the applicant can file a complaint to the Review committee within 7 days.

7.7 The Client shall return the unopened Financial Proposals of those consultants who did not pass the technical evaluation.

7.8 The consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.

## **8. Confidentiality**

8.1 Information relating to evaluation of proposals and

recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the letter of intention to accept the proposal is not issued to the selected consultant pursuant to Sub- Clause 7.1.

**9. Conduct of Consultants**

9.1 The Consultant shall be responsible to fulfil his obligations as per the requirement of the Contract Agreement, RFP documents and GoN's Public Procurement Act and Regulations.

9.2 The consultant shall not carry out or cause to carry out the following acts with an intention to influence the implementation of the procurement process or the procurement agreement:

- a. give or propose improper inducement directly or indirectly,
- b. distortion or misrepresentation of facts
- c. engaging or being involved in corrupt or fraudulent practice
- d. interference in participation of other prospective bidders.
- e. coercion or threatening directly or indirectly to impair or harm, any party or the property of the party involved in the procurement proceedings,
- f. collusive practice among consultants before or after submission of proposals for distribution of works among consultants or fixing artificial/uncompetitive proposal price with an intention to deprive the Client the benefit of open competitive proposal price.
- g. contacting the Client with an intention to influence the Client with regards to the proposals or interference of any kind in examination and evaluation of the proposals during the period after opening of proposals up to the notification of award of contract

**10. Blacklisting Consultant**

10.1 Without prejudice to any other rights of the Employer under this Contract, the Public Procurement Monitoring Office may blacklist a Consultant for his conduct up to three years on the following grounds and seriousness of the act committed by the consultant:

- a) if it is proved that the consultant committed acts pursuant to the Sub-clause 9.2,
- b) if the consultant fails to sign an agreement pursuant to Sub - Clause 7.3,
- c) if it is proved later that the consultant has committed substantial defect in implementation of the contract or has not substantially fulfilled his obligations under the contract or the completed work is not of the specified quality as per the contract,
- d) if convicted by a court of law in a criminal offence which disqualifies the bidder from participating in the contract.
- e) if it is proved that the contract agreement signed by the Consultant was based on false or misrepresentation of

consultant's qualification information,

f) other acts mentioned in the Data Sheet or SCC

10.2 A Consultant declared blacklisted and ineligible by the GON, Public procurement Office and or concerned Donor Agency in case of donor funded project shall be ineligible to bid for a contract during the period of time determined by the GON and or the concerned donor agency.

## Information to Consultants

### DATA SHEET

#### Clause Reference

1.1	<p>The name of the Client is: <b>Melamchi Water Supply Development Board(MWSDB)</b></p> <p>The method of selection is: QCBS</p>
1.2	<p>Technical and Financial Proposals are requested: <b>Yes</b></p> <p>The name, objectives, and description of the assignment are:</p> <p>Name: Project Management Consultancy Service for Melamchi Water Supply Project</p> <p>Objectives: To assist the MWSDB to ensure i) a smooth winding up MWSP Phase I, and ii) a successful implementation of the MWSP – Phase II through a high-quality project management and administration</p> <p>Description: The PMC services include:</p> <ul style="list-style-type: none"> <li>i) wrap up of Phase-I works,</li> <li>ii) procurement of design review and supervision consultant D/CSC,</li> <li>iii) procurement of contracts for tunnel, headworks and water treatment plant, hydromechanical works and other related works,</li> <li>iv) procurement of RAP, EMP, SUP works,</li> <li>v) review of the design review works of D/CSC,</li> <li>vi) monitor and review the works of D/CSC, and</li> <li>vii) contract management and construction administration of the entire project.</li> <li>viii) capacity building and training of MWSDB Engineers</li> <li>IX) other related services</li> </ul>
1.2	Type of Contract Agreement is: <b>Time Based</b>
1.3	The assignment is phased: <b>No</b>
1.4	<p>A pre-proposal conference will be held: <b>Yes,</b> On <b>30 November, 2017</b>, at 11.00 hours Local time at MWSDB Office, Baneshwor, Kathmandu</p> <p>The name(s), address(es), and telephone numbers of the Client's official(s) are: Name: Melamchi Water Supply Development Board (MWSDB) Address: Executive Director Melamchi Water Supply Development Board 580 Devkota Marg, Mid Baneshwor Kathmandu, Nepal Tel. No 977-1- 4468963, 4468964, 4468965</p>



	Fax No. 977-1-4468962 Email: - <a href="mailto:procurement@melamchiwater.gov.np">procurement@melamchiwater.gov.np</a>
1.5	The Client will provide the following inputs: <ul style="list-style-type: none"> <li>o Suitable office space in Kathmandu and Melamchi Pul Bazar Camp Site.</li> <li>o Assistance in obtaining visas, residence permits, exchange permits and any other documents required for the stay of the foreign Consultant and the family in Nepal; and</li> <li>o Assistance in the import of any materials and equipment required for Project purposes.</li> <li>o Counterpart Engineers/Staffs for technology transfer .</li> </ul>
1.7.2	The Client envisages the need for continuity for downstream work: <b>No</b>
1.11	The clauses on fraud and corruption in the Contract are: As per SCC
2.1	Clarifications may be requested 7 days before the last submission date The address for requesting clarifications is: The Executive Director Melamchi Water Supply Development Board 580 Devkota Marg, Mid Baneshwor Kathmandu, Nepal Tel. No 977-1- 4468963, 4468964, 4468965 Fax No. 977-1-4468962 Email: - <a href="mailto:procurement@melamchiwater.gov.np">procurement@melamchiwater.gov.np</a>
3.1	Proposals should be submitted in the following language/s <b>English</b>
3.3	(i) Shortlisted consultants/entity may associate with other shortlisted consultants: <b>No</b> (ii) The estimated number of professional staff-months required for the assignment is: <b>89 international and 275 National</b> (iii) The minimum required experience of proposed professional staff is: <b>as stated in TOR</b> (iv) Reports that are part of the assignment must be written in the following language(s): <b>English</b>
3.4	(vii) Training is a specific component of this assignment: <b>Yes</b> Training of about 15 MWSDB Engineers/Staffs on CPM Scheduling, Delay Analysis, and Tunnelling.
3.7	<b>Taxes: The Consultant shall pay all applicable taxes as per Rules of Government of Nepal.</b>
3.8	Currency of Payment For International level proposal whether the Consultants

	is to state the local cost in the national currency: <b>Yes</b>
3.10	Proposals must remain valid 90 days after the last submission date (11 December,2017) until: <b>11 March 2018</b>
4.3	Consultants must submit an original and four additional copies of each proposal:
4.4	The proposal submission address  Information on the outer envelope should also include: Executive Director Melamchi Water Supply Development Board 580 Devkota Marg, Mid Baneshwor Kathmandu, Nepal Tel. No 977-1- 4468963, 4468964, 4468965 Fax No. 977-1-4468962 Email: - <a href="mailto:procurement@melamchiwater.gov.np">procurement@melamchiwater.gov.np</a>
4.5	Proposals must be submitted no later than:  <b>11 December, 2017, 14.00 hours local time</b>
5.1	The address to send information to the Client is Executive Director Melamchi Water Supply Development Board 580 Devkota Marg, Mid Baneshwor Kathmandu, Nepal Tel. No 977-1- 4468963, 4468964, 4468965 Fax No. 977-1-4468962 Email: - <a href="mailto:procurement@melamchiwater.gov.np">procurement@melamchiwater.gov.np</a>
5.3	The number of points to be given under each of the evaluation criteria are:  i) Specific experience in the last 7 Years of the consultants related to the assignment - <b>20 points</b> <ul style="list-style-type: none"> <li>▪ Design/Design Review/Construction Supervision/Procurement/Project Management of any Civil Eng Project of value of at least \$30 million each, managed in the last 7 yrs - 6 points</li> <li>▪ Construction Supervision/Project Management of project value of at least \$30 million each, relating to Water Supply or Hydropower Project involving at least 5 km long tunnels in the last 7 yrs. - 7 points</li> <li>▪ Construction Supervision/Project Management of project value of at least \$30 million each, relating to Water Treatment Plant in the last 7 yrs</li> </ul>

	<p style="text-align: center;">- 7 points</p> <p>(ii) Adequacy of the proposed work plan and methodology in responding to the Terms of Reference - <b>20 points</b></p> <ul style="list-style-type: none"> <li>▪ Approach to Cost Overrun and Time Overrun Control - 7 points</li> <li>▪ Approach to Design Review &amp; Procurement - 7 points</li> <li>▪ Approach to Work plan &amp; Quality Assurance - 6 points</li> </ul> <p>(iii) Qualifications and Experience of the key staff for the Assignment - <b>40 points</b></p> <p>(iv) Suitability of the transfer of knowledge program or training - <b>10 points</b></p> <ul style="list-style-type: none"> <li>Use of CPM and Delay Analysis 4</li> <li>Training on Tunnel Engg 3</li> <li>Training on Water Treatment 3</li> </ul> <p>(v) Local participation (as reflected by nationals among key staff presented by foreign and local consultants) - <b>10 points</b></p> <ul style="list-style-type: none"> <li>Account and Finance Expert 5 points</li> <li>IT Specialist technical Expert 3 points</li> <li>EMP/Social Development /Social Safeguard Expert 2points</li> </ul> <p><b>Total Points: 100</b></p> <p>The number of points to be given under each evaluation sub criteria (iii) for qualifications of staff are:</p> <ul style="list-style-type: none"> <li>(i) General Qualifications 30 points</li> <li>(ii) Work Experience 60 points</li> <li>(iii) Geographical Experience in Australia/America/Canada or Europe 10 points</li> </ul> <p style="padding-left: 40px;">Total Points: 100</p> <p>The minimum technical score of the consulting firm(s) required to pass: <b>70 out of 100</b></p> <p>CVs of local experts and professional shall be submitted. CV of local experts Account and Finance Expert, IT Specialist, and EMP/SS expert shall be evaluated for local participation. For other professional, CV shall be submitted only to verify if meets the minimum qualification of Bachelor degree and minimum experience in the related areas as stated in the TOR.</p>
<p>5.7</p>	<p>The single currency for price conversions is: US Dollar</p> <p>The source of official selling rates is: Nepal Rastra Bank</p> <p>The date of exchange rates is: 28 days prior to last date of submission of proposal</p>
<p>5.10</p>	<p>The formula for determining the financial scores is the following: [Either <math>Sf = 100 \times Fm/F</math>, in which <math>Sf</math> is the financial score, <math>Fm</math> is the lowest price and <math>F</math> the price of the proposal under consideration, or another proportional linear formula]</p>

	The weights given to the technical and Financial Proposals are: T (Technical Proposal) = 0.9, and P (Financial Proposal) = 0.1
6.1	The address for negotiations is: MWSDB, Baneshwor, Kathmandu, Nepal
7.6	The assignment is expected to commence on 1 <sup>st</sup> February, 2018 at MWSDB

## **Section 3.      Technical Proposal - Standard Forms**

- 3A.    Technical Proposal submission form.
- 3B.    Consultant's references.
- 3C.    Comments and suggestions of consultants on the Terms of Reference and on data, services, and facilities to be provided by the Client.
- 3D.    Description of the methodology and work plan for performing the assignment.
- 3E.    Team composition and task assignments.
- 3F.    Format of curriculum vitae (CV) for proposed professional staff.
- 3G.    Time schedule for professional personnel.
- 3H.    Activity (work) schedule.

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## 3A. Technical Proposal Submission Form

[Location, Date]

To: [Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for [Title of consulting services] in accordance with your Request for Proposal dated [Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

If negotiations are held during the period of validity of the Proposal, i.e., before [Date] we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Consultant:

Address:

### 3B. Consultant’s References

**Relevant Services Carried Out in the Last Seven Years That Best Illustrate Qualifications**

Using the format below, provide information on each assignment for which your Consultant/entity, either individually as a corporate entity or as one of the major companies within an association, was legally contracted.

Assignment Name:		Country:
Location within Country:		Professional Staff Provided by Your Consultant/Entity(profiles):
Name of Client:		No. of Staff:
Address:		No. of Staff-Months; Duration of Assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services Proposal National level: NRs International Level: (in Current US\$):
Name of Associated Consultants, If Any:		No. of Months of Professional Staff Provided by Associated Consultants:
Name of Senior Staff and Designation (Project Director/Coordinator, Team Leader etc.) Involved and Functions Performed:		
<p>Narrative Description of Project of construction value more than \$30 million each completed in the last 7(seven) years: Actual assignment, nature of activities performed, type of project, cost of Project to which the Consultancy Services were provided and location. The Project shall include infrastructure projects in Water Supply/Hydropower/Road involving at least 5 km long tunnel, and Water Treatment plant.</p> <p>Note: if a single project contains more than one component (e.g. WTP &amp; Tunnel), then the construction value of each component shall be clearly specified with value of more than \$30 Million.</p>		
Description of Actual Services Provided by Your Staff in the completed project in the last 7 (seven) years: The Services provided by the Consultant relating to Design/ Design Review/ Construction Supervision or Project / Contract Management, cost of service provided		

Consultant’s Name: \_\_\_\_\_

### **3C. Comments and Suggestions of Consultants on the Terms of Reference and on Data, Services, and Facilities to be provided by the Client**

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services, and facilities to be provided by the Client:

- 1.
- 2.
- 3.
- 4.
- 5.



### **3D. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**

### 3E. TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Proposed Technical/Managerial Staff		
Name	Position	Task

2. Proposed Support Staff		
Name	Position	Task

### 3F. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with Consultant/Entity: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

\_\_\_\_\_

Detailed Tasks Assigned: \_\_\_\_\_

\_\_\_\_\_

**Key Qualifications:**

*[Give an outline of staff member’s experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use about half a page.]*

\_\_\_\_\_

**Education:**

*[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended, and degrees obtained. Use about one quarter of a page.]*

\_\_\_\_\_

**Employment Record:**

*[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, value of the Projects involved, and locations of assignments. For experience in last years, also give types of activities performed and client references, where appropriate. Use about two pages.]*

\_\_\_\_\_

**Languages:**

*[For each language indicate proficiency: excellent, good, fair, or poor in speaking, reading, and writing.]*

\_\_\_\_\_

**Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience.

\_\_\_\_\_  
*[Signature of staff member and authorized representative of the consultant]* Date: \_\_\_\_\_  
 Day/Month/Year

Full name of staff member: \_\_\_\_\_

Full name of authorized representative: \_\_\_\_\_

**3G. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL**

Name	Position	Reports Due/Activities	Months (in the Form of a Bar Chart)												Number of Months	
			1	2	3	4	5	6	7	8	9	10	11	12		
																Subtotal (1)
																Subtotal (2)
																Subtotal (3)
																Subtotal (4)

Full-time: \_\_\_\_\_  
 Reports Due: \_\_\_\_\_  
 Activities Duration: \_\_\_\_\_

Part-time: \_\_\_\_\_

Signature: \_\_\_\_\_  
 (Authorized representative)

Full Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

### 3H. ACTIVITY (WORK) SCHEDULE

#### B. Completion and Submission of Reports

Reports as per TOR	Date

#### A. Field Investigation and Study Items

	<i>[1st, 2nd, etc. are months from the start of assignment.]</i>													
	1st	2nd	3rd	4th	5 <sup>th</sup>	6th	7th	8th	9th	10 <sup>th</sup>	11 <sup>t</sup> h	12th		
Activity (Work)														
_____														
_____														
_____														
_____														



## Section 4. Financial Proposal

- 4A. Financial Proposal submission form.
- 4B. Summary of costs.
- 4C. Breakdown of price.
- 4D. Breakdown of remuneration.
- 4E. Reimbursable per activity.



## 4A. FINANCIAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: [Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for [Title of consulting services] in accordance with your Request for Proposal dated [Date] and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal is for the sum of [Amount in words and figures]. This amount is exclusive of the local taxes, which we have estimated at [Amount(s) in words and figures].

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e., [Date].

Commissions and gratuities, if any, paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature:  
 Name and Title of Signatory:  
 Name of Consultant:  
 Address:

**4B. SUMMARY OF COSTS**

Costs	Currency(ies)	Amount(s)
Subtotal		
Local Taxes		
Total Amount of Financial Proposal		_____

**4C. BREAKDOWN OF PRICE**

Price Component	Currency(ies)	Amount(s)
a. Competitive Cost:		
Remuneration:		
i. Expatriate Professional		
ii. Domestic Professional/ Support Staff		
Reimbursable:		
Subtotal		_____
b. Non Competitive cost :		
i. Provisional Sum <i>(including office furniture, computer, software and equipment)</i>	NPR	47,733,120.00
ii. Contingencies	NPR	45,356,432.00
Subtotal		
Total Excluding VAT		

**4D. BREAKDOWN OF REMUNERATION - INTERNATIONAL**

S. No.	Description	Field/Home	Person MM	Rate (in US\$)	Amounts
					(in US\$)
	<b><i>A- Expatriate Professionals</i></b>				
1	Team Leader / Contract Management Expert		64		
2	CPM Scheduling, Delay Analysis Expert		5		
3	Engineering-geological / Geotechnical - rock mechanics/Tunneling Expert		5		
4	Social Safeguard cum EMP Expert		5		
5	Unallocated		10		
	<b>Sub -total – D</b>		<b>89</b>		

**4E. BREAKDOWN OF REMUNERATION – LOCAL**

S. No.	Description	Office	Person MM	Rate in NPR	Amount in NPR
	<b>E1. Domestic / Local Professionals</b>				
1	Finance Expert		65		
2	Social Safeguard Specialist		30		
3	EMP Specialist		30		
4	Engineers x2 Nos		125		
5	IT Specialist		60		
7	Office Manager		60		
8	Accountant		65		
6	Computer Operator		65		
9	Secretary		65		
10	Runners x 2Nos		130		
11	Unallocated		30		
	<b>Sub-total E</b>		<b>725</b>		

**4F. BREAKDOWN OF OUT OF POCKET EXPENSES  
(TRANSPORTATION EXPENSES) - EXPATRIATE**

S. No.	Description	Unit	Quantity	Rate in US\$	Amount in US\$
1	International Round Trip Flight	No.	32		
2	Miscellaneous Travel Expenses	No.	32		
3	Unaccompanied baggages	Pc.	32		
	<b>Sub-total F</b>				

<b>4G. OUT OF POCKET EXPENSES</b>					
<b>S. No.</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Rate in NPR</b>	<b>Amount in NPR</b>
<b>G1 Office Utilities, Vehicle, Report, Office Rental, Communication</b>					
1	Office Utilities	Month	60		
2	Vehicle Rent, Operating - Operation, maintenance including Driver (2 Nos)	month	120		
3	Reporting including quarterly progress reports, bidding documents, Social Safeguards and EIA reports as required	Nos	20		
4	Communication (including Cargo, Fax etc)	Month	60		
<b>Sub Total G1</b>					
<b>G2 Furniture, Training, Computer</b>					
6	Office Furniture	P.S.			1,500,000.00
7	Computers/software/Equipment	P.S.			5,000,000.00
8	Staff Training	Nos.	100		
<b>Sub Total G2</b>					
<b>G3 Subsistence allowances (Expatriate)</b>					
9	Short Term	days	510		
10	Long Term	months	65		
<b>Sub Total G3</b>					
<b>G4 Field Equipment Purchasing</b>					
1	GPS	Nos	2		
2	Geological field equipment (Geological hammer, compass, lens, etc.)	Sets	2		
3	Geotechnical field equipment (Schmidt hammers)	Sets	2		
4	Safety equipment (PPE: helmets, boot, gloves, goggle etc)	Sets	4		
<b>Sub -Total G4</b>					

## **Section 5**

### **Terms of Reference**

**For**

**Project Management Consulting (PMC) Services for  
Melamchi Water Supply Project**



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Section 5. Terms of Reference.....

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- 2. Objective
- 3. Scope of Services
- 4. Team Composition & Qualification Requirements for the Key Experts
- 5. Indicative Work Plan
- 6. Communication, Reporting and Deliverables
- 7. Counterpart Support by EA
- 8. Inputs to be provided by the PMC
- 9. Competitive Cost Items

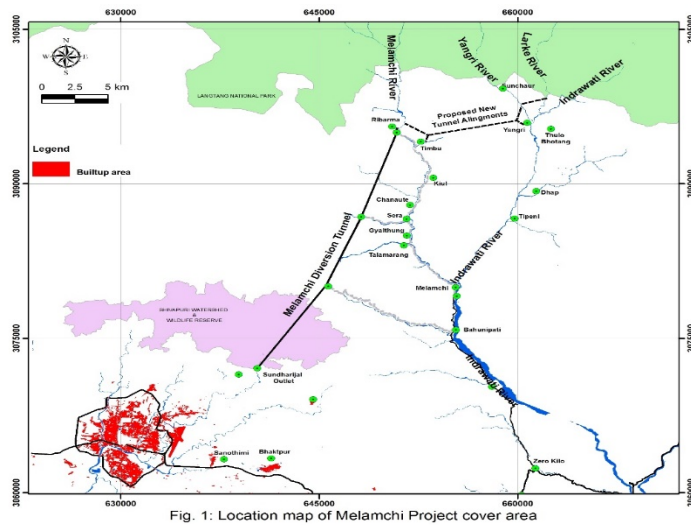
Section 6. Standard Form of Contract

## Background of the Project

1. Phase I of the Melamchi Water Supply Project (MWSP) is an ongoing project since the year 2000 in order to meet the water requirements of Kathmandu valley. The project is now nearing completion and Government of Nepal (GON) is preparing to start Phase 2 of the Melamchi Water Supply Project. Figure 1 is a layout map of the Melamchi Water Supply System Phase-1 and Phase-2.
2. The amended and restated ADB loan no 1820-NEP(SF) for Phase 1 of MWSP provided for two subprojects: a) Melamchi River Diversion-Subproject 1 implemented by MWSP, Melamchi Water Supply Development Board (MWSDB) under the Ministry of Water Supply and Sanitation and b) Kathmandu Valley Water Supply and Sanitation-Subproject 2 implemented by Project Implementation Directorate (PID) under Kathmandu Upatyaka Khanepani Limited (KUKL). The funding for the amended project comprised of ADB (43%), JBIC (15%), OPEC (4%), JICA (6%), NDF (3%) and GON (29%).
3. As of 2017, the construction of a 26km long Melamchi River Diversion tunnel for diversion of 170 MLD of water from Melamchi River is progressing under a contract with an Italian Construction Firm, Co-operativa Muratori Cementisti-CMC di Ravenna under ADB Loan No. 1820 NP(SF) and Loan 3110 (additional financing) implemented by Melamchi Water Supply Development Board(MWSDB). Also in progress under MWSP Phase 1 is the JICA funded water treatment plant of capacity 85 MLD under a contract with VA Tech Wabag - Pratibha Industries JV; and ADB funded water treatment plant of capacity 85 MLD under a contract with Tundi Construction Pvt Ltd – Pratibha Industries Ltd JV and financed under ADB Loan 3255. Construction of about 43 km of access roads and upgrading of about 29 km of road to facilitate the construction of the Project facilities and their maintenance have also been an integral part of the MWSP Phase 1.
4. Under MWSP- Phase 1, a social and environment support programme is being implemented to mitigate direct and indirect negative impacts of the project and to provide sustainable development base for the Melamchi Valley. The Social Upliftment Program (SUP) includes components like income generation, buffer zone development, rural electrification, health and education. Hyolmo Sindhu Melamchi Valley Social Upliftment Program Implementation Committee (HSMVSUPIC) is implementing the SUP in the 14 project affected then-Village Development Committees (VDCs) in Sindhupalchowk District. Mandan Valley Social Upliftment Program Implementation Committee (MVSUPIC) is implementing the similar program in the then-5 VDCs (now under Gaunpalikas) of Kavrepalanchowk District. GoN through MWSDB is also undertaking similar activities in the then-10 VDCs in Yangri and Larke area and 6 VDCS (now under Gaunpalikas) on the left bank of Indrawati River as envisaged to be affected by the proposed project. Safeguard and Social Development Support (SSDS) Consultant is facilitating implementation of the SUP activities. The MWSP Phase-1 is also implementing an Environmental Management Plan (EMP) to mitigate adverse impacts during construction and operation phase in the project affected areas.
5. Project Implementation Directorate (PID) under Kathmandu Upatyeka Khanepani Limited (KUKL) has so far been improving the existing sources of water, laying pipes in the Bulk Distribution System(BDS) and Distribution Network (DNI) System, and improving the existing waste water management works through various contracts under the ADB financed loan projects Loan no 1820-MWSP, Loan no 2776-KVWSIP, Loan no 3255-KVWSIP(AF), and Loan no. 3000-Kathmandu Valley Wastewater Management Project (KVWWMP). Loan 3255 is also financing WTP expansion under MWSDB (civil work and supervision consultant), and detailed design consultancy for Melamchi Phase 2.
6. **Government of Nepal has applied for a loan from the Asian Development Bank (ADB) for financing the Phase II of the Melamchi Water Supply Project.** The Executing Agency (EA) of the Project is the Ministry of Water Supply and Sanitation (MWSS). Under the EA, the Melamchi Water Supply Development Board (MWSDB) will be implementing the MWSP-Phase 2. Melamchi Water Supply Project – Phase 2 aims at diversion of 340 MLD water from Yangri and Larke rivers to the existing Melamchi Diversion Tunnel in order to ensure an integrated water supply system of 510 MLD capacity of treated water. Water from Larke Diversion Intake will be diverted by 2 km(appx) long tunnel of carrying capacity 170 MLD to the Yangri Diversion Intake which will divert water to Melamchi water diversion intake through a 9 km (appx) long tunnel of 340 MLD capacity. Yangri Water Diversion

Scheme will have its intake at Yangri Khola opposite of Bhotang about 40 kms North-East of Kathmandu City. Melamchi Phase II mainly includes the following components:

- (i) Access Roads
  - (ii) Yangri Diversion Tunnel and Larke Diversion tunnel
  - (iii) Diversion weir, intake, settling basin, and associated works
  - (iv) Adit Tunnel (may not be required)
  - (v) Hydro-Mechanical works comprising trash racks, gates and stop logs in the intake and gates in adit tunnel & diversion tunnel outlet etc.
  - (vi) 340 MLD capacity Water Treatment Plant inclusive of expansion of the existing 170 MLD plants at Mahankalphant, Sundarijal
  - (vii) Infrastructure facilities including Site Offices and Camps.
  - (viii) Environmental Management Plan (EMP) and Social Uplift Programme (SUP) Works
  - (ix) Indigenous People Plan (IPP) to mitigate any adverse impacts on the indigenous people.
  - (x) Generation of additional hydropower from the additional discharge of 340 MLD water in the main system.
7. ADB's Country Operation Business Plan (2017 -2019) allocates ADB financing of \$185 million for the project in 2019 with high readiness. This means that more than 50% of works value should be ready to be awarded by the time of ADB Board approval; and safeguards requirements for these packages are met. Accordingly, the design consultant is recruited and has commenced its services. The detailed design of Yangri and Larke diversion tunnel and treatment plant of 340 MLD capacity is expected to complete by December 2017 whereas the design of access road will be completed by September 2017. Invitation for Bids will be published by November 2017 for the procurement of works package for the construction of Access Road.
8. Project Management Consultant (PMC) will be engaged to provide management support to MWSDB for winding up MWSP Phase I and to start the MWSP Phase II until its completion. The PMC will assist the MWSDB in complying the requirements of MWSP and ADB in project implementation. A separate consultant will assist the MWSDB in the review of design and supervision of Yangri and Larke diversion tunnel and headworks contracts. The scope of the PMC service include the following: i) preparation of borrower's project completion report of Melamchi Phase I; ii) update procurement plan on quarterly basis; (iii) support to procure access road improvement works package, if not already procured iv) monitoring of performance of CSC for the construction of access roads, v) recruitments of design review and supervision consultant D/CSCs for WTP and Tunnel, vi) procurement of works package for construction of Yangri and Larke diversion tunnel, headworks and water treatment plant and other related works, vii) monitor implementation of Resettlement Action Plan, Environmental Management Plan, IPP and SUP activities, viii) monitoring of the design review works of D/CSC, ix) monitor performance of D/CSC and prepare performance evaluation report on quarterly basis; and x) support MWSDB in contract management and administration of the entire project. The PMC will carry out all the works necessary to support the Employer before the design review and construction supervision consultant is engaged (see Table 2). The selection and engagement of the consulting firms will be done followings Quality and Cost Based Section (QCBS) procedure set out in the Public Procurement Act and Rules of the GoN.
9. Project Management Consultant (PMC) will support the MWSDB to undertake monitoring and evaluation, reporting, overall planning, risk management, contract management and administration supports and coordination to ensure that project implementation is in compliance with existing financing agreements and future agreements to be signed between Government of Nepal and ADB. The PMC will also assist the MWSDB in meeting the relevant requirements of the Government and ADB for project implementation. The PMC will also provide institutional development assistance and guidance to the KVWSMB and the municipalities related to the project. The contract will be implemented over 65 months from February 2018 to June 2023. **The main role of the PMC is to ensure successful completion of the project without undue delays and cost overruns and in conformity with the requirements and guidelines of the employer and the funding agency/ies.**



## 2. Objective

10. The main objective of the PMC is to assist the MWSDB to ensure i) a smooth winding up MWSP Phase I, and ii) a successful implementation of the MWSP – Phase II through a high-quality project management and administration covering:
- (i) ensuring ongoing contractors of MWSP-I submits as built drawings, maintenance and operation manual, and prepare plans for monitoring of the activities during the defect liability period,
  - (ii) monitor procurement plan for ensuring timely recruitments of Design Review and Construction Supervision Consultant and the Construction Contractor for MWSP Phase II,
  - (iii) prepare detailed guidelines for planning and implementation of Social Upliftment Programs (SUP) ,
  - (iv) monitoring implementation of social safeguards including environmental management plans, land acquisition, compensation, and resettlement plan, and indigenous peoples plan as per ADB's requirements and international best practices,
  - (v) monitoring the activities and progress of works of the Design Review and Construction Supervision Consultant and advising the Employer in taking necessary steps for corrective actions, through short term expert inputs on need basis, to ensure smooth and timely progress of the Construction works.
  - (vi) monitoring and reviewing the progress of works under the construction contracts, carrying out delay analysis and advising the Employer for timely actions in the matter of contract administration requiring the Employer's approval/decision.
  - (vii) monitoring the status of claims, disputes and dispute resolution and advising the Employer in time to minimize the claims and disputes,
  - viii) ensuring timely withdrawal applications and fund disbursements and auditing by competent authorities,
  - ix) ensure that consolidating quarterly progress reports and biannual safeguards reports as per ADB's requirements are prepared by the D/CSC; and

- x) building capacity of MWSDB by providing on the job training to i) MWSP engineers/staffs in the project CPM scheduling using Primavera, MS Project and equivalent software's, delay analysis, claims and disputes management, tunnel constructions, and ii) MWSP financial staff on tariff and revenue management

### 3. Scope of Services

#### 11. General

The PMC will:

- (i) Advise and assist the MWSDB in scheduling of all activities of Phase I and Phase II of the Melamchi Water Supply Project and provide overall strategic direction, for smooth and timely project implementation.
- (ii) Carry out wrap up activities of MWSP Phase-I including proper handover documents, as-built drawings and operation and maintenance manual.
- (iii) Develop a project management information system and keep track of the Schedules of all activities in the Project and advice MWSDB and funding agencies of any deviations in the agreed subproject implementation processes, schedules, and agreed activities, and suggest actions that should be taken to remedy these deviations and thereby avoid delays.
- (iv) Proactively identify potential risks and opportunities and assist MWSDB and funding agencies with resolving bottlenecks and taking timely actions to enhance subproject performance and mitigate any adverse constraints.
- (v) Advise and assist MWSDB in establishing and maintaining the most effective organizational, fiscal, implementation, and management arrangements to ensure successful subproject implementation.
- (vi) Assist MWSDB and funding agencies in efficiently coordinating and monitoring the various consultancies and effectively implementing the various subproject components.
- (vii) Establish project performance monitoring, evaluation, and reporting systems that keep stakeholders suitably informed of project progress and impact, and assist MWSDB with operating, maintaining, and updating the system.
- (viii) Provide MWSDB and funding agencies with independent monthly reports on implementation and management performance of subproject; the reports should identify risks and opportunities and suggest measures to improve subproject implementation.
- (ix) Assist MWSDB in ensuring effective implementation of sustainable social upliftment and environmental mitigation components and implementing the components through appropriate organizational and procedural structures.
- (x) Establish and maintain fiscal management and monitoring systems for the subprojects, and regulate subproject expenditures and disbursements in conjunction with MWSDB.
- (xi) Support MWSDB in preparing policies for benefit sharing mechanism to be paid for the water diversion and entering into an agreement with Melamchi Valley residents regarding the water levy.
- (xii) Coordinate the work and activities of implementing agencies, funding agencies, staff, consultants, contractors, and the public.
- (xiii) Undertake preparatory works for procurement and consultancy recruitment, including preparation of terms of reference and bid documents, and assist MWSDB in bid evaluation, selection, and contract awarding. The team leader of the PMC will join the executive committee for procurement and contract management as an invitee member, and will assist with procurement and contract variation of civil works and consultancies of the subproject, if required.
- (xiv) Advise MWSDB on ways to enhance human resources management and development.

- (xv) Improve project standard operating procedures, in accordance with Government regulations and to the satisfaction of funding agencies, and assist MWSDDB with institutionalizing such procedures.
- (xvi) Prepare Quarterly Project Reports (QPRs) for submission to ADB

## 12. Contract Management

The PMC will, with respect to procurement and contract management for the project:

- (i) Support MWSDDB in reviewing the overall procurement plan and updating the master procurement plan and annual procurement plans.
- (ii) Advise MWSDDB on preparing, inviting, evaluating, and negotiating the various consultancy proposals and construction bids.
- (iii) Advise MWSDDB in effective contract administration and management, including reviewing/updating project schedules, handling contractors' claims and carrying out delay analysis using impacted versus as-planned method, contemporaneous method or other methods to determine excusable, in-excusable, compensable and non-compensable delays.
- (iv) Monitor the consultants' reports on contract progress, and assist MWSDDB in maintaining bar charts and CPM schedules summarizing overall subproject progress, and causes of time and cost over-runs, if any. Advise the employer on corrective measures and notify MWSDDB, funding agencies, and the relevant consultants if there is slippage in the progress of critical activities.
- (v) Build the capacity of MWSDDB's finance unit to monitor the consultant-endorsed progress payment certificates. Comment on and endorse the final recommendations of MWSDDB's finance unit on payment of contract invoices.
- (vi) Monitor contract variations and time extensions, and build the capacity of MWSDDB to keep up-to-date records of contract prices, completion dates, and variation order dates. Ensure that each variation order is complete in respect of costs, impact on schedule, extension of time and formal approval.
- (vii) Build MWSDDB's capacity to ensure that funding agency construction-supervision guidelines and requirements stipulated in the loan and grant agreements are followed.
- (viii) Advise for the services of subject experts such as tunneling expert, safeguard expert, EMP expert, accounting expert to review and obtain specific advice on corrective measures identified in site inspections or progress reports.
- (ix) Ensure that the records of tunnel probing, geological face maps, rock mass rating and rock quality designation and decision on the type of support system is maintained daily and signed by designated responsible Engineering-geologist / Geotechnical Engineer.
- (x) Ensure that the records of idle equipment and manpower due to employer and contractor caused delays in the implementation of planned schedule is maintained daily and signed by the designated responsible engineer of the employer.

## 13. Financial Management

The PMC will, with respect to financial management for the project:

- (i) Assist in preparing all administrative and financial systems and procedures to enable MWSDDB to ensure effective coordination and implementation of the project consultants.
- (ii) Review the IPC certified by the Design/Construction Supervision Consultant, advice the Client, the status of payment, variation, time and cost over-runs and measures to be taken contractually to ensure smooth implementation of the project.

- (iii) Support MWSDB to design and institutionalize effective financial management systems, including fiscal management procedures, to enable MWSDB to manage its finances in line with internationally accepted standards in real time and using modern technologies and practices.
- (iv) Build the capacity of MWSDB's finance unit to keep a summary record of project financial commitments and expenditures; withdrawal applications, and forecast, prepare, and refine the annual budget for project components.
- (v) Train relevant MWSDB staff on the financial management requirements of the subproject.
- (vi) Support MWSDB in preparing audited subproject accounts for timely submission to ADB.
- (vii) Establish procedures to enable MWSDB to maintain a real-time database of contracts, disbursements, payments, and advances; and support MWSDB to institutionalize these processes. (The database should be easily retrievable, for instance by funding agencies or by work components.)

## 14. Social and Environmental

The PMC will, with respect to social and environmental aspect of the project:

- (i) Support MWSDB in monitoring the performance and inputs of the social development program consultants.
- (ii) Give necessary support to MWSDB in updating strategies and plans for social and environmental safeguards (i.e., the resettlement plan, environmental management plan, and ethnic minority development plan), and support MWSDB in ensuring that project implementation is in compliance with those plans.
- (iii) Review and assess the project's compliance with social and environmental safeguards, as required by ADB safeguards policy, and advise MWSDB of any slippage in adhering to those safeguards, or of any need for mitigating actions.
- (iv) Advise and assist MWSDB in designing, overseeing, and managing the community-oriented social and environmental components such as Social Upliftment Plan (SUP)
- (v) Assist MWSDB in ensuring smooth implementation of Environmental Management Plan (EMP); Resettlement Action Plan (RAP), Indigenous Peoples Plan (IPP) and Land Acquisition and Compensation Plan.
- (vi) Facilitate coordination among MWSDB, various consultants, contractors, and community beneficiaries.
- (vii) Prepare biannual safeguards monitoring reports (separate for environmental and social) for submission to ADB.

## 15. Expert Inputs

### (a) Engineering-geological/Geotechnical-rock mechanics/Tunneling

The PMC will, with respect to tunneling and engineering-geological and geotechnical issues:

- (i) Mobilize the expert on short term, as needed basis to make best use of the person months allocated.
- (ii) Set the monitoring framework and procedures to identify the key issues during the construction.
- (iii) Review the design and site-specific issues on as and when needed basis, particularly at the design review stage and critical stages of tunneling and slope/ground stabilization works, and make recommendations to ensure timely completion of works with due regard to contractual provisions.
- (iv) Prepare and conduct training on tunneling and support systems in the terrain such as in the project in the first year before start of tunneling and in the second and third year of tunneling works

## (b) Scheduling

The PMC will, with respect to Scheduling and Delay Analysis:

- (i) Set the guidelines for preparing Base-line Schedule, Preparing As-built schedule, determining excusable delays, concurrent delays, and inexcusable delays and updating the schedules in a consistent manner.
- (ii) Review the schedule and delay analysis prepared by the Contractor and the Engineer and make recommendations to the Employer to ensure timely completion of works.
- (iii) Prepare curriculum for training on preparing CPM schedules and conducting delay analysis.

## (c) Other Items – Access Roads, Water Treatment Plant, Headworks

The Team Leader shall along with the available experts and engineers under support staff in the contract identify the issues and recommend for corrective actions.

## (d) Information Management

The PMC will, with respect to Information Management:

- (i) Support MWSD in designing an appropriate management information system that provides real-time, useful information to appropriate managers, implementers, and stakeholders.
- (ii) Assist/Advise MWSD on modernizing its record-management processes and systems to enable timely, cost-effective decision making.
- (iii) Build MWSD's capacity to prepare reports for submission to higher authorities and funding agencies.
- (iv) The IT specialist should fully assist for management of MWSD's web site and all other IT and web related matters

## 16. Training

The PMC will, with respect to training:

- (i) Make sure that skill transfer be realized to the domestic counterparts and the government staff, through both on the job training and structured programs on scheduling, delay analysis and claim evaluation.

## 17. Corporate Public Relations

The PMC will, with respect to corporate public relations:

Support MWSD in implementing an effective corporate public relations plan highlighting the role of MWSP in environmental safeguards and benefits to poor local communities.

## **4. Team Composition & Qualification Requirements for the Key Experts ( NOTE: Infrastructure development projects means a project of value of \$30 M or more)**

### **18. Team Leader**

Team Leader is expected to have a minimum of Bachelor degree in civil engineering with a Master degree in Construction Engineering / Management or Contract Management or Project Management including:



- Preferably 15 years of project management experience in civil engineering works related to design and/or construction of water or highway tunnels or large infrastructure projects
- 10 years of experience as a Team Leader in Major civil engineering project/s is preferred
- Experience in a highly professional environment in projects in Australia or Europe or America or Canada in major civil engineering works for a duration of at least 1 years or more.
- Preference will be given for PhD degree in the related subject.
- At least 2 weeks training in the related field is desirable.
- Demonstrated capabilities to lead multidisciplinary teams and to work with a range of different stakeholders
- Demonstrated capabilities in time and cost over-run controls in large civil engineering projects
- Experience of working in multilateral funded projects such as ADB, WB
- Experience of working in South Asia
- Skills in communicating with authorities and other stakeholders.
- Medically fit for travelling and working in difficult conditions and preferably of age not exceeding 65years.
- Demonstrated capabilities in report writing

### **19. Team Leader cum Contract Management Specialist – 64 person months**

The consultant is expected to have a minimum Bachelor's degree in civil engineering with a Master's degree in Construction Engineering / Management or Contract Management or Project Management including:

- Not less than two weeks long training in CPM Scheduling.
- 10 years or more of experience in infrastructure development projects.
- At least 3 years of experience as Contract Management Expert of major civil engineering projects
- Experience in slope stabilizations, rock cutting, and other structures.
- Experience in a highly professional environment in projects in Australia or Europe or America or Canada in major civil engineering works for a duration of at least 1 year.
- Experience in procurement of goods, services and works. In depth knowledge and understanding of technical, commercial and legal aspects of procurement in development projects, financed by the government and its development partners.
- Conversant with project Scheduling, delay analysis and processing claims and disputes.
- Conversant with FIDIC conditions of Contract Red Book, Yellow Book and Silver Book types
- Ability to work in an interdisciplinary team.
- Experience in donor funded large projects such as ADB, WB.
- Skills in training in procurement, contract management and administration.

### **20. Scheduling Expert – 5 person months**

The consultant is expected to have a minimum Bachelor's degree in civil engineering with a Master's degree in Construction Engineering/Management or Contract Management or Project Management including:

- 10 years of experience in infrastructure development projects involving tunnels, slope stabilizations, rock cutting, and other structures.
- 5 years or more experience in scheduling using Primavera, MS Project and equivalent software.
- Conversant with project delay analysis and processing claims and disputes.
- Conversant with FIDIC conditions of Contract Red Book, Yellow Book and Silver Book types.
- Ability to work in an interdisciplinary team.
- Experience in Donor funded large projects such as ADB, WB.

- Skills in training in project scheduling and delay analysis.

## **21. Engineering-geological / Geotechnical - rock mechanics/Tunnelling Expert – 5 person months**

The consultant is expected to have a minimum Bachelor's degree in civil engineering with a Master's, preferably Ph.D degree, in Engineering-geology or Geotechnical Engineering/Rock Mechanics or Tunnelling in Mountainous terrain including:

- At least 3 years of experience in Engineering-geology or Geotechnical Engineering/Rock Mechanics relating to Tunnelling.
- 5 years of experience in preparing geological face maps and assessing RMR, RQD and type of tunnel support.
- Not less than two weeks long training in the related field.
- Experience in a highly professional environment in projects in Australia or Europe or America or Canada in major civil engineering works for a duration of at least 1 year.
- Experience in Donor funded large projects such as ADB, WB.
- Experience in preparation of Geotechnical Base Line Report (GBR) and Geotechnical Data Report (GDR).
- Skills in training in procurement, contract management and administration.
- Experience in Hindu-Kush Himalaya mountains.

## **22. Social Safeguard cum Environmental Expert-5 Person months**

The consultant is expected to have a Minimum Bachelor's degree in environmental or social sciences or engineering, or natural resources management or other relevant subject including:

- 10 or more years of experience in preparation of Social Impact Assessments and Resettlement Action Plans in infrastructure projects.
- At least 3 years of experience working in environmental management plus health and safety issues including the preparation of SIA/IEE/EIA reports and implementing environmental management plans (EMP).
- Knowledge of social impact assessments and environmental management tools, familiarity with applicable Nepalese legislation, especially related to environmental protection, IEE and EIA procedures and land acquisition or expropriation.
- Experience in a highly professional environment in projects in Australia or Europe or America or Canada in major civil engineering works for a duration of at least 1 year.
- Experience in the preparation of Social Upliftment Plans (SUP)
- Skills in communicating with PAPs (Project Affected Persons), authorities and other stakeholders
- Experience of working for the Asian Development Bank (ADB) or other development partners' projects.
- Familiarity with applicable Nepalese legislation, especially related to land acquisition or expropriation.
- Familiarity with ADB's SPS (2009). Qualification of local part

## **Qualification requirements for Domestic Experts**

### **Financial Expert**

- The consultant is expected to have a minimum of Bachelor Degree in account and finance or other relevant subject.
- At least 10 years of general experience in managing account and financing in development related organization/projects etc.
- At least 3 years of experience in managing account and financing in large Infrastructure Projects (each project value  $\geq$  NPR 250 Million) funded by Donor agencies preferably conversant in handling accounting system with FIDIC or other harmonized edition Contract type.

- Should have not less than two weeks long training in the related field.

#### **IT Expert**

- The consultant is expected to have a minimum of Bachelor Degree in IT related subject with a relevant training of at least 2 weeks duration.
- At least 5 years of general experience in IT related field.
- At least 1 year experience in managing IT system in Infrastructure related Development projects.
- Should have not less than two weeks long training in the related field.

#### **Social Safeguard Expert**

- The consultant is expected to have a minimum of Bachelor degree in Social Science/Sociology or other related field.
- At least 10 years of general experience in Social related field
- At least 3 years of working experience as a social safeguard expert/Social Expert in Development Projects (each project value  $\geq$  NPR 250 Million) preferably with funded by Donor agencies .
- Should have not less than two weeks long training in the related field.

## **5. Indicative Work Plan**

23. The consultancy is a 65-months assignment.  
24. Figure 2 presents an indicative work plan for the consultancy services.

## **6. Communication, Reporting and Deliverables**

25. The PMC shall
- (i) Prepare, based on the submission from the Consultants and the Contractors report all necessary documents for progress reviews, and a comprehensive midterm review, to be conducted by the Government and ADB at various intervals according to the Project documents and agreements with the Government.
  - (ii) Assist MWSDB to conduct regular meetings with Consultants, Contractors, Funding Agency, and other stake holders to discuss progress and issues related to implementation.
26. The following constitute a minimum reporting requirement for the PMC:
- Inception Report – 45 days from Commencement
  - Phase 1 Wrap up Reports – Quarterly
  - Monitoring Reports/Brief Project Status Report - Monthly
  - Detail Progress Reports – Quarterly Report
  - Review of Design Review Report – 45 days from mobilization of Design Review and Construction Supervision Consultant
  - Reviews of Schedules and Delay Analysis – Quarterly Report
  - Engineering Geological and Geotechnical Expert's Report – Before and During Construction.
  - Monitoring of Claims and Dispute Resolution Activities – Quarterly Report
  - Contract Management and Administration Supports – Quarterly Report
  - Monitoring of Safeguards and EMP Activities – Quarterly Report
  - Financial and Disbursement Planning, Monitoring Activities – Beginning of Each Quarter
  - Report on Training on Contract Management and Administration, Tunnel Construction – Second Quarter of Each Year
  - Draft Final Report - 60<sup>th</sup> month

- Final Report - 65<sup>th</sup> Month

## 7. Counterpart Support by EA

27. The Employer will provide the following inputs:

- Suitable office space in Kathmandu and Melamchi Pul Bazar Camp Site.
- Assistance in obtaining visas, residence permits, exchange permits and any other documents required for the stay of the foreign Consultant and the family in Nepal; and
- Assistance in the import of any materials and equipment required for Project purposes.
- Counterpart Engineers/staff for technology transfer.

## 8. Inputs to be provided by the PMC

28. The Consultant will provide the following inputs:

- Transport from home office to Kathmandu and back.
- Local transport, including vehicles, drivers and fuel as required.
- Project offices other than that provided by the Employer.
- Office facilities, such as computers, printers, photocopier, UPS, telephones, and fax with the required consumables.
- Necessary Vehicle hiring and maintenance.
- Accommodation as required in Kathmandu or in the field.
- Support Staff including National Specialists and Engineers
- The required insurances.
- Technology Transfer Programs and Activities.
- Field Equipment.

## 9. Competitive Cost Items

29. The Table below presents a description of competitive cost items for the Consultancy proposed.

**Table 1. Competitive Cost Items for Project Management Consultancy Services**

**Competitive Cost Items for Project Management Consultancy Services for MWSP Phase II**

Exchange Rate (as of ..... 2017) 1 US\$ =

S. N.	Description	Field/ Home	Person MM
<b>A- Expatriate Professionals</b>			
1	Team Leader / Contract Management Expert	Field	64
2	CPM Scheduling, Delay Analysis Expert	Field	5

3	Engineering-geological / Geotechnical - rock mechanics/Tunneling Expert	Field	5
4	Social Safeguard cum EMP Expert	Field	5
5	Financial Management Expert	Field	5
6	Unallocated	Field	10
			5
<b>B. Support Staffs</b>			
1	Office Manager		60
2	Accountant and Finance Expert		65
3	Accountant		65
4	Secretary		65
5	Runnersx 2Nos		130
6	Computer Operator		65
7	Engineers x2 Nos		125
8	Social Safeguard Specialist		30
9	EMP Specialist		30
10	IT Specialist		60
11	Unallocated		30
<b>C. Out of Pocket Expenses (Transportation Expenses) - Expatriate</b>			
1	International Round Trip Flight	No.	32
2	Miscellaneous Travel Expenses	No.	32
3	Unaccompanied bagges	Pc.	32
<b>D Out of Pocket Expenses</b>			
<b>Office</b>			
1	Office Utilities	month	60
2	Vehicle Operating - Operation, maintenance including Driver (2 Nos)	month	120
3	Reporting including quarterly progress reports, bidding documents, Social Safeguards and EIA reports as required	Nos	20
4	Office Rental	month	0
5	Communication (including Cargo, Fax etc)	month	60
6	Office Furniture (Reimbursable)	L.S.	1
7	Computers/Equipment (Reimbursable)	Nos	1
8	Staff Training	Nos	100
<b>Subsistence allowances (Expatriate)</b>			
9	Short Term	days	510
10	Long Term	months	65
<b>E Equipment Purchasing</b>			
	GPS	Nos	2
1	Geological field equipment's (Geological hammer, compass, lence,etc)	Sets	2
2	Geotechnical field equipment's (Schmidt hammers)	Sets	2
3	Safety equipment's (PPE: helmets, boot, gloves, goggle etc)	Nos	4



**Table 2. Indicative Summary of Melamchi Phase 1 and 2 Activities**

S. N	Activities	2017	2018	2019	2020	2021	2022	2023
1	Ongoing Phase 1 Activities	██████████						
2	Ongoing Phase 2 Design & bidding for Access Road	██████████						
	Access Road Design and Contract Award	██████████						
	Phase 2 Complete Design	██████████						
3	Access roads improvement/construction		██████████					
4	Procurement of PMC (GON Funds)	██████████						
5	Bidding for Phase 2 Works		██████████					
6	Procurement of Design Review cum Construction Supervision Consultant		██████████					
7	PMC Activities		██████████	██████████	██████████	██████████	██████████	██████████
	Monitoring of Design Review & Supervision of Access Roads Construction by D/CSC.		██████████					
	Monitoring of Design Reviews & Construction supervision by D/CSCs			██████████	██████████	██████████	██████████	
	Monitoring, Contract admin, management, reporting of Tunnel, HW, WTP, etc			██████████	██████████	██████████	██████████	██████████
8	DR/CSC Activities			██████████	██████████	██████████	██████████	██████████
	Review of Design			██████████	██████████	██████████	██████████	
	Construction Supervision			██████████	██████████	██████████	██████████	
9	Phase 2 Constructions Works			██████████	██████████	██████████	██████████	██████████
	Tunnel, HW, RAP, EMP, SUP, WTP			██████████	██████████	██████████	██████████	
	DNP Activities							██████████





## **Section 6. Standard Form of Contract**

**Contract for Consultant Services  
For**

[ Name of the Assignment]

Between

\_\_\_\_\_  
[name of the Client]

And

\_\_\_\_\_  
[Name of the Consultants]

Dated: \_\_\_\_\_

## I. Form of Contract

This CONTRACT (hereinafter called the "Contract") is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of client]* (hereinafter called the "Client") and, on the other hand, *[name of consultants]* (hereinafter called the "Consultants").

**[Note:** *If the Consultants consist of more than one entity, the above should be partially amended to read as follows: "...(hereinafter called the "Client") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Client for all the Consultants' obligations under this Contract, namely, [name of consultants] and [name of consultants] (hereinafter called the "Consultants").]*<sup>1</sup>

### WHEREAS

- (a) the Client has requested the Consultants to provide certain consulting services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the "Services");
- (b) the Consultants, having represented to the Client that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract;
- (c) the Client has received *[or has applied for]* a loan *[or credit or grant]* from the Donor Agency (hereinafter called the "Donor") towards the cost of the Services and intends to apply a portion of the proceeds of this loan *[credit or grant]* to eligible payments under this Contract, it being understood (i) that payments by the Donor will be made only at the request of the Client and upon approval by the Donor, (ii) that such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the loan *[or credit or grant]*, and (iii) that no party other than the Client shall derive any rights from the agreement providing for the loan *[or credit or grant]* or have any claim to the loan *[or credit or grant]* proceeds;

[Note: Include clause (c) only in donor-funded projects. Otherwise omit.]

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract;
  - (b) The Special Conditions of Contract;
  - (c) The following Appendices: **[Note:** *If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*
    - Appendix A: Description of the Services
    - Appendix B: Reporting Requirement
    - Appendix C: Key Personnel and Subconsultants
    - Appendix D: Duties of the Client
    - Appendix E: Cost Estimates in Local Currency
    - Appendix F: Form of Guarantee for Advance Payments
    - Appendix G: Minutes of Negotiations Meetings
2. The mutual rights and obligations of the Client and the Consultants shall be as set forth in the Contract, in particular:

<sup>1</sup> *Text in brackets is optional; all notes should be deleted in final text.*

- (a) the Consultants shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the Client shall make payments to the Consultants in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[name of client]*

\_\_\_\_\_  
*[Authorized Representative]*

For and on behalf of *[name of consultants]*

\_\_\_\_\_  
*[Authorized Representative]*

**[Note:** *If the Consultants consist of more than one entity, all these entities should appear as signatories, e.g., in the following manner.]*

For and on behalf of each of the Members of the Consultants

*[name of member]*

\_\_\_\_\_  
*[Authorized Representative]*

*[name of member]*

\_\_\_\_\_  
*[Authorized Representative]*

## II. General Conditions of Contract

### 1. General Provisions

- 1.1 Definitions** Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- a. "Applicable Law" means the laws and any other instruments having the force of law in Nepal, as they may be issued and in force from time to time;
  - b. "Government" means Government of Nepal.
  - c. "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
  - d. "Effective Date" means the date on which this Contract comes into force and effect pursuant to Clause GCC 2.1;
  - e. "GCC" means these General Conditions of Contract;
  - f. "Donor" means the organization offering loan, credit or grant to GoN
  - g. "Local Currency" means the currency of the Government;
  - h. "Member," in case the Consultants consist of a joint venture of more than one entity, means any of these entities; and "Members" means all these entities;
  - i. "Party" means the Client or the Consultants, as the case may be, and "Parties" means both of them;
  - j. "Personnel" means persons hired by the Consultants or by any Sub consultant as employees and assigned to the performance of the Services or any part thereof; "Foreign Personnel" means such persons who at the time of being so hired had their domicile outside Nepal; "Local Personnel" means such persons who at the time of being so hired had their domicile inside Nepal; and "Key Personnel" means the Personnel referred to in Clause GCC 4.2(a);
  - k. "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
  - l. "Services" means the work to be performed by the Consultants pursuant to this Contract, as described in Appendix A hereto;
  - m. "Sub consultant" means any person or entity to whom/which the Consultants subcontract any part of the Services in accordance with the provisions of Clause GCC 3.7;
  - n. "Third Party" means any person or entity other than the Government, the Client, the Consultants or a Sub consultant.
- 1.2 Relation between the** Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent as between

- Parties** the Client and the Consultants. The Consultants, subject to this Contract, have complete charge of Personnel and Sub consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 1.3 Law Governing Contract** This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law of Nepal.
- 1.4 Language** This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.5 Headings** The headings shall not limit, alter or affect the meaning of this Contract.
- 1.6 Notices**
- 1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the SCC.
- 1.6.2 Notice will be deemed to be effective as specified in the SCC.
- 1.6.3 A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the provisions listed in the SCC with respect to Clause GCC 1.6.2.
- 1.7 Location** The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Nepal or elsewhere, as the Client may approve.
- 1.8 Authority of Member Charge** In case the Consultants consist of a joint venture of more than one entity, the Members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Consultants' rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
- 1.9 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Client or the Consultants may be taken or executed by the officials specified in the SCC.
- 1.10 Taxes and Duties** Unless otherwise specified in the SCC, the Consultants, Subconsultants and Personnel shall pay such taxes, duties, fees and other impositions as may be levied under the Applicable Law.

## 2. Commencement, Completion, Modification and Termination of Contract

- 2.1** This Contract shall come into force and effect on the date (the

- Effectiveness of Contract** “Effective Date”) of the Client’s notice to the Consultants instructing the Consultants to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.
- 2.2 Termination of Contract for Failure to Become Effective** If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as shall be specified in the SCC, either Party may, by not less than thirty (30) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 2.3 Commencement of Services** The Consultants shall begin carrying out the Services at the end of such time period after the Effective Date as shall be specified in the SCC.
- 2.4 Expiration of Contract** Unless terminated earlier pursuant to Clause GCC 2.9 hereof, this Contract shall terminate at the end of such time period after the Effective Date as shall be specified in the SCC.
- 2.5 Variation** Variation of the terms and conditions of this Contract, including any variation of the scope of the Services, may only be made by written agreement between the Parties however, each Party shall give due consideration to any proposals for variation made by the other Party.
- 2.6 Force Majeure**
- 2.6.1 Definition**
- a. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
  - b. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Subconsultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Contract and (B) avoid or overcome in the carrying out of its obligations hereunder.
  - c. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.
- 2.6.2 No Breach of Contract** The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure,

provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

**2.6.3 Measures to be Taken**

- a. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- b. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fifteen (15) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- c. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

**2.6.4 Extension of Time (EoT)**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure or Client's failure to provide facilities in time as per the contract

The Consultant shall submit an application to the Client for extension of time, stating the causes for delay with supporting evidence within 7 days before the expiry of the Contract completion date. The approval of EoT shall be subject to verification by the Client whether:

- a. the consultant had made the best possible efforts to complete the work in due time ,
- b. the facilities to be provided by the Client as per the contract to the Consultant was made in time or not,
- c. the delay was as a result of Force Majeure or not.

**2.6.5 Consultation**

Not later than thirty (30) days after the Consultants, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

**2.7 Suspension**

The Client may, by written notice of suspension to the Consultants, suspend all payments to the Consultants hereunder if the Consultants fail to perform any of their obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultants to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultants of such notice of suspension.

**2.8 Termination**

**2.8.1 By**

The Client may, by not less than thirty (30) days' written notice of



**the Client**

termination to the Consultants. (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause GCC 2.8.1, terminate this Contract:

- a. if the Consultants fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Client may have subsequently approved in writing;
- b. if the Consultants become (or, if the Consultants consist of more than one entity, if any of their Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- c. if the Consultants fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8 hereof;
- d. if the Consultants submit to the Client a statement which has a material effect on the rights, obligations or interests of the Client and which the Consultants know to be false;
- e. if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- f. if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- g. if the Consultant, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practice among consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

**2.8.2 By the Consultants**

The Consultants may, by not less than thirty (30) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.8.2, terminate this Contract:

- a. if the Client fails to pay any money due to the Consultants pursuant to this Contract and not subject to dispute pursuant to Clause GCC 8 hereof within forty-five (45) days after receiving written notice from the Consultants that such payment is overdue;

- b. if the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by the Client of the Consultants' notice specifying such breach;
- c. if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d. if the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8 hereof.

**2.8.3 Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to Clauses GCC 2.2 or GCC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GCC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 3.3 hereof, (iii) the Consultants' obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 3.6(ii) hereof, and (iv) any right which a Party may have under the Applicable Law.

**2.8.4 Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 2.9.1 or GCC 2.9.2 hereof, the Consultants shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultants and equipment and materials furnished by the Client, the Consultants shall proceed as provided, respectively, by Clauses GCC 3.9 or GCC 3.10 hereof.

**2.8.5 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses GCC 2.8.1 or GCC 2.9.2 hereof, the Client shall make the following payments to the Consultants:

- a. remuneration pursuant to Clause GCC 6 hereof for Services satisfactorily performed prior to the effective date of termination;
- b. reimbursable expenditures pursuant to Clause GCC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
- c. except in the case of termination pursuant to paragraphs (a) through (d) of Clause GCC 2.8.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Personnel and their eligible dependents.

**2.8.6 Disputes about Events of Termination**

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause GCC 2.8.1 or in Clause GCC 2.9.2 hereof has occurred, such Party may, within thirty (30) days after receipt of notice of termination from the other Party, shall settle the dispute pursuant to Clause GCC 8 hereof, and this Contract shall not be

terminated on account of such event except in accordance with the terms of any resulting arbitral award.

### **3. Obligations of the Consultants**

#### **3.1 General**

##### **3.1.1 Standard of Performance**

The Consultants shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultants shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub consultants or Third Parties.

##### **3.1.2 Law Governing Services**

The Consultants shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub consultants, as well as the Personnel of the Consultants and any Sub consultants, comply with the Applicable Law. The Client shall notify the Consultants in writing of relevant local customs, and the Consultants shall, after such notification, respect such customs.

##### **3.1.3 Application of Procurement Law**

If the Consultants, as part of the Services, have the responsibility of advising the Client on the procurement of goods, works or services, the Consultants shall comply with any applicable procurement guidelines as per the prevailing Public Procurement Act and Regulations of the GoN (or of the Donors/funding agencies) and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultants in the exercise of such procurement responsibility shall be for the account of the Client.

#### **3.2 Conflict of Interests**

##### **3.2.1 Consultants Not to Benefit from Commissions, Discounts, etc.**

The remuneration of the Consultants pursuant to Clause GC 6 hereof shall constitute the Consultants' sole remuneration in connection with this Contract or the Services and, subject to Clause GCC 3.2.2 hereof, the Consultants shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations hereunder, and the Consultants shall use their best efforts to ensure that any Sub consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

##### **3.2.2 Consultants and Affiliates Not to Engage**

The Consultants agree that, during the term of this Contract and after its termination, the Consultants and any entity affiliated with the Consultants, as well as any Sub consultant and any entity

***in Certain Activities***

affiliated with such Sub consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

**3.2.3 *Prohibition of Conflicting Activities***

The Consultants shall not engage, and shall cause their Personnel as well as their Sub consultants and their Personnel not to engage, either directly or indirectly, in any of the following activities:

- a. during the term of this Contract, any business or professional activities in Nepal which would conflict with the activities assigned to them under this Contract; and
- b. after the termination of this Contract, such other activities as may be specified in the SCC.

**3.3 *Confidentiality***

The Consultants, their Sub consultants, and the Personnel of either of them shall not, either during the term of within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Client's business or operations without the prior written consent of the Client.

**3.4 *Liability of the Consultants***

Subject to additional provisions, if any, set forth in the SCC, the Consultants' liability under this Contract shall be as provided by the Applicable Law.

**3.5 *Insurance to be Taken Out by the Consultants***

The Consultants (i) shall take out and maintain, and shall cause any Sub consultants to take out and maintain, at their (or the Sub consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverages, as shall be specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

- 3.6 Accounting, Inspection and Auditing** The Consultants (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof (including such bases as may be specifically referred to in the SCC), and (ii) shall permit the Client or its designated representative periodically, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Client and, where applicable
- 3.7 Consultants' Actions Requiring Client's Prior Approval** The Consultants shall obtain the Client's prior approval in writing before taking any of the following actions:
- a. appointing such members of the Personnel as are listed in Appendix C merely by title but not by name;
  - b. entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Subconsultant and the terms and conditions of the subcontract shall have been approved in writing by the Client prior to the execution of the subcontract, and (ii) that the Consultants shall remain fully liable for the performance of the Services by the Subconsultant and its Personnel pursuant to this Contract;
  - c. any other action that may be specified in the SCC.
- 3.8 Reporting Obligations** The Consultants shall submit to the Client the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.
- 3.9 Documents Prepared by the Consultants to be the Property of the Client** All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultants for the Client under this Contract shall become and remain the property of the Client, and the Consultants shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultants may retain a copy of such documents and software. Restrictions about the future use of these documents and software, if any, shall be specified in the SCC.
- 3.10 Equipment and Materials Furnished by the Client** Equipment and materials made available to the Consultants by the Client, or purchased by the Consultants with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultants shall make available to the Client an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Client's instructions. While in possession of such equipment and materials, the Consultants, unless otherwise instructed by the Client in writing, shall insure

them at the expense of the Client in an amount equal to their full replacement value.

#### **4. Consultants' Personnel and Subconsultant**

**4.1 General**

The Consultants shall employ and provide such qualified and experienced Personnel and Subconsultants as are required to carry out the Services.

**4.2 Description of Personnel**

- a. The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultants' Key Personnel are described in Appendix C. If any of the Key Personnel has already been approved by the Client, his/her name is listed as well.
- b. If required to comply with the provisions of Clause GCC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix C may be made by the Consultants by written notice to the Client, provided (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 6.1(b) of this Contract. Any other such adjustments shall only be made with the Client's written approval.
- c. If additional work is required beyond the scope of the Services specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix C may be increased by agreement in writing between the Client and the Consultants, provided that any such increase shall not, except as otherwise agreed in writing, cause payments under this Contract to exceed the ceilings set forth in Clause GCC 6.1(b) of this Contract.

**4.3 Approval of Personnel**

The Key Personnel and Subconsultants listed by title as well as by name in Appendix C are hereby approved by the Client. In respect of other Key Personnel which the Consultants propose to use in the carrying out of the Services, the Consultants shall submit to the Client for review and approval a copy of their biographical data. If the Client does not object in writing (stating the reasons for the objection) within twenty-one (21) calendar days from the date of receipt of such biographical data .

**4.4 Removal and/or Replacement of Personnel**

- a. Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Personnel, the Consultants shall forthwith provide as a replacement a person of equivalent or better qualifications.
- b. If the Client (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultants shall, at the Client's written request

specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Client.

- c. Any of the Personnel provided as a replacement under Clauses (a) and (b) above, the rate of remuneration applicable to such person as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Client. Except as the Client may otherwise agree, (i) the Consultants shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

## **5. Obligations of the Client**

- 5.1 Access to Site** The Client warrants that the Consultants shall have, free of charge, unimpeded access to all sites in Nepal in respect of which access is required for the performance of the Services. .
- 5.2 Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultants in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultants under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 6.1(b).
- 5.3 Services, Facilities and Property of the Client** The Client shall make available to the Consultants and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix D at the times and in the manner specified in said Appendix D, provided that if such services, facilities and property shall not be made available to the Consultants as and when so specified, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultants for the performance of the Services, (ii) the manner in which the Consultants shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultants as a result thereof pursuant to Clause GCC 6.1(c) hereinafter.
- 5.4 Payment** In consideration of the Services performed by the Consultants under this Contract, the Client shall make to the Consultants such payments and in such manner as is provided by Clause GCC 6 of this Contract.

## **6. Payments to The Consultants**



- 6.1 Cost Estimates; Ceiling Amount**
- a. An estimate of the cost of the Services payable in local currency is set forth in Appendix E.
  - b. Except as may be otherwise agreed under Clause GCC 2.6 and subject to Clause GCC 6.1(c), payments under this Contract shall not exceed the ceilings in local currency specified in the SCC. The Consultants shall notify the Client as soon as cumulative charges incurred for the Services have reached 80% of either of these ceilings.
  - c. Notwithstanding Clause GCC 6.1(b) hereof, if pursuant to any of the Clauses GCC 5.3 or 5.4 hereof, the Parties shall agree that additional payments in local and/or foreign currency, as the case may be, shall be made to the Consultants in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GCC 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause GCC 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.
- 6.2 Remuneration and Reimbursable Expenditures**
- a. Remuneration for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services after the date determined in accordance with Clause GCC 2.3 and Clause SCC 2.3 (or such other date as the Parties shall agree in writing) (including time for necessary travel via the most direct route) at the rates referred to, and subject to such additional provisions as are set forth, in the SCC.
  - b. Reimbursable expenditures actually and reasonably incurred by the Consultants in the performance of the Services, as specified in Clause SCC 6.3.
- 6.3 Currency of Payment**
- a. All payments to the Consultant for the performance of the services shall be made in the currency of the GoN.
- 6.4 Mode of Billing and Payment**
- Billings and payments in respect of the Services shall be made as follows:
- a. The Client shall cause to be paid to the Consultants an advance payment as specified in the SC, and as otherwise set forth below. The advance payment will be due after provision by the Consultants to the Client of a bank guarantee by a bank acceptable to the Client in an amount specified in the SCC, such bank guarantee (i) to remain effective additional one month after the advance payment has been fully set off as provided in the SCC, and (ii) to be in the form set forth in Appendix I hereto or in such other form as the Client shall have approved in writing.
  - b. As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services or on completion of the task on which the payment

is based , the Consultants shall submit to the Client, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to Clauses GCC 6.3 and 6.4 for such month or completed task.

The invoice format shall be as agreed between the client and the consultants.

- c. The Client shall cause the payment of the Consultants' monthly statements less retention money 5% within *thirty (30)* days after the receipt by the Client of such statements with supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorised to be incurred by the Consultants, the Client may add or subtract the difference from any subsequent payments. Interest at the annual rate specified in the SCC shall become payable as from the above due date on any amount due by, but not paid on, such due date.
- d. The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultants and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final statement shall be deemed approved by the Client as satisfactory *forty-five (45)* calendar days after receipt of the final report and final statement by the Client unless the Client, within such *forty-five (45)* day period, gives written notice to the Consultants specifying in detail deficiencies in the Services, the final report or final statement. The Consultants shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Client has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultants to the Client within thirty (30) days after receipt by the Consultants of notice thereof. Any such claim by the Client for reimbursement must be made within *ninety (90) calendar days* after receipt by the Client of a final report and a final statement approved by the Client in accordance with the above.
- e. All payments under this Contract shall be made to the account of the Consultant specified in the SCC.

**6.5 Retention**

- a. The Client shall retain from each payment due to the Contractor the proportion stated in the SCC until Completion of the whole of the Works.
- b. One half of the retention shall be repaid by the Client to the consultant at the time of the payment of the Final Bill pursuant to GCC Clause 6.4 (d)
- c. The remainder of the retention shall be paid by the Client to the consultant within 15 days after submission of an evidence document issued by the concerned Internal Revenue Office that the consultant has submitted his Income Returns.

**6.6 Liquidated Damages**

The Consultant shall pay liquidated damages to the Client at the rate per day stated in the SCC for each day that the completion services is later than the Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. Beyond this limit the contract may be terminated by the Client. The Client may deduct liquidated damages from any payments due to the Consultant. Payment of liquidated damages shall not affect the Consultant's liabilities.

**7. Fairness and Good Faith****7.1 Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

**7.2 Operation of the Contract**

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GCC 8 hereof.

**8. Settlement of Disputes**

**8.1 Amicable Settlement**

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof.

**8.2 Dispute Settlement**

Any dispute between the Parties as to matters arising pursuant to this Contract which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be referred to the Adjudicator by either Party within 15 days after the amicable settlement period of 30 days.

**8.3. Appointment**

i. **of the Adjudicator**  
i.

a. The Adjudicator, shall be appointed jointly by the Client and the Consultant within 30 days of the commencement date of the contract. If the parties cannot reach an agreement on the appointment of the Adjudicator, the Client will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 15 days of receipt of such request.

b. Should the Adjudicator resign or die, or should the Client and the Consultant agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Client and the Consultant. In case of disagreement between the Client and the Consultant, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 15 days of receipt of such request

#### **8.4. Procedures for Disputes**

- a. If a dispute is referred to the Adjudicator pursuant to GCC Clause 8,2 then the the Adjudicator shall give a decision in writing within 30 days of receipt of a reference of the dispute.
- b. The Adjudicator shall be paid by the hour at the rate specified in the SCC, together with reimbursable expenses of the types specified in the SCC, and the cost shall be divided equally between the Client and the Consultant, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 30 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 30 days, the Adjudicator's decision will be final and binding.
- c. In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures published by Nepal Council of Arbitration .

#### **9. Remedies for Breach of Contract**

Without prejudice to any other right of the Client under this Contract, the remedies available to the Client in the event of breach of the Contract by the Consultant are as follows:

- a. rejection of defective performance,
- b. prompt replacement and correction of defective services,
- c. application of liquidated damages for delay as per the provision of the Contract,
- d. termination of the contract and correction of the services, not performed as per the requirement of the contract, at the expense of the consultant,
- e. recovery for consequential damages;
- f. such other remedies as may be available pursuant to the contract or to applicable law.

#### **10. Conduct of Consultants**

10.1 The Consultant shall be responsible to fulfill his obligations as per the requirement of the Contract Agreement, RFP documents and GoN's Procurement Act and Regulations.

10.2 The consultant shall not carry out or cause to carryout the following acts with an intention to influence the implementation

of the procurement process or the contract agreement :

- a. give or propose improper inducement directly or indirectly,
- b. distortion or misrepresentation of facts
- c. engaging or being involved in corrupt or fraudulent practice
- d. interference in participation of other prospective bidders.
- e. coercion or threatening directly or indirectly to impair or harm, any party or the property of the party involved in the procurement proceeding
- f. collusive practice among consultants before or after submission of proposals for distribution of works among consultants or fixing artificial/uncompetitive proposal price with an intention to deprive the Client the benefit of open competitive proposal price.
- g. contacting the Client with an intention to influence the Client with regards to the proposals or interference of any kind in examination and evaluation of the proposals during the period after opening of proposals up to the notification of award of contract

**11.Blacklisting  
Consultant**

- 11.1 Without prejudice to any other right of the Client under this Contract, Public Procurement Monitoring Office may blacklist a Consultant for his conduct up to three years on the following grounds and seriousness of the act committed by the consultant without prejudice to any other rights of the Client under rights under this Contract:
- a) if it is proved that the bidder committed acts pursuant to the Information to Consultants GCC 10.2,
  - b) if the consultant fails to sign an agreement pursuant to Information to Consultants clause 7.3,
  - c) if it is proved later that the consultant has committed substantial defect in implementation of the contract or has not substantially fulfilled his obligations under the contract or the completed work is not of the specified quality as per the contract ,
  - d) if convicted by a court of law in a criminal offence which disqualifies the bidder from participating in the contract.
- 11.2 A Consultant declared blacklisted and ineligible by the Public procurement Office and or concerned Donor Agency in case of donor funded project shall be ineligible to bid for a contract during the period of time determined by the PPMO and or the concerned donor agency.

# Appendices

## Appendix A—Description of the Services

*Included in Section 5 TOR, Clause 3*

## Appendix B—Reporting Requirements

*Included in Section 5 TOR, Clause 6*

## Appendix C—Key Personnel and Sub consultants

*Key Personnel: Included in Section 5 TOR, Clause 4*

*List of approved Sub consultants (if already available); NA*

## Appendix D—Duties of the Client

*Included in Section 5 TOR, Clause 7*

## Appendix E—Cost Estimates in Local Currency

*List hereunder cost estimates in local currency: Refer Section 4: Financial Proposal*

1. *Monthly rates for local Personnel (Key Personnel and other Personnel)*
2. *Reimbursable expenditures as follows:*
  - (a) *Per diem rates for subsistence allowance for foreign short-term Personnel, plus estimated totals.*
  - (b) *Living allowances for long-term foreign Personnel, plus estimated totals.*
  - (c) *Cost of local transportation.*
  - (d) *Cost of other local services, rentals, utilities, etc.*



## Appendix F —Form of Bank Guarantee for Advance Payments

**Note:** See Clause GCC 6.4(a) and Clause SCC 6.4(a). The Client should insert here an acceptable form of a bank guarantee. An example is set forth below.

TO: [Name and Address of Client]  
[Name of Contract for Consultants' Services]

Gentlemen:

In accordance with the provisions of Clauses GCC 6.4(a) and SCC 6.4(a) of the above-mentioned Contract (hereinafter called "the Contract"), [name and address of Consultants] (hereinafter called "the Consultants") shall deposit with [name of Client] a bank guarantee to guarantee their proper and faithful performance under the said provisions of the Contract in an amount of [amount of Guarantee], [amount of Guarantee in words].<sup>1</sup>

We, the [bank or financial institution], as instructed by the Consultants, agree unconditionally and irrevocably to guarantee as primary obligor and not as Surety merely, the payment to [name of Client] on his first demand without whatsoever right of objection on our part and without his first claim to the Consultants, in the amount not exceeding [amount of Guarantee], [amount of Guarantee in words].

We further agree that no change or addition to or other modification of the terms of the Contract which may be made between [name of Client] and the Consultants, 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 validity period of the guarantee shall be 30 days beyond the period scheduled for repayment of the advance payment and the guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until the [name of Client] receives full repayment of the same amount from the Consultant.

Yours truly,

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Signature and Seal

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Name of Bank/Financial Institution

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Address

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Date

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<sup>1</sup> An amount is to be inserted by the bank or financial institution as specified in Clause SC 6.4(a).

**APPENDIX G—MINUTES OF NEGOTIATIONS MEETINGS**

*Append minutes of negotiation meetings if applicable. It is advisable to append minutes where important changes in the scope of work, schedule etc. were made during negotiations.*

### III. Special Conditions of Contract

<p><b>1.6.1</b></p>	<p>The addresses are :</p> <p>Client:                  Executive Director                  Melamchi Water Supply Development Board                  580 Devkota Marg, Mid Baneshwor                  Kathmandu, Nepal                  Tel. No 977-1- 4468963, 4468964, 4468965                  Fax No. 977-1-4468962                  Email: - <a href="mailto:procurement@melamchiwater.gov.np">procurement@melamchiwater.gov.np</a></p> <p>Consultants:                  Address: .....                  Attention: .....                  Cable address: .....                  Telex: .....                  Facsimile: .....                  E-mail: .....</p>
<p><b>1.6.2</b></p>	<p>Notice will be deemed to be effective as follows:</p> <p>(a) in the case of personal delivery or registered mail, on delivery;</p> <p>(b) in the case of facsimiles, Local Time 10:00 AM – 16:00 PM following confirmed transmission.</p> <p>(c) in case of E-mail, Local Time 10:00 AM – 16:00 hours following confirmed transmission.</p>
<p><b>1.8</b></p>	<p>The Member in Charge is : Full details of authorised consulting Firm</p> <p>Address: .....                  Attention: .....                  Telex: .....                  Facsimile: .....                  E-mail: .....</p>
<p><b>1.9</b></p>	<p>The Authorized Representatives are:</p> <p>For the Client: Ram Chandra Devkota, Executive Director                  For the Consultants: _____</p>

<p><b>1.10 Taxes:</b></p> <p><b>2.1</b></p>	<p>The Consultant shall pay all applicable taxes as per Rules of Government of Nepal.</p> <p>Within one month from the date of contract signing</p>
<p><b>2.2</b></p>	<p>The time period :Thirty Five(35) days</p>
<p><b>2.3</b></p>	<p>The time period : within Fifteen (15) Days</p>
<p><b>2.4</b></p>	<p>Sixty Five (65) months after the date of commencement</p>
<p><b>3.2.3(b)</b></p>	<p>“For a period of two years after the expiration of this Contract, the Consultants shall not engage, and shall cause their Personnel as well as their Sub consultants and their Personnel not to engage, in the activity of a purchaser (directly or indirectly) of the assets on which they advised the Client under this Contract nor in the activity of an adviser (directly or indirectly) of potential purchasers of such assets. The Consultants also agree that their affiliates shall be disqualified for the same period of time from engaging in the said activities.”</p>
<p><b>3.4</b></p>	<p><b>“3.4 Limitation of the Consultants’ Liability towards the Client</b></p> <p>(a) Except in case of gross negligence or wilful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client’s property, shall not be liable to the Client:</p> <p>(i) for any indirect or consequential loss or damage; and</p> <p>(ii) for any direct loss or damage that exceeds (A) the total payments for professional fees and reimbursable expenditures made or expected to be made to the Consultants hereunder, or (B) the proceeds the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (A) or (B) is higher.</p> <p>(b) This limitation of liability shall not affect the Consultants’ liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultants in carrying out the Services.”</p>
<p><b>3.5</b></p>	<p>The risks and the coverages shall be as follows:</p> <p>a. professional liability insurance, with a minimum coverage (insurance charges included under remuneration) and As per Rule of Government of Nepal;</p> <p>b. employer’s liability and workers’ compensation insurance in respect of the</p>

	<p>Personnel of the Consultants and of any Sub consultant, in accordance with the relevant provisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>c. Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultants' property used in the performance of the Services, and (iii) any documents prepared by the Consultants in the performance of the Services.</p>
<p><b>3.7(c)</b></p>	<p>The other actions are: The consultant shall take prior approval of employer for the mobilization of the intermittent staff.</p>
<p><b>3.9</b></p>	<p><i>Documents and other related properties prepared by the consultants to be the property of the client::</i></p> <ul style="list-style-type: none"> <li>• “The Consultants shall not use these documents and other related properties, for purposes unrelated to this Contract without the prior written approval of the Client.”</li> </ul>
<p><b>6.1(b)</b></p>	<p>The <b>Estimate Amount</b> in local currency is <b>Four Hundred Ninety-Eighty Million Nine Hundred Twenty Thousand and Seven Hundred Fifty-Two Only (NPR 498,920,752.00) Excluding VAT.</b></p>
<p><b>6.4(a)</b></p>	<p>The following provisions shall apply to the advance payment and the advance payment guarantee:</p> <p>[Note: The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</p> <p>(1) An advance payment [of [insert amount] in foreign currency] [and of [insert amount] in local currency] shall be made within [insert number] days after the Effective Date. The advance payment will be set off by the Client in equal instalments against the statements for the first [insert number] months of the Services until the advance payment has been fully set off.</p> <p>(2) Maximum 10 % of the contract amount excluding VAT , contingencies and provisional sum shall be paid against submission of advance payment guarantee within 30 days.</p>
<p><b>6.4(c)</b></p>	<p>The interest rate is: <i>8 % annually for local currency and 1.5% annually foreign currency</i></p>
<p><b>6.4(e)</b></p>	<p>The account number is:</p>

6.6	Liquidated Damages : at the rate of 0.05 % of contract price per day to a maximum of 10% of the sum settled in the Agreement
8.3 Appointment of the Adjudicator	Not Applicable
8.4(b)	Not Applicable
8.4 (c)	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <ol style="list-style-type: none"> <li>1. Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by an arbitration panel composed of three arbitrators. The Client and the Consultants shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <b>Nepal Arbitration Council (NEPCA) and the</b> arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of <b>NEPCA</b>.</li> <li>2. Substitute Arbitrators. If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.</li> <li>3. Miscellaneous. In any arbitration proceeding hereunder: <ol style="list-style-type: none"> <li>(a) proceedings shall, unless otherwise agreed by the Parties, be held in Kathmandu, Nepal;</li> <li>(b) the <b>English</b> language shall be the official language for all purposes; and</li> <li>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</li> </ol> </li> </ol>
10.3 Fraud and Corruption	<ol style="list-style-type: none"> <li>1.1 <i>Public Procurement Act, 2063</i> requires that public Entities, Bidders, Supplies, Contractors and consultant under Public contract to serve the highest standard of ethics during the procurement and execution of such contract.</li> <li>1.2 If the Employer determines at any time that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 15 day notice to the Consultant, terminate the Consultant's employment under the Contract and the provisions of <b>Clause 2.8</b> shall apply. <ol style="list-style-type: none"> <li>(a) For the purposes of this provision, the terms set forth below as</li> </ol> </li> </ol>

	<p>follows:</p> <ul style="list-style-type: none"> <li>(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution; and</li> <li>(ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;</li> <li>(iii) "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non competitive levels; and;</li> <li>(iv) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;</li> <li>(v) "obstructive practice" means <ul style="list-style-type: none"> <li>(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a GoN/DP investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or</li> <li>(bb) acts intended to materially impede the exercise of the GoN/DP's inspection and audit rights provided for under the Conditions of Contract .</li> </ul> </li> </ul> <p>1.3 Without prejudice to any other rights of the Employer under this Contract, on the recommendation of the Employer, Public Procurement Monitoring Office may blacklist a Bidder/Supplier/Consultant for its conduct for a period of one (1) to three (3) years including on the following grounds and seriousness of the act committed by the bidder:</p> <ul style="list-style-type: none"> <li>(a) if it is established that the Supplier has committed acts specified in SCC10.3,</li> <li>(b) if it is established later that the Consultant has committed substantial defect in implementation of the contract or has not substantially fulfilled its obligations under the contract or the completed work is not of the specified quality as per the contract.</li> </ul> <p>1.4 In case of DP funded bid, DP:</p> <ul style="list-style-type: none"> <li>(a) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;</li> </ul>
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	<p>(b) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Bank-financed contract; and</p> <p>(c) will have the right to require that Consultant to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.</p>
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