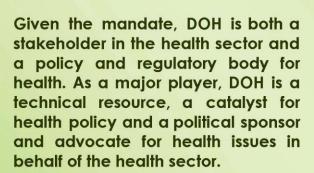
DEPARTMENT OF HEALTH

DOH is the primary government agency tasked to develop, implement, and deliver public health services. It is responsible for ensuring access to basic public health services to all Filipinos through the provision of quality health care and regulation of providers of health goods and services.







GOVERNMENT PROCUREMENT POLICY BOARD

It is government agency composed of top-level public officials primarily mandated to foster public procurement reform agenda through the exercise of its quasi-legislative powers such as policy formulation, development of sustained training programs, and implementing as well as monitoring public procurement reforms. GPPB was established by virtue of Section 63 of Republic Act 9184 or the Government Procurement Reform Act of 2003.

As an inter-agency body, GPPB relies upon the research, technical, and administrative support provided by its Technical Support Office.





VOLUME 3

MANUAL OF PROCEDURES FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

DEPARTMENT OF HEALTH CUSTOMIZED PROCUREMENT MANUAL

VOLUME 3

MANUAL OF PROCEDURES FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

DOH PROCUREMENT SERVICE

DOH Customized Procurement Manuals (Volumes 1 to 4)

These Procurement Manuals are customized for the use of the Department of Health based on the GENERIC PROCUREMENT MANUALS published by the Government Procurement Policy Board through Technical Support Office. The Manuals must be reviewed and updated periodically by the DOH as the GPPB introduces changes in the original Manuals (2006) to ensure its applicability to existing conditions. The DOH shall submit to the GPPB its recommendations for specific revisions to the original Manual. Any such revisions must be approved by the GPPB and must be consistent with existing procurement law, rules, regulations, and policies. This edition has been approved by the GPPB on 25 June 2010.

Published by the Department of Health
First Edition

This customization of the generic procurement manuals, issued by the GPPB, was made possible with the technical inputs from various DOH procurement practitioners and committee members and other stakeholders from the Hospitals, Centers for Health Development, Services and Bureaus in the Central Office especially the Procurement Service/COBAC Secretariat, the Inter- agency Technical Working Group, and the GPPB Technical Support Office. The process has been initially facilitated by a Procurement Specialist, hired by the TSO through the financial support of the World Bank.

The GPPB in October 2007 approved the DOH Customized Procurement Manual. However, it was not published. With the issuance of the Revised Implementing Rules and Regulations of RA 9184, the DOH updated the Customized Manuals and submitted for GPPB's approval on March 2010.

DOH Secretary's Message



Public procurement is not a novel concept here in the Philippines. It plays a central role in effective good governance by promoting equitable and fair competition among prospective bidders through an efficient, effective, and transparent procurement process. The objective is always to deliver procured goods and services promptly with the best value for money and most advantageous conditions on behalf of the Government of the Philippines. Throughout the years, this has been an evolving and dynamic field. Procurement reforms have been spearheaded collectively by government agencies through the enactment of Republic Act 9184, its Implementing Rules and Regulations, and various procurement initiatives.

With great pride, I pronounce that the Department of Health has been a constant forerunner and active trailblazer in implementing procurement reforms. The years have borne witness to the many innovative programs this Department have conceptualized, developed, and ultimately executed in favor of a better and more efficient procurement process. These include, among others, the establishment of a reliable registry system, updated price reporting system, the most recent procurement monitoring system and the creation, as well as subsequent revisions, of these Procurement Manuals. A rewarding reality borne out of the zealous dedication, marked professionalism, and evident hard-work of procurement practitioners and others involved in the procurement process.

As we forge ahead to a new era of renewed and invigorated interest in public procurement, let us always keep in mind our duties as public servants and public health service providers in serving the needs of this Department, the Government of the Philippines, and the general public at large. Let us work together to arrive at proactive solutions on procurement issues and concerns which impede the judicious delivery of health services in the different level of public health care.

We, the DOH officials and personnel, should take the challenge of being steadfast advocates of the principles of public procurement and the ideals of good governance now and in the years to come.

ENRIQUE T. ONA. MD

Secretary of Health

COBAC Chairperson's Message

As Chairperson of the Department of Health's Central Office Bids and Awards Committee, it is with conviction that I say that public procurement is as dynamic and challenging now as when it was first implemented following the enactment of Republic Act 9184, otherwise referred to as the Government Procurement Reform Act of 2003. With the revised guidelines on the procurement process as approved on 02 September 2009, the IRR harmonizes the procurement process of both locally funded and foreign assisted projects in the hopes of establishing a more than adequate and standardized public procurement system. These new provisions shall hopefully answer pressing procurement problems, address inefficiencies procurement policies/practices, promote fair and equitable competition, enhance established procurement system, and improve transparency in furthering the principle of good governance.

Due to the nature, complexity or peculiarity of the DOH's procurement, these Customized Procurement Manuals are being issued to present a clear discussion on the substantive and procedural provisions of R.A. 9184 and its Implementing Rules and Regulations, as accompanied by relevant procurement-related laws, GPPB and DOH issuances. The objective thereof is to give DOH procurement practitioners' sufficient help in tracking any procurement activity on hand. It is, therefore, my fervent hope that the gap between a successful DOH project/policy implementation and the delivery of timely but quality public health service is accomplished through an efficient, effective and transparent process.

Once again, a challenge is put before us – DOH procurement practitioners – as interest in public procurement is renewed, to judiciously perform the duties delegated to us, strictly but reasonably adhere to the principles and provisions of the procurement law, and maintain a positive and sustained conviction to always promote the ideals of good governance and how dedicated public servants are committed to it.

ALEXANDER A. RADILLA
Underscoreasy of Health



Foreword

It is fundamental that we purchase the needed goods, services and works in the right quantity and quality at the right time and price to better support the implementation of health programs and delivery of health services.

We need to plan our procurements better, improve our systems, use better tools and produce a cadre of committed and trustworthy procurement professionals. We need to better manage our procurements to have significant impacts of lowering costs, generating substantial savings, and ensuring that quality goods and services are available for health program at all cost and in service delivery points. We need to make our transactions more transparent, competitive, faster, and to comply with existing laws that relates to purchasing of health goods, services and works. It is also essential that we have procurement reform activists and a core group of highly competent and honest professionals and support staff.

The procurement reform is an essential component of our health sector reform agenda. The Government Procurement Reform Act or Republic Act 9184 of 2002 and its Implementing Rules and Regulations gives us a legal basis for conducting our procurements. In addition, the Government Procurement Policy Board wherein the Department is an active member has been issuing standard bid documents and forms, various resolutions, circulars, opinions and the generic manuals to support compliance, facilitate the procurement processes and make it more efficient and effective.

With the variations in procurement practices in each of the DOH procuring entities and special requirements of health goods, services and works, the generic procurement manuals have been customized to minimize variations and ensure that all concerned follow the procurement law and related laws. For your reference and guidance are the four (4) customized volumes: Volume I: Guidelines on the Establishment of Procurement Systems and Organizations; Volume II: Guidelines on the Procurement Goods; Volume III: Guidelines on the Procurement of Civil Works and Volume IV: Guidelines on the Procurement of Consulting Services.

With these, we hope to improve the efficiency and effectiveness of our procurement systems, practices and processes.

ENRIQUE T. ONA, MD

Secretary of Health

Executive Summary

The role of public procurement in any government worldwide has changed drastically over the years. Once a matter exclusive only to experts has now become subject to public scrutiny. TRANSPARENCY and GOOD GOVERNANCE – these were the principal motivating factors, among others, which facilitated the legislation of comprehensive procurement law to govern the acquisition of goods and services in the government. Anchored on the understanding that public procurement is at the heart of delivering public service, sound procurement policies and procedure is fundamental to any government operations.

In the Philippines, a comprehensive procurement act was enacted in 2003. On 26 January 2003, Republic Act 9184 or the Government Procurement Reform Act took effect. It established a systematic and standardized procurement process for all government agencies, bureaus, departments, government-owned, and government-controlled corporations. The conduct of procurement shall be governed by the principle of transparency in all procurement transactions, fair and equitable competition among prospective bidders/suppliers, streamlined procurement process, system of accountability for both procurement practitioners and prospective bidders/suppliers, and public monitoring to ascertain compliance with the provisions of RA 9184, its Implementing Rules and Regulations and other procurement-related governmental issuances. The procurement framework covers the procurement process from planning to contract implementation and termination. A procurement policy-making body referred to as the Government Procurement Policy Board was also established by virtue of the same statute.

On 08 October 2003, the Implementing Rules and Regulations Part-A of RA 9184 was approved. It covered only all domestically funded procurement but not those involving Foreign Assisted Projects. Competitive bidding is established as the principal mode of procurement but the existence of certain procurement conditions warrants the use of alternative mode of procurement such as Negotiated Procurement, Shopping, Limited Source Bidding, Repeat Order, and Direct Contracting. For those procurement projects undertaken through competitive bidding, procurement tenders/invitations must be publicized in the prescribed media and locations. Submission of eligibility documents forms a crucial role in the public bidding.

The GPPB, pursuant to its mandate to formulate and amend public procurement policies, practices, rules and regulations, formulated the Revised Implementing Rules and Regulations which took effect on the 2 September 2009. The revised IRR now shall cover all domestically funded and foreign assisted projects. Major amendments in the procurement guidelines include a more detailed procurement planning align with the Agency's budget allocation, the change of procurement procedure for Infrastructure projects from two-stage bidding process to a single-stage, the introduction of the two-envelope system, the additional instances or conditions for the use of alternative mode of procurement such as Negotiated Procurement, increase threshold for the conduct of Shopping and Small Value Procurement and longer procurement timelines, among others.

The Philippine Bidding Documents, standard forms, and the Generic Procurement Manual are prepared and harmonized to reflect the amendment contained in the revised IRR of RA 9184. The mandatory usage of the abovementioned documents will promote a systematized procurement process, avoid confusion, and ultimately ensure transparency.

Since the agency is given the prerogative to customize the GPM to suit the needs, peculiarity, nature, or complexity of its procurement by virtue of Section 6.2 of the revised IRR, the following Manuals are being issued by the Department of Health to address procurement concerns of DOH procurement practitioners: Volume I: Guidelines on the Establishment of Procurement Systems and Organizations; Volume II: Guidelines on the Procurement Goods; Volume III: Guidelines on the Procurement of Civil Works; and Volume IV: Guidelines on the Procurement of Consulting Services.

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SECTION 1

INTRODUCTION

SCOPE OF VOLUME 3

This Manual seeks to provide its users clear, concise, and accurate information on the public procurement of infrastructure projects, by discussing the steps that need to be taken to effect such procurement in the manner prescribed by R.A. 9184, otherwise known as the "Government Procurement Reform Act," and the revised IRR. It also discusses important issues that may confront government procurement officials in all stages of infrastructure procurement, from the preparation of bid documents, to the actual bidding activity, monitoring of contract implementation and the final payment to the contractor.

This Manual focuses on public procurement of Infrastructure projects. The procedures are harmonized to a large extent with the International Financing Institutions and bilateral agencies lending to the Philippines. There are, however, policies which are specific to a particular lending agency or grantor and the document highlight the main differences. It should however be noted that the loan, credit or grant agreement with the relevant IFIs and/or bilateral and their respective Guidelines will be the overriding factors governing the foreign assisted projects.

Infrastructure projects are undertakings to construct, improve, rehabilitate, demolish, repair, restore, or maintain DOH buildings, hospitals and other related health and communication facilities, civil works components of information technology projects or diagnostics or reference laboratory systems. It also encompasses such infrastructures as drainage, water supply, sanitation, sewerage and solid waste management systems, laboratory buildings, and other related construction projects of the government. Under R.A. 9184 and the revised IRR, the term "infrastructure projects" has the same meaning as and is used interchangeably with the term "civil works." (Section 5.u of the revised IRR)

In addition, the following terms are used in the manner indicted below:

- The bidder shall be referred to differently at different stages of the procurement process. Thus, the bidder is called:
 - **a.** prospective bidder from the posting of the IB
 - **b.** bidder with the LCB after evaluation;
 - **c.** bidder with the LCRB after post-qualification; and
 - **d.** contractor after the issuance of the NTP.
- **2.** The term bid will be used instead of "proposal" or "offer."
- 3. The Eligibility Requirements and Technical component of the bid are enclosed in the Technical Envelope.
- **4.** The Financial Envelope contains the financial component of the bid.

Finally, this Manual ought to be used together with the PBDs for Infrastructure Projects prescribed by the GPPB.

SECTION 2

PREPARING FOR PROCUREMENT OF INFRASTRUCTURE PROJECTS

PREPARING FOR THE PROCUREMENT INFRASTRUCTURE PROJECTS

Volume I of this Manual contains an extensive discussion of Procurement Planning as a general concern for all kinds of government procurement. This Section, however, focuses mainly on procurement of infrastructure projects. As such, the reader is advised to refer to the pertinent discussions in Volume I before and during the reading of this Section.

Preparation creates a higher efficiency and efficacy in any kind of activity. It enables the procurement officials concerned to anticipate the onset of events and, as a consequence, better calibrate their response to them. Having a better appreciation of forthcoming events gives these officials the opportunity to test a range of possible courses of action, choose the best and most feasible of these, and identify measures to put them into action. Ultimately, it would enable them to determine the best manner by which such measures are to be implemented, ensuring that their individual and collective impacts are optimized at the least cost.

Preparing for procurement basically involves three (3) activities: procurement planning, preparation of bidding documents, and the conduct of the pre-procurement conference. Procurement planning entails ensuring that detailed engineering investigations are conducted. The plans for procurement are linked to budgets. Preparing the Project Procurement Management Plan and consolidating all PPMPs into the Annual Procurement Plan. Formulating the PPMP involves identifying the procurement project requirements, writing the technical specifications, determining the Approved Budget for the Contract, identifying the schedule of milestone activities, and determining the method of procurement.

The PPMP is then converted into the bidding documents, which ought to contain all the information a prospective bidder needs to prepare its bid. Therefore, in preparing the bidding documents, the procuring entity has to ensure that such accurately and comprehensively reflect the main elements of the PPMP. One also has to make sure that the documents are of the kind and form prescribed by the revised IRR and this Manual.

The pre-procurement conference is the forum where all officials of the Procuring Entity involved in the project meet to discuss all aspects of the said project to determine the readiness of the same to undertake the procurement. The conference focuses on the technical specifications, the ABC, the appropriateness and applicability of the recommended method of procurement, and the availability of pertinent budget releases, among others.

The preparation of the bidding documents and the conduct of the pre-procurement conference for the procurement of infrastructure projects are discussed in this Volume.

A. PROCUREMENT PLANNING

1. LEGAL REFERENCE

Sections 7, 17.6 and Annex A of the revised IRR provide the rules in relation to Detailed Engineering and Procurement Planning.

2. PURPOSE

The purpose of procurement planning is for the Procuring Entity to schedule its procurement activities in advance, consistent with its approved budget and its target date of implementation.

For infrastructure projects, the APP shall consider the appropriate timing/phasing of related project activities such as engineering design and acquisition of Right of Way to reduce/lower project costs, among others.

The government hospitals or medical centers should have a master site development plans which indicates the rational allocation of land using activities showing at least the location and plan of existing and proposed building layout of road networks including entrances, exits and parking areas and landscaped areas. All hospital plans for new construction, major renovation and rehabilitation should have a Permit to Construct issued by the Bureau of Health Facilities and Services, for licensing purposes. The minimum space and medical equipment for licensing and design purposes should comply with BHFS standards otherwise the License to Operate will not be issued if such standards are not complied with. For the construction of a new hospital, a certificate of need is required based on *Administrative Order No. 2006-0004 (Reference A)* and its succeeding amendments, *AO 2006-0004-A (Reference B)* and *AO 2006-0004-B (Reference C)*.

Hospital design development should refer to the existing DOH Technical Guidelines on Planning and Design of 10-bed, 25-bed and 100-bed hospitals. It should strictly comply with the pertinent provisions of the following national codes:

- Revised National Building Code of the Philippines
- Accessibility Law
- Structural Code of the Philippines
- Revised Electrical Code of the Philippines
- Sanitary Code of the Philippines
- Mechanical Code of the Philippines
- Fire Code of the Philippines

3. RULES AND GUIDELINES

3.1 DETAILED ENGINEERING

No bidding and award of contract shall be made unless the detailed engineering investigations, surveys and designs including the acquisition of the ROW for the project have been sufficiently carried out. These investigations must then be duly approved in accordance with the standards and specifications prescribed by the Head of the Procuring Entity concerned or his duly authorized representative, and in accordance with the provisions of Annex A of the revised IRR of R.A. 9184. The only exception to this are design and build schemes wherein bidders are allowed to submit detailed engineering designs as part of their bids. (Section 17.6 of the revised IRR)

3.2 HOW TO COMMENCE

Prior to the conduct of the detailed engineering investigations, surveys and designs, the implementing office should draw a feasibility or preliminary engineering study which establishes the technical viability of the project and conformance to land use and zoning guidelines prescribed by existing laws.

The findings contained in the feasibility study, if undertaken for the project, should be examined. If, in the course of this exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes should be supported by detailed justifications, including their effects on the cost, and, if necessary, the economic justification (*Annex A-1 of the revised IRR*).

3.3 ACTIVITIES COVERED

Only after the acceptance and approval of the feasibility study shall the detailed engineering investigations be conducted. A schedule of detailed engineering activities shall include the following:

- a. Survey
- **b.** Site Investigation
- **c.** Soils and Foundation Investigation
- **d.** Construction Materials Investigation
- **e.** Preparation of Design Plans and Design Analysis
- f. Preparation of Technical Specifications
- g. Preparation of Quantity and Cost Estimates
- **h.** Preparation of Program of Work
- *i.* Preparation of Proposed Construction Schedule [and estimated Cash Flow for projects with Schedule over six (6) Months]

- *j.* Preparation of Site or Right of Way Plans including Schedule of Acquisition
- **k.** Preparation of Utility Relocation Plan
- *I.* Preparation and Submission of Design Report
- **m.** Environmental Impact Statement for critical project or project in a critical area, as defined by the Department of Environment and Natural Resources
- **n.** Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
- **o.** Preparation of Tender/Bidding Documents

Furthermore, work under detailed engineering shall include, but not necessarily be limited to, the following:

Setting Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the DOH. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.

Health facilities have special requirements. The Health Facility Infrastructure Standards Manual and related administrative issuances issued by the DOH through the National Center for Health Facilities Development shall be referred and adhered including the minimum standards set by the BHFS for licensing purposes, As mentioned these include among others minimum space and equipment requirements; security, sanitary and protection standards. For example, X-ray facilities and ionizing radiation emitting diagnostic or therapeutic equipments have technical and protection standards to be considered as early as construction of place of installation.

- 2. Conduct of Field Surveys and Investigations Necessary field surveys and investigations which may include aerial, topographic, hydrographic, hydrologic, geological, soil and materials, parcellary and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the agency concerned. All survey and investigation works shall be done so as to provide input data for the design and production of plans that will permit quantity estimates to be made within plus or minus ten percent (10%) of the final quantities of the completed structure.
- Conduct of Design Analyses, and Preparation of Design Plans and Design Report.
 These shall conform to standards of DOH-NCHFD and other relevant government and international standards.

- **4.** Preparation of Contract Plans The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the Procuring Entity concerned, incorporating at least the following:
 - a. Site development plan;
 - **b.** Plans and profile sheet;
 - **c.** Typical sections and details;
 - **d.** Drainage details where applicable;
 - **e.** Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed; and
 - 6. Other details which may be required by health infrastructure licensing and design
- Preparation of Technical Specifications –These shall adopt the NCHFD standards or health industry standard which is most applicable. Supplemental Specifications shall be prepared for specific items of work or methods of construction, measurement and payment. Reference can be made to the DOH Standard Specifications as well if necessary.
- 6. Preparation of Quantity Estimates All construction quantities shall be estimated with a degree of accuracy of not more than plus or minus ten percent (10%) of the final quantities as the as-built structure.
- 7. Preparation of Cost Estimates and Approved Budget for the Contract Unit prices for the different work items shall be prepared for each contract using costs based on current market prices as projected over the proposed construction period, divided into local and foreign exchange costs, as the case may be. The ABC shall be prepared by the official duly designated by the HOPE. The ABC shall be approved by the HOPE or his duly designated official. The ABC is further discussed in the succeeding parts of this Manual.
- 8. Preparation of Program of Work including Schedule The program of work must include, estimates of the work items, quantities and costs, the general methods, arrangements, order and timing of the project activities, including a PERT/CPM diagram and bar chart with S-curve. The program of work must cover at least a usable portion of the project. No construction shall be started for portions of the project that are less than usable, except projects requiring stage construction, in which case continuity of construction up to the completion of a usable portion must be assured.

- 9. Determination of Contract Packages. The number and sizes of the contracts into which the project is to be packaged depends on the kind, complexity, magnitude, cost and timetable of the project. A large infrastructure project, say, costing P100 million or more may, where feasible, be packaged into smaller contracts covering separate sections or work components, provided that the technical integrity of the structure is not impaired, and that the contracts are within the capabilities of Filipino contractors. This is in line with the objective of E.O. 278, series of 2004. There shall be no splitting of contracts, however, as defined in E.O. 109-A for the purpose of circumventing the provisions of law and existing rules and regulations.
- 10. Preparation of Site or ROW Plans, Schedule of Acquisition and Resettlement Action Plans This shall be based on parcellary surveys and socio-economic surveys on households affected by the project.
- **11.** Preparation of Utilities Relocation Plan As necessary, these shall include electric, water, sewerage, telephone, drainage, and other utilities that will be affected by the project.
- **12.** Preparation of Environmental Impact Statement This shall be done for a critical project or a project in a critical area, as defined by the DENR.
- 13. Preparation of Minimum Requirements for a Construction Safety and Health Program These shall conform to the standards of the Department of Labor and Employment.
- Conduct of Value Engineering Studies Value engineering shall be undertaken for all projects costing P15 million or more. Value engineering shall analyze alternative schemes of achieving the project objectives in order to delete or reduce the non-essential features and lessen life cycle costs of the project without sacrificing the quality and integrity of the structure, while attaining its essential function, performance, and safety.
- Contract Time or Duration The proposed contract time in calendar days shall be calculated by first estimating the number of working days required to complete the works through a PERT/CPM analysis of the project activities. Then, added to this will be (1) the non-working days (Sundays and holidays) and (2) the estimated number of rainy/unworkable days considered unfavorable for implementing the works at the site, based on the records of the PAGASA. Item (2) shall be made known before the date of bidding through the Instructions to Bidders for the purpose of guiding both the government and winning contractor in taking action on requests for time extensions.
- **16.** Warranty Period This shall be specified from 2-15 years, depending upon the type of project in accordance with the provisions of the revised IRR of R.A. 9184.

17. Preparation of Bidding Documents – This is discussed in Section 2.3, Volume III the above rules shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under emergency or extraordinary cases involving major calamities and disasters as declared by the President of the Philippines, where time is of the essence to save lives and properties and restore damaged infrastructures, detailed engineering shall be conducted in accordance with the guidelines and procedures prescribed by the Department of Public Works and Highways and approved by the Infrastructure Committee of the National Economic and Development Authority Board. This will enable quick response in such cases, while maintaining the safety and integrity of the structure.

The NCHFD shall implement, at the Central Office, CHDs, and Hospitals, a system for the review and assurance of the quality of detailed engineering outputs to ensure that they conform to the prescribed design standards and will allow estimates of quantities to be made within plus or minus ten percent (10%) of the final values of the completed structure. The survey and design data of structural components that are prone to significant overstatement and variation, such as earthworks and base course, shall be especially scrutinized to assure the integrity of the design and estimates.

3.4 CONSIDERATION IN SETTING THE STANDARDS AND TECHNICAL SPECIFICATIONS

- **a.** Standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement;
- b. As far as possible, the Procuring Entity should specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship should comply, except that where such international standards are unavailable or are inappropriate, national standards may be specified; and
- **c**. In all cases, the bidding documents should state that equipment, material or workmanship meeting other standards, which promise at least substantial equivalent, should also be accepted.

For Hospital construction/repair/upgrading and all its ancillary facilities, refer to the Manuals on Technical Guidelines for Hospitals and Health Facilities Planning and Design, published by the Health Infrastructure Division of the National Center for Health Facilities and Services. These are posted on the DOH website.

http://www.doh.gov.ph/wiki/images/4/4f/Volume_1_Introduction_and_Instruction_for_use.pdf

3.5 APPROVED BUDGET OF THE CONTRACT

The ABC is the budget for the contract duly approved by the HOPE, as included in the Budget reflected in the approved or proposed General Appropriations Act, continuing, and automatic appropriations, in the case of national government agencies; the corporate budget for the contract approved by the governing board, pursuant to Executive Order No. 518, series of 1979 (E.O. 518). For Foreign-funded Procurement, the estimated contract cost for the project refers to the cost estimate prepared by the procuring entity and approved by the foreign government/foreign or international financing institution as specified in the Treaty or International or Executive Agreement. Thus, the ABC referred to in R.A. 9184 and the revised IRR basically refers to the proposed budget for the project approved by the Head of the Procuring Entity based on the APP as consolidated from various PPMPs.

3.6 FACTORS TO CONSIDER IN DETERMINING THE ABC

The Procuring Entity shall consider the following factors in determining the ABC:

- a. Complete and adequate detailed engineering which enable estimates of quantities to be made within plus or minus ten percent (10%) of the final value of the finished works.
- b. Compliance with the DPWH Standard Specifications for Public Works and Highways Projects, particularly Volume II for Highways, Bridges and Airports, 2004, and Volume III for Buildings, Flood Control and Drainage, and Water Supply, 1995.
- **c.** Use of appropriate construction methods.
- **d.** Use of applicable construction industry norms and practices, including minimum production rates of construction equipment and labor and components of direct and indirect costs.
- **e.** Use of identified feasible sources of construction materials.
- f. Use of market prices of component labor, materials and equipment and monitored as-built costs of contract work items.
- **g.** Reasonable risks and contingencies.
- **h.** Inclusion of all relevant and legitimate cost items to be incurred by the contractor.
- *i.* Compliance with D.O. No. 57, series of 2002, as amended, regarding the ABC.

The ABC must be based on the detailed engineering of the project which passes the quality assurance system for design of the Department and is duly cleared by NCHFD.

The ABC shall consist of the following cost elements, based on DPWH D.O. No. 57, series of 2002, as amended.

a. Direct Cost

- i. Cost of materials cost source (including processing), hauling, handling, storage, and allowance for at waste/losses not exceeding 5% of the materials requirement.
- ii. Cost of labor salaries/wages and fringe benefits in accordance with law and based on market rates in the locality, and considering the minimum production rate for labor set by the DPWH.
- *iii.* Cost of equipment rental, mobilization/demobilization, considering minimum production rates for equipment set by the DPWH.

b. Indirect Cost

- i. Overhead expenses engineering and administrative supervision, transportation allowances, office expenses, and premiums on Comprehensive All-Risk Insurance and Warranty Security, not exceeding 5-10% of Estimated Direct Cost, following the schedule of overhead, contingencies and miscellaneous expenses for different costs, duration, and warranty periods set by the DPWH based on industry norms as embodied in a Department Order.
- *ii.* Contingencies not exceeding 0.5-2% of EDC, following the said schedule of OCM expenses.
- iii. Miscellaneous laboratory tests, etc., not exceeding 0.3-1% of EDC.
- iv. Profit per year not exceeding OCC (n+2)/12 multiplied by the EDC, where OCC is the opportunity cost of capital in the Philippines in percent per annum as determined by the NEDA (presently 15%), and n is the contract duration in months, provided that the profit shall be (a) at least one-half (1/2) of the OCC and (b) at most two-thirds (2/3) of the OCC multiplied by the EDC.
- v. Value Added Tax twelve percent (12%) of [EDC + (Estimated IC for (1) to (4))]

Since the contract cost is fixed, the estimated unit price for each work item must allow for the projected inflation and foreign exchange fluctuation during the implementation period, especially for construction with duration of more than one year. The estimator shall refer to the NEDA for estimates of likely inflation rates and to the Bangko Sentral ng Pilipinas for estimates of probable foreign exchange fluctuation.

In preparing, reviewing, and approving the ABC, the Procuring Entity shall refer to the computerized DPWH database which monitors and posts (a) prices of component materials, labor, and equipment based on market prices in the locality, and (b) prices of completed work items in place, e.g., base course, based on as-built costs.

If the project or contract has a foreign component, it is also best to include a currency valuation adjustment factor, in order to hedge against any foreign exchange rate fluctuations between the planning phase and the actual procurement date. To determine the factor to be used, the PMO or end-user unit may request for guidance from the BSP, or refer to BSP forecasts, if available.

If the resulting sum of the different cost components is lower than the appropriation for the procurement, then the ABC should be equal to the sum of the cost components. If the resulting sum is higher than the appropriation, it is advisable to review the technical specifications and the computation of the ABC. In any case, the ABC should not exceed the appropriation.

In case of bid failure, the BAC is obligated under Section 35 of the revised IRR to conduct mandatory review. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates (*Section 35.2 of the revised IRR*). Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the revised IRR.

Under this new rule, ABC may be adjusted upward or downward without any restriction/limitation if so warranted. This is a variation from the previous rule, embodied in GPPB Resolution 07-2005, which only allows upward adjustment of the ABC from the original amount on the condition that there has been two-failed bidding and previous modification of the terms, conditions, and specifications of the project.

Furthermore, downward adjustment of the ABC may be considered after the first failed bidding to reflect prevailing market prices and/or scope of work or suit actual field conditions of the project.

B. PREPARING THE BIDDING DOCUMENTS

1. LEGAL PURPOSE

Section 17 of the revised IRR is the legal basis for the issuance of the bidding documents for the procurement of infrastructure projects.

PURPOSE

As defined in Section 5.f of the revised IRR, bidding documents refer to the documents issued by the procuring entity as the basis for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required by the procuring entity. These clearly and adequately define, among others:

- 2.1 The scope of work, approved budget, duration, and expected outputs of the proposed contract;
- 2.2 The minimum legal, technical, and financial requirements that the bidder must meet to be eligible to bid;
- **2.3** The documents and other requirements that the bidder must include in its bid;
- **2.4** The process and rules for the submission and receipt of bids, evaluation of bids, post-qualification, and award of contract; and
- 2.5 The terms and conditions of the contract between the winning bidder and the Procuring Entity including their prospective obligations.

3. RULES AND GUIDELINES

3.1 Contents

The PBDs contain the following:

- Section I Invitation to Bid
- Section II Instructions to Bidders
- Section III Bid Data Sheet
- Section IV General Conditions of Contract
- Section V Special Conditions of Contract
- Section VI Specifications
- Section VII Drawings

- Section VIII Bill of Quantities
- Section IX Forms

Specifically, as provided in Section 17.1 of the revised IRR, the bidding documents shall include the following information embodied in the standard forms and in this manual as approved by the GPPB, as follows:

- **a.** ABC and source of funds;
- **b.** Date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
- c. Eligibility Requirements;
- **d.** ITB, including criteria for eligibility, bid evaluation and post-qualification;
- e. Scope of Work;
- f. Plans and Technical Specifications;
- g. Form of Bid and Bill of Quantities;
- **h.** Completion Schedule;
- i. Form, amount and validity period of Bid Security, the amount to be stated in Philippine Peso terms (Section 27.3 of the revised IRR) and its validity period to be determined by the Head of the Procuring Entity but not to exceed one hundred twenty (120) calendar days after the opening of bids (Section 28.1of the revised IRR);
- **j.** Form and amount of Performance Security and Warranty; and
- **k.** Form of Contract, GCC and SCC.

The contents of the standard bidding documents for FAPs may vary. For every contract to be bid, the Procuring Entity shall prepare the BDs by adopting the PBD, Third Edition. The Procuring Entity, however, shall insert in the PBDs the necessary information specific to the contract, particularly in the IB, BDS, SCC, Specifications, Drawings, and BOQ, in order to produce the complete BDS.

The specifications and other terms in the Bidding Documents shall reflect minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous term (Section 17.2 of the revised IRR). A bidder may, therefore, be allowed to submit a superior offer. However, in the evaluation of the bids, no premium or bonus must be given as a result of this superior offer. This rule is based on the nature of the procedure used to evaluate the technical proposals – a "passed/failed" method – such that the presence or absence of the technical requirements is the sole basis for determining technical compliance. After having established compliance with the technical specifications, the next factor to consider would then be the price or financial bid.

In addition to properly crafted bidding documents, there are other practices that should be observed by the Procuring Entity to ensure successful procurement.

3.2 OTHER PRACTICES TO ENSURE SUCCESSFUL PROCUREMENT

- **a.** All prospective bidders should be provided the same information, and should be assured of equal opportunities to obtain additional information on a timely basis.
- **b.** Procuring Entities should provide reasonable access to project sites for visits by prospective bidders.
- **c.** For works, particularly for those requiring refurbishing existing works, a pre-bid conference may be arranged whereby potential bidders may meet with the Procuring Entity's representatives to seek clarifications (in person or online).
- d. Any additional information, clarification, correction of errors, or modifications of bidding documents should be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline should be extended.

3.3 PARTICIPANT

The following may participate in the preparation of the bidding documents:

- a. BAC;
- **b.** BAC Secretariat.
- **c.** TWG or technical experts, when necessary;
- **d.** Consultants, if any; and
- e. End-user unit/PMO.

3.4 TIME OF PREPARATION

The bidding documents must be prepared in time for presentation at the pre- procurement conference. After the conference, and preferably before the advertisement and/or posting of the IB, it should be ascertained that these documents are finalized.

3.5 VARIOUS TYPES AND SIZES OF CONTRACTS

The bidding documents should clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefore. The most common types of contracts provide for payments on the basis of a lump sum, unit price, or combinations thereof. Reimbursable cost contracts are acceptable to IFIs only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advanced with sufficient accuracy. Such contracts should include appropriate incentives to limit costs.

The size and scope of individual contracts will depend on the magnitude, nature, and location of the project, for example:

- a. For projects requiring a variety of goods and works, separate contracts may be awarded for the supply and/or installation of different items of equipment and plant ("plant" refers to installed equipment, as in a production facility) and for the works.
- b. For a project requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual contracts (lots) or for a group of similar contracts (package). All bids and combinations of bids should be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest calculated cost to the Procuring Entity.
- c. In certain cases, the Procuring Entity may require a turnkey contract under which the design and engineering, the supply and installation of equipment, and the construction of a complete facility or works are provided less than one (1) contract. Alternatively, the Procuring Entity may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods and works required for the project component. Also acceptable where appropriate are contracts such as, but not limited to:
 - i. Design and build;
 - *ii.* Design, build and operate;
 - iii. Design, build and lease; and
 - *iv.* Management contract.

4. PROCEDURES

BAC Secretariat, with the assistance from the TWG members or technical experts whenever necessary, consultants (if any) and the end-user unit/PMO, prepares the bidding documents by using the PBD, as described in Section 3.1 of the revised IRR hereof, following the standard forms and this manual as approved by the GPPB.

The Procuring Entity may require additional document requirements or specifications, where applicable and necessary for prospective bidders to prepare their respective bids. The bidding documents, as amended, shall subsequently form an integral part of the contract. Statements not made in writing at any stage of the bidding process shall not modify the bidding documents.

4.1 POSTING AND DOWNLOADING OF BIDDING DOCUMENTS FROM THE PHILGEPS WEBSITE

The procuring entity shall also post the Bidding Documents at its website and at the PhilGEPS website from the time that the Invitation to Bid is advertised. Prospective bidders may download the Bidding Documents from any of the said websites; provided that, bidders shall pay the fee for the Bidding Documents upon submission of their Bids (Section 17.5 of the revised IRR).

The above cited provision facilitates a more expeditious and efficient issuance of the bidding documents because it is made available online. However, the bidders are still required to pay the necessary fee for the bidding documents upon submission of their bids.

4.2 MONITORING OF BIDDING DOCUMENTS

To monitor the issuance of bidding documents, the BAC may label or number copies of such documents, i.e., "Copy No. 1, 2, 3, etc." or "Copy for Observer", "Copy for BAC Member No.1". The Secretariat may choose a numbering or labeling system that is appropriate for the Procuring Entity.

C. PRE-PROCUREMENT CONFERENCE

1. LEGAL REFERENCE

Section 20 of the revised IRR is the legal basis for the conduct of a pre-procurement conference.

2. PURPOSE

The pre-procurement conference is the forum where all officials involved in the procurement meet and discuss all aspects of the transaction and check whether the project is ready for procurement in terms of legal, technical and financial requirements. These aspects include the technical specifications, the ABC, the applicability and appropriateness of the recommended method of procurement and the related milestones, the bidding documents, and availability of the pertinent budget release for the project.

The conference shall confirm the scope of work under the proposed contract, ensure that the procurement is consistent with the PPMP and the APP, check the budget for the contract, and review and approve the Bidding Documents, making sure that they are complete and comply with the set standards and rules. The conference will also review the criteria for the examination of eligibility and bid requirements, bid evaluation, post- qualification, and award, and agree on the mode and schedule of procurement.

3. RULES AND GUIDELINES

For projects involving an ABC amounting to more than Five Million Pesos (\$\overline{P}\$5,000,000.00), a preprocurement conference shall be conducted to determine the readiness of the Procuring Entity to procure infrastructure projects in terms of the legal, technical and financial requirements. More specifically, it ensures that the procurement will proceed in accordance with the PPMP and APP, confirms the availability of appropriations and programmed budget for the contract, and reviews all relevant documents in relation to their adherence to the law (Section 20 of the revised IRR).

Even when the ABC of the infrastructure project amounts to Five Million Philippine Pesos (PhP 5,000,000.00) million and below, the BAC is encouraged to conduct a pre-procurement conference if the circumstances, like the complexity of the technical specifications, warrant the holding of such a conference before the Procuring Entity proceeds with the procurement.

3.1 Period of Action

The pre-procurement conference must be conducted prior to the advertisement or issuance of the IB (Section 20.1 of the revised IRR). At least seven (7) calendar days prior to publication or issuance of the IB would be an advisable timeframe for the pre-procurement conference, to give the technical staff sufficient time to incorporate the necessary changes, amendments or revisions thereto.

3.2 Responsibility of the BAC

The BAC, through its Secretariat, calls a pre-procurement conference.

3.3 Participants

The participants in a pre-procurement conference are:

- **a.** BAC;
- **b.** Secretariat;
- **c.** Representatives of the PMO or end-user unit/s;
- d. Members of the TWG/s or technical experts, whenever necessary, who help in the preparation of the bidding documents and consultants hired by the Procuring Entity who prepared the technical specifications, TORs, bidding documents and the draft advertisement, as the case may be, for the procurement at hand;
- **e.** Officials who reviewed the above-enumerated documents prior to final approval, if any; and
- **f.** Other officials concerned, as may be required.

3.4 Expected Results

A pre-procurement conference should: (Section 20.1 of the revised IRR)

- **a.** Confirm the description and scope of the contract, the ABC, and contract duration.
- **b.** Ensure that the procurement is in accordance with the project and annual procurement plans;
- **c.** Determine the readiness of the procurement at hand, including, among other aspects, the following:
 - *i.* Availability of appropriations and programmed budget for contract;
 - *ii.* Completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;
 - *iii.* Completion of the detailed engineering according to the prescribed standards in the case of infrastructure projects; and
 - *iv.* Confirmation of the availability of ROW and the ownership of affected properties.
- Review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;

- **e.** Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities:
- **f.** Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of the revised IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing;
- Review, modify and agree on the criteria for the evaluation of bids, and ensure that the said criteria are fair, reasonable and applicable to the procurement at hand, are of the "passed-failed" type for the evaluation of the technical component, pertain to the price for the evaluation of the financial component, and includes those which will affect the completeness of the bids in the bill of quantities and any minor arithmetical correction in getting the correct calculated price;
- h. Clarify that the specifications and other terms in the bidding documents are minimum requirements and that the bidder may submit an offer which provides for superior specifications, better terms and conditions to the government at no extra cost, without any bonus, credit or premium in the bid evaluation. For example, the bidding documents shall emphasize that the bidder shall provide information on the minimum equipment required for the project with the corresponding engine numbers, chassis numbers and/or serial numbers. Additionally, the bidding documents shall clearly state the minimum required experiences of the bidders' personnel, such as project managers, project engineers, material engineers and foreman; and,
- *i.* Ensure that the requirements to be procured are in accordance with the ABC and Finalize and approve the IB.

SECTION 3

PROCUREMENT OF INFRASTRUCTURE PROJECTS THROUGH COMPETITIVE BIDDING

PART ONE - COMPETITIVE BIDDING

COMPETITIVE BIDDING

Competitive or Public Bidding is a method of procurement that is open to any interested and qualified party. It is preferred over other methods of procurement. A Procuring Entity should, therefore, see to it that its procurement program allows enough time to conduct such Public Bidding (Section 48.2 of the revised IRR).

Refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, submission, receipt, opening and examination of bids, evaluation of bids, post-qualification, and award of contract. For purposes of, and throughout the revised IRR, the terms "Competitive Bidding" and "Public Bidding" shall have the same meaning and shall be used interchangeably (Section 5.h of the revised IRR).

The procurement process from the opening of bids up to the award of contract should not exceed three (3) months, or a shorter period to be determined by the Procuring Entity concerned (Section 38 of the revised IRR). In case the deadline for each activity falls on a non-working day (i.e. Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day. (Refer to detailed timeline as follows and Annex C of the revised IRR).

STEP1. ADVERTISE AND POST THE INVITATION TO BID

1. LEGAL REFERENCE

Section 21 of the revised IRR provides for the legal reference for advertisement and posting of the IB.

PURPOSE

The IB serves as the notice to the public and all interested parties of the procurement and bidding opportunities of the Procuring Entity.

The IB serves as the notice to interested contractors and to the general public and other interested parties of the proposed procurement for a specific contract of the Procuring Entity. It provides basic information that will enable prospective bidders to decide whether or not to participate in the procurement at hand.

Advertising and posting the IB and ensuring its widest possible dissemination will increase the number of prospective bidders and intensify competition for the procurement activity or project. Intensified competition, in turn, will ensure that the government, in general, and the Procuring Entity, in particular, will get the best possible proposals as to quality and cost.

3. RULES AND GUIDELINES

3.1 Contents

The IB must contain the following:

- a. Name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works (Section 21.1.a.ii of the revised IRR).
- **b.** A general statement on the criteria to be used by the Procuring Entity for:
 - *i.* Preliminary examination of eligibility and bid requirements;
 - ii. Detailed bid evaluation; and
 - iii. Post-qualification;
- **c.** The date, time and place of the deadline for:
 - *i.* The pre-bid conference, if any; and,
 - The submission, receipt, opening and examination of the eligibility and bid requirements;

- d. ABC;
- e. Source of funding;
- f. Period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the eligibility documents;
- **g.** Contract duration;
- h. Name, address, telephone number, facsimile number, e-mail and website addresses of the concerned Procuring Entity, as well as its designated contact person;
- i. Reservation Clause, which is normally located at the bottom of the notice; and
- Such other necessary information deemed relevant by the Procuring Entity.

3.2 Posting

The IB for infrastructure projects with ABCs of more than Five Million Pesos (PhP 5,000,000.00) must be advertised and posted as follows (Section 21.2.2 of the revised IRR):

- Advertised at least once in a newspaper of general nationwide circulation, which has been regularly published for at least two (2) years, before the date of issue of the advertisement. It is advisable that the posting be made at least on the seventh (7th) calendar day after the pre-procurement conference. However, if during the pre-procurement conference, the BAC finds that it is not prepared to undertake the bidding process, it should not hesitate to consider moving date of the advertisement/posting thereof at a later date to allow more time to perfect the same);
- **b.** Continuously on the website of the Procuring Entity, as provided in the revised Section 8 of the revised IRR, the PhilGEPS for seven (7) calendar days starting on date of advertisement, if applicable, and the website prescribed by the foreign government/foreign or international financing institution, if applicable; and
- c. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity as certified by the head of the BAC Secretariat, for seven (7) calendar days, if applicable. Moreover, the IB shall also be posted at the city/municipal hall and/or provincial capitol where the project is located. Finally, the heads of contractors' organizations in the area shall also be informed of such advertisement.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

For projects with ABCs of Five Million Pesos (₽ 5,000,000.00) and below, the IB should be posted:

- a. Continuously on the website of the Procuring Entity, as provided in Section 8 of the revised IRR, and the PhilGEPS for seven (7) calendar days starting on date of advertisement, if applicable; and
- b. At any conspicuous place reserved for this purpose in the premises of the Procuring Entity, as certified by the head of the BAC Secretariat, for seven (7) calendar days, if applicable. Moreover, the IB shall also be posted at the city/municipal hall and/or provincial capitol where the project is located. Finally, the heads of contractors' organizations in the area shall also be informed of such advertisement.

FAPs may have additional publication requirements. For this reason, reference should be made to the appropriate standard bidding documents for the project.

3.3 Responsibility of the BAC

The BAC is responsible for ensuring that the IB is advertised and posted in accordance with law. However, the actual advertisement and posting thereof shall be undertaken by the BAC Secretariat, in performance of its function, as prescribed in RA 9184, the revised IRR, and this manual.

3.4 Reservation Clause

The Reservation Clause declares that the Procuring Entity reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract in the following situation:

- a. If there is prima facie evidence of collusion between appropriate public officers or employees of the procuring entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- b. If the BAC is found to have failed in following the prescribed bidding procedures for which the applicable sanctions shall be applied to the erring officers, as provided in Section 65 of the revised IRR; or
- **c.** For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP, as follows:
 - i. If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HOPE;

- ii. If the project is no longer necessary as determined by the HOPE; and
- *iii.* If the source of funds for the project has been withheld or reduced through no fault of the procuring entity. (Section 41 of the revised IRR)

In the case of <u>Mata V. San Diego</u>, G.R. No. L-30447 (March 21, 1975), the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award the contract to it. The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the courts. It should be noted, however, that R.A. 9184 Section 41 of the revised IRR, has placed some limiting qualifiers on the possible contents of the Reservation Clause.

If the HOPE abuses his power to reject any and all bids, as provided by the Reservation Clause, with manifest preference to any bidder who is closely related to him in accordance with Section 47 of the revised IRR, or if it is proven that he exerted undue influence or undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take such action, and the same favors or tends to favor a particular bidder, he shall be meted with the penalties provided in Section 65 of the revised IRR of RA 9184 (Section 65.1.e of the revised IRR).

4. PROCEDURES

The following steps are followed in the advertising and posting of IBs:

- a. For public bidding of contracts with an ABC costing more than Five Million Philippine Pesos (PhP 5,000,000.00)
 - *i.* The BAC Secretariat prepares the draft IB for review/approval of the BAC.
 - *ii.* The BAC approves the contents of the IB.
 - *iii.* The BAC Secretariat posts the IB in any conspicuous place reserved for this purpose in the premises of the Procuring Entity for the duration required; and this fact will be certified to by the head of the Secretariat.
 - *iv.* The BAC Secretariat advertises the IB in a newspaper for the duration required, as described above. For priority programs and projects funded out of the annual GAA, which are intended for implementation within the province, the IB may also be advertised in a local newspaper for the same duration as above.
 - v. The BAC Secretariat, through its member who is authorized to transact with the PhilGEPS, posts the IB in the following websites: the PhilGEPS and that of the Procuring Entity, if available, for the duration so required.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

- **b.** For public bidding of contracts with an ABC costing Five Million Philippine Pesos (PhP 5,000,000.00) and below:
 - *i.* BAC Secretariat prepares the draft IB for review/approval of the BAC.
 - ii. BAC approves the contents of the IB.
 - iii. BAC Secretariat performs steps iii and v in Item a above.

STEP 2. ISSUE BIDDING DOCUMENTS

1. LEGAL REFERENCE

Section 17 of the revised IRR is the legal reference for the issuance of the bidding documents.

2. PURPOSE

This is the stage when the Procuring Entity provides the prospective Bidders a copy of the bidding documents so that prospective Bidders can study the requirements and conditions of the procurement process being adopted in general and the specific procurement being bided.

3. RULES AND GUIDELINES

3.1 Schedule bidding documents issuance

Prospective bidders must be allowed to acquire or purchase the bidding documents from the time the IB is first advertised/posted until the deadline for the submission and receipt of bids (Section 17.3 of the revised IRR).

No bidding and award of contract for infrastructure projects shall be made unless the detailed engineering investigations, surveys and designs, including the acquisition of the ROW, for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the HOPE concerned or his duly authorized representative, and in accordance with the provisions of Annex "A" of the revised IRR.

The exception is design and build scheme, wherein the bidders shall be allowed to submit its detailed engineering designs as part of its bid. The procedures for the procurement and contract implementation of infrastructure projects using a design and build scheme shall be in accordance with the provisions of Annex "G" of the revised IRR. (Section 17.6 of the revised IRR)

The bidding documents are strictly confidential and may not be divulged or released to any person prior to its official release, except to those officially authorized in the handling of the documents. However, after its official release, it shall be made available to the public, unless the procurement at hand affects national security.

3.2 Cost of bidding documents

The BAC must consider the cost recovery component in determining the price which interested contractors would have to pay for the bidding documents ensure that the same would not have an effect of discouraging competition.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

The cost recovery component may include the following:

- **a.** Direct costs, which include:
 - i. Development costs, which are incurred in developing the original content of the documents, designs, plans and specifications. However, the design cost may be excluded if it is to be included in the capitalized cost of the project, or the project cost, which is to be recovered from the use of the completed project facility;
 - *ii.* Reproduction costs, which are labor, supplies and equipment rental costs incurred in the reproduction of the documents; and
 - *iii.* Communication costs, which include mail and fax costs, plus costs of advertising, meetings, internet/web posting, and other costs incurred for the dissemination of information about the bidding.
- b. Indirect costs, such as overhead, supervision, and administrative costs, allocated to the bidding activity. This may include the costs of paying honoraria to the officers and personnel of the Procuring Entity who are entitled thereto under the law.

In practice, cost recovery entails getting the sum of Direct and Indirect Costs and dividing the total by the expected number of prospective bidders who will purchase the bidding documents. This number is an estimate derived from the initial survey of the industry conducted by the procurement office/unit. The BAC is discouraged from using the cost of bidding documents to limit the number of bidders. If the procurement involves a fairly large project of a particular complexity, and project implementation requires a higher level of size or capacity on the part of the contractor, it would be more advisable for the BAC to allow the project requirements to naturally limit competition among eligible contractors, by summarizing the qualification requirements in the IB and detailing these in the bidding documents, rather than for the BAC to unilaterally increase the price of the bidding documents and hope that this price discourages competition. As such, if the BAC wants to encourage the participation of as many bidders as possible to create competition, it should consider charging a lower price for the bidding documents, keeping in mind that this price should be sufficient to recover the above-enumerated costs.

4. PROCEDURES

The BAC Secretariat issues the bidding documents to the prospective bidders that may wish to secure the said documents. If the bidding documents are sold, only those prospective bidders who have paid the amount required shall be issued bidding documents, and bidders should be informed that the Procuring Entity will only accept bids from bidders that have purchased the bidding documents from the office indicated in the IB. Prior to the issuance of the bidding documents,

eligible bidders may be required to show the official receipt as proof of payment (Section 14.1.e of the revised IRR).

5. POSTING OF BIDDING DOCUMENTS

The procuring entity shall also post the Bidding Documents at its website and at the PhilGEPS website from the time the IB is advertised. Prospective bidders may download the Bidding Documents from any of the said websites; provided that, bidders shall pay the Bidding Documents upon submission of their bids (Section 17.5 of the revised IRR).

STEP 3. CALL A PRE-BID CONFERENCE AND ISSUE SUPPLEMENTAL BID BULLETINS

1. LEGAL REFERENCE

Section 22 of the revised IRR provides for the imprimatur on the conduct pre-bid conference and issuance of supplement bid bulletins.

2. PURPOSE

The pre-bid conference is the initial forum where the Procuring Entity's representatives and the prospective bidders discuss the different aspects of the procurement at hand.

The ground rules that will govern the procurement are discussed. In particular, the participants discuss the technical and financial components of the contract to be bid. This is also an opportunity for the prospective bidders to request for clarifications about the bidding documents. However, it should be noted that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin (Section 22.4 of the revised IRR).

It is important that responsible and knowledgeable officials attend the conference. The persons who actually formulated the scope of work, plans and technical specifications for the project should be present and among those representing the Procuring Entity. Prospective bidders, on the other hand, should be encouraged to send representatives who are legally and technically knowledgeable about the requirements of the procurement at hand. It is also important that the prospective bidders are given ample time to review the bidding documents prior to the pre-bid conference.

3. RULES AND GUIDELINES

3.1 PERIOD OF ACTION AND THRESHOLD OF PRE-BID CONFERENCE

A pre-bid conference must be held for all contracts with ABCs of at least One Million Pesos (PhP1,000.000.00) and above. For contracts with ABCs of less than One Million Pesos (PhP1,000.000.00), pre-bid conferences may or may not be held at the discretion of the BAC. The BAC may also decide to hold such a pre-bid conference upon the written request of a prospective bidder (Section 22.1 of the revised IRR).

The pre-bid conference must be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids (**Section 22.2 of the revised IRR**). If the pre-bid conference is held less than twelve (12) calendar days before the deadline for the submission and receipt of bids, that deadline should be moved to a later date. If the procuring entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference shall

be held at least **thirty** (30) calendar days before the deadline for the submission and receipt of bids.

3.1.1 PARTICIPANTS IN THE PRE-BID CONFERENCE

The following must attend the pre-bid conference:

- **a.** BAC;
- **b.** BAC Secretariat;
- **c.** TWG members and consultants, if any:
- **d.** Procuring unit/end-user unit;
- e. Prospective bidders; and
- f. Observers.

The attendance of the prospective bidders shall not be mandatory. However, the procuring entity has the option whether or not to allow only those prospective bidders who have purchased the bidding documents to participate in the pre-bid conference and raise or submit written queries and/or clarifications (Section 22.3 of the revised IRR).

Neither will the absence of the observers nullify the BAC proceeding provided that they were duly invited in writing (Section 13.3 of the revised IRR).

3.1.2 PROPER CONDUCT OF PARTICIPANTS

The BAC, BAC Secretariat, TWG, and other officials involved in procurement are expected to act in an impartial, courteous and professional manner in all their dealings and interactions with the bidders during all stages of the procurement. The bidders' representatives are likewise enjoined to adopt the same professional manner in their dealings with the Procuring Entity's officials. Communications between the parties must, as much as possible, be made in writing, except during the pre-bid conference when verbal clarifications may be allowed – keeping in mind, however, that any statement made at the pre-bid conference would not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment of the documents and issued as a supplemental/bid bulletin.

3.2 SUPPLEMENTAL BID BULLETINS

Supplemental Bid Bulletins are issuances of the procuring entity which seeks to amend, clarify, and/or modify any provision in the bidding documents, whether agreed upon during the pre-bid conference or as a response to a written request for clarification or interpretation espoused by a prospective bidder on any part of the bidding document, which shall form an integral part thereof.

3.2.1 ISSUANCE OF SUPPLEMENTAL BID BULLETINS

a. Request for Clarification after the Pre-bid Conference

Requests for clarification(s) on any part of the bidding documents or for an interpretation may be made by prospective bidders provided that these are in writing and are submitted to the BAC at least ten (10) calendar days before the deadline for the submission and receipt of bids. In this case, the BAC shall issue its response by issuing a supplemental/bid bulletin, to be made available to all those who have properly secured the bidding documents at least seven (7) calendar days before the deadline for the submission and receipt of bids (Section 22.5.1 of the revised IRR).

b. Procuring entity's initiative to clarify or modify

The Procuring Entity may, at its own initiative, also issue supplemental/bid bulletins for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents must be identified as an "AMENDMENT" (Section 22.5.2 of the revised IRR).

3.2.2 PARTICIPANTS IN THE PREPARATION AND ISSUANCE OF SUPPLEMENTAL BID BULLETINS

The following have an integral part in the preparation and subsequent issuance of the Supplemental Bid Bulletins:

- **a.** BAC;
- **b.** BAC Secretariat;
- c. End-user units/PMOs;
- **d.** TWG members or technical expert, whenever necessary; and
- **e.** Prospective bidders.

3.2.3 FORM AND CONTENTS OF THE SUPPLEMENTAL BID BULLETINS

Bidders who have submitted bids before a supplemental/bid bulletin is issued have to be informed in writing and allowed to modify or withdraw their respective bids (Section 22.5.3 of the revised IRR).

A supplemental/bid bulletin must contain a brief but comprehensive and accurate summary of the issue or issues that it wishes to address. If it was a bidder that raised the issue addressed by the bulletin, then it ought to contain a summary of that bidder's request for clarification and/or interpretation, without identifying the prospective bidder.

3.2.4 POSTING OF SUPPLEMENTAL BID BULLENTINS

The BAC should also post the supplemental/bid bulletin on the website of the Procuring Entity concerned, if available, and on the PhilGEPS, within the same timetable. Nonetheless, it will be the bidders' responsibility to ask for, and secure, these bulletins; however BAC should ensure that all prospective bidders receive the bid bulletin.

4. PROCEDURES

4.1 Pre-bid Conference

How the pre-bid conference is conducted depends on the discretion of the BAC Chairperson or his/her alternate who shall chair the proceedings. However, several events need to take place in the conference, namely:

The BAC must initiate discussions on contentious issues, most especially if the participating prospective bidders have no ready questions. It is probable that there are issues that may not be apparent in the bidding documents but are known to the representatives of the procuring entity. If these issues are brought out and openly discussed, prospective bidders will be able to prepare responsive bids, thus avoiding situations that may give rise to a failure of bidding due to lack of bids received or failure of bids to comply with all the bid requirements. This would also help prevent the birth of contentious issues during the bidding itself.

- a. The BAC shall discuss, among other things, the technical and financial components of the contract to be bid, including the explanation of the different documents to be submitted by each bidder (Section 22.3 of the revised IRR).
- b. The BAC Chairperson shall also discuss the requirements in the ITB, the replies to the bidders' queries about the requirements, specifications and other conditions of the project, the bid evaluation of all bidders and post- qualification evaluation of the lowest calculated bidder. Emphasis should also be given to the warranty requirement of the project and the different offenses and penalties provided for in the revised IRR of R.A. 9184.
- **c.** The recording, by the BAC Secretariat of minutes of the pre-bid conference, and its availability to all participants not later than three (3) calendar days after the pre-bid conference (Section 22.4 of the revised IRR).

4.2 Issuance of Bid Bulletin

If the supplemental/bid bulletin is being issued upon the initiative of the BAC, the following steps are followed:

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- **a.** The BAC Secretariat, with the assistance of the TWG whenever necessary, drafts the supplemental/bid bulletin for approval by the BAC.
- **b.** The BAC approves the supplemental/bid bulletin and the BAC Chairperson signs it.
- **c.** The BAC Secretariat sends copies of the supplemental bid bulletin to all prospective bidders who have properly secured or purchased the bidding documents, within the period prescribed above.
- **d.** The BAC Secretariat posts the supplemental/bid bulletin in the websites of the PhilGEPS and the procuring entity concerned, within the same period prescribed in number (3) above.

If the supplemental/bid bulletin is being issued in response to a request for clarification submitted by an eligible bidder, on the other hand, the process goes as follows:

- **a.** The eligible bidder submits to the BAC, through the BAC Secretariat, a written request for clarification, within the period prescribed above.
- **b.** The BAC directs the BAC Secretariat, and/or the TWG whenever necessary, to study the request for clarification.
- **c.** BAC Secretariat performs the steps undertaken in the issuance of the supplemental/bid bulletin issued at the initiative of the BAC.

STEP4. RECEIVE AND OPEN THE BID PROPOSAL (TECHNICAL AND FINANCIAL ENVELOPES)

1. LEGAL REFERENCE

Sections 25 to 31 of the revised IRR are the legal bases on the receipt and opening of bids.

2. PURPOSE

This is the phase wherein prospective bidders formally submit their eligibility and bid requirements and the procuring entity has to receive and check for the presence and completeness of the eligibility and bid documents to undertake the contract.

3. RULES AND GUIDELINES

3.1 PROSPECTIVE BIDDERS ELIGIBLE TO PARTICIPATE IN THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

Bidders are those eligible contractor, manufacturer, supplier, distributor and/or consultant competing for the award of a contract in any procurement by the GOP. A contractor is said to be eligible if it meets all the eligibility requirements issued by the procuring entity. (Section 5.e of the revised IRR)

A prospective bidder is eligible to bid for the procurement of infrastructure projects if it complies with the eligibility requirements. The eligibility requirements shall provide for fair and equal access to all prospective bidders.

3.1.1 Eligibility Criteria

- **a.** Under Section 23.5.2.1 of the revised IRR, the following persons/entities shall be allowed to participate in the bidding for infrastructure projects:
 - *i.* Duly licensed Filipino citizens/sole proprietorships;
 - *ii.* Partnerships duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;
 - *iii.* Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines;
 - *iv.* Cooperatives duly organized under the laws of the Philippines, and of which at least seventy percent (75%) belongs to citizens of the Philippines; or

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- V. Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that, in accordance with Letter of Instructions No. 630, Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): Provided. further, that joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: Provided, finally, that in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.
- vi. Foreign bidders may be eligible to participate in the procurement of infrastructure projects when provided for under any Treaty or International or Executive Agreement as provided in Section 4 of RA 9184 and the revised IRR.
- vii. In accordance with Republic Act 4566, entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefore, and for Other Purposes", the persons/entities enumerated in Section 23.5.1.1 of the revised IRR may participate in public bidding if he has been issued a license by the Philippine Contractors Accreditation Board to engage or act as a contractor.
- *viii.* Government corporate entities may be eligible to participate in Competitive Bidding only if they can establish that:
 - **a.** They are legally and financially autonomous;
 - **b.** They operate under commercial law; and,
 - **c.** They are not dependent agencies of the GOP or the procuring entity.

The GPPB shall promulgate the necessary guidelines for this provision (Section 23.6 of the revised IRR).

- **b.** The Constructors Performance Evaluation Summary rating and/or certificate of completion and owner's acceptance of the contract must be satisfactory.
- c. The prospective bidder must have an experience of having completed, within a period of ten (10) years from the date of submission and receipt of bids, at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: Provided, however, that contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost of their registration based on the guidelines as prescribed by the PCAB.

For Foreign-funded Procurement, the GOP and the foreign government/ foreign or international financing institution may agree on another track record requirement. Moreover, a contract shall be considered "similar" to the contract to be bid if it has the same major categories of work.

3.1.2 Eligibility requirements of a foreign entity

Foreign contractors, when allowed to bid under the circumstances mentioned in Section 23.5.2.2 of the revised IRR must submit the same eligibility requirements as domestic entities. However, the legal documents and the audited financial statements under the Class "A" documents may be substituted by the appropriate equivalent documents issued by the country of the foreign contractor. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Class "A" and "B" Documents if they are in other foreign language. IFIs permit firms and individuals from eligible countries to offer goods, works, and services. Any conditions for participation should be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In connection with any contract to be financed in whole or in part from an IFI loan, the IFI generally does not permit a procuring entity to deny pre- or post-qualification to a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a procuring entity to disqualify any bidder for such reasons. Consequently, Procuring Entities should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract.

3.1.3 Procuring Entity's right to review eligibility of bidders

The procuring entity has the right to review the qualification of the prospective bidders, notwithstanding eligibility therefore, at any stage of the procurement process if the procuring entity has reasonable grounds to believe that the following circumstances exist:

a. Misrepresentation has been made by the said prospective bidder.

Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the eligibility criteria, the procuring entity shall consider the said prospective bidder as ineligible and shall disqualify it from obtaining an award or contract, in accordance with Rules XXI, XXII of the revised IRR.

b. There has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements.
(Section 23.7 of the revised IRR)

3.1.4 Responsibilities of prospective bidders

In the Philippine Bidding Documents 3rd edition, including those provided for under RA 9184 and the revised IRR, the following are the identified responsibilities of prospective bidders when participating in the procurement of infrastructure projects:

- **a.** The Bidder is responsible for the following:
 - *i.* Having taken steps to carefully examine all of the Bidding Documents;
 - *ii.* Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
 - *iii.* Having made an estimate of the facilities available and needed for the contract to be bid, if any; and
 - *iv.* Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin.
 - v. Ensuring that it is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/ foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;

- vi. Ensuring that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct:
- **vii.** Authorizing the HOPE or its duly authorized representative/s to verify all the documents submitted;
- viii. Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture;
- *ix.* Complying with the disclosure provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and
- **x.** Complying with existing labor laws and standards, if applicable.

Failure to observe any of the above responsibilities shall be at the risk of the Bidder concerned.

- b. The Bidder, by the act of submitting its bid, shall be deemed to have inspected the site and determined the general characteristics of the contract works and the conditions for this Project. Unless otherwise indicated in the Bid Data Sheet of the PBD, failure to furnish all information or documentation required in this Bidding Documents shall result in the rejection of the bid and the disgualification of the Bidder.
- c. It shall be the sole responsibility of the prospective bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the infrastructure project, including:
 - *i.* The location and the nature of the contract, project, or work;
 - ii. Climatic conditions;
 - *iii.* Transportation facilities;
 - iv. Nature and condition of the terrain, geological conditions at the site communication facilities, requirements, location and availability of construction aggregates and other materials, labor, water, electric power and access roads; and
 - v. Other factors that may affect the cost, duration and execution or implementation of the contract, project, or work.

- **d.** Before submitting their bids, the Bidders are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect the contract in any way.
 - However, if the contract is affected by new laws, ordinances, regulations or other acts of government promulgated after the date of the bidding, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis provided such is not covered by the contract provisions on price adjustment.
- **e.** The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- f. Bidders should note that the Procuring Entity will only accept bids only from those that have paid the nonrefundable fee for the Bidding Documents at the office indicated in the Invitation to Bid.
- g. Failure to observe any of the above responsibilities shall be at the risk of the eligible bidder concerned. For this purpose, the bidder or its duly authorized representative shall submit a sworn statement in the form prescribed in Section IX. Bidding Forms as required Section IX. Bidding Forms as required in ITB Clause 12.1 (b) (iii) of the PBD.

This omnibus sworn statement which shall state, among others, that the prospective bidders complies with the responsibilities of a prospective or eligible bidder provided in the PBD (Section 25.2.iv of the revised IRR).

In view of the foregoing, the procuring entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity.

3.1.5 Standard of Ethics to be observed

As Procuring Entities, bidders and contractors are required to observe the highest standard of ethics during the procurement and execution of contract, bidders should not be under a declaration of ineligibility for corrupt, fraudulent, collusive and coercive practices by the government.

In pursuance of this policy, PBD 3rd edition provides for the following

- **a.** Defines, for purposes of this provision, the terms set forth below as follows:
 - i. "Corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by

misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the Procuring Entity, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019;

- ii. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after Bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition;
- iii. "Collusive practices" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, noncompetitive levels; and
- iv. "Coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
- b. Will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract; and
- c. Will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded Contract funded by the Funding Source if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing or, or in executing, a Contract funded by the Funding Source.

Furthermore, the Procuring Entity will seek to impose the maximum civil, administrative, and/or criminal penalties available under the applicable laws on individuals and organizations deemed to be involved in any of the practices mentioned.

Relative thereto, the Funding Source and the Procuring Entity reserve the right to inspect and audit records and accounts of a contractor in the bidding for and performance of a contract themselves or through independent auditors.

The pertinent provisions of the Anti-Graft and Corrupt Practices Act, or R.A. No. 3019, shall also be applied in determining the existence of "corrupt or fraudulent practice."

3.2 BIDDERS DISQUALIFIED TO PARTICIPATE IN THE PROCUREMENT OF GOODS AND SERVICES

Disqualification is a distinct concept from ineligibility and post-disqualification. When a Bidder is disqualified, it is barred from further participating in the procurement at hand, even if, in some instances, it has initially been declared eligible. Even if a Bidder is Post-qualified, if after such Post-qualification, the Procuring Entity has found grounds for disqualification, the latter may declare such Bidder disqualified, hence, the Procuring Entity shall not award the contract to the former.

Aside from those who are not eligible to bid for the procurement of goods, a bidder that has a conflict of interest shall be disqualified to participate in the procurement at hand. A Bidder would be considered as having a conflict of interest with another bidder in any of the events described in paragraphs 1 through 3 below and a general conflict of interest in any of the circumstances set out in paragraphs 4 through 6 below:

- 3.2.1 If the bidder is a corporation or a partnership and it has officers, directors, controlling shareholders, partners or members in common with another bidder; or if the bidder is an individual or a sole proprietorship and he is the proprietor of another bidder, or an officer, director or a controlling shareholder of another bidder; or if the bidder is a joint venture and it or any of its members has officers, directors, controlling shareholders or members in common with another bidder, or any of its members is a bidder;
- **3.2.2** A bidder receives or has received any direct or indirect subsidy from another bidder:
- **3.2.3** A bidder has the same legal representative as any other bidder for purposes of the bidding at hand.
- 3.2.4 A bidder has a relationship directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decisions of the Procuring Entity regarding the bidding process. This will include a firm or an organization that lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project;
- **3.2.5** A bidder submits more than one bid in the bidding process. However, this does not limit the participation of subcontractors in more than one bid; or
- 3.2.6 A bidder who participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the bid.

In accordance with Section 47 of the revised IRR, the bidder should not be related to the HOPE, members of the BAC, the TWG, the BAC Secretariat, and the Head of the PMO or end-user unit, and the project consultants by consanguinity or affinity up to the third (3rd) civil degree. This prohibition shall apply to the following persons:

- a. If the bidder is an individual or a sole proprietorship, to the bidder himself;
- **b.** If the bidder is a partnership, to all its officers and members;
- **c.** If the bidder is a corporation, to all its officers, directors and controlling stockholders; and
- **d.** If the bidder is a joint venture, items 1 through 3 above shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

To establish the non-existence of the above relationship, and to bind the Bidders to its representation relating to the foregoing, all bids must be accompanied by a Omnibus Sworn Statement, including therein a Disclosure Provision of the bidder to that effect.

The bidder that fails to comply with any of the Technical or Financial requirements of the Bid will be disqualified by the BAC. Similar to ineligible bidders, it may file a written request for reconsideration within three (3) days from the receipt of the communication regarding its bid's deficiency (Section 55.1 of the revised IRR).

3.3 MINIMUM ELIGIBILITY REQUIREMENTS

Included in the technical component of the Bid is the eligibility requirements prescribed in Section 23.1 of the revised IRR.

For the purpose of determining the eligibility of prospective bidders using the criteria stated in Section 3.1.1 of this manual- following Section 23.5 of the revised IRR - the following documents shall be required by the BAC using the forms prescribed in the Bidding Documents:

a. Class "A" Documents

Legal Documents

- *i.* Registration certificate from SEC, Department of Trade and Industry for sole proprietorship, or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents.
- *ii.* Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.

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Technical Documents

- iii. Statement of the prospective bidder of all its ongoing and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents. The statement shall include all information required in the PBDs prescribed by the GPPB.
- *iv.* Valid Philippine Contractors Accreditation Board license and registration for the type and cost of the contract to be bid.

Financial Documents

- v. The prospective bidder's audited financial statements, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission.
- vi. The prospective bidder's computation for its Net Financial Contracting Capacity or a commitment from a Universal or Commercial Bank to extend a credit line certificate in favor of the prospective bidder if awarded the contract to be bid.

b. Class "B" Documents

Valid JVA, if the prospective bidder is a joint venture, with the agreement containing a statement on who the joint venture/association has constituted and appointed as the lawful attorney-in-fact to sign the contract, if awarded the project, and on who among the members is the lead representative of the joint venture;

All members of the joint venture should submit all the Class "A" eligibility documents. All members of the joint venture should comply with all the legal eligibility requirements, but compliance by one of the joint venture members with the technical and financial requirements will suffice.

3.3.1 Facilitating eligibility checks

To facilitate eligibility checking, the BAC of a procuring entity may maintain a file of Class "A" documents submitted by contractors. When such file is required by the procuring entity, a contractor who wishes to participate in a public bidding for infrastructure projects should maintain this file current and updated at least once a year, or more frequently when needed. A contractor who maintains a current and

updated file of his Class "A" documents will be issued a certification by the BAC to that effect, which certification may be submitted to the procuring entity concerned in lieu of the foregoing Class "A" documents (Section 23.5.2 of the revised IRR).

3.3.2 DOH Simplified Supplier Registration System

To facilitate eligibility check, the DOH COBAC established a Simplified Supplier Registration System or SSRS through which any prospective bidder registered in the system is issued a SSRS Certificate. Registration in the SSRS requires prospective suppliers to submit certain specified documents necessary for its participation in the conduct of procurement within the department. These documents include, among others, a duly registered certification from SEC or Department of Trade and Industry for sole proprietorship or CDA for cooperatives, or any proof of such registration as stated in the Bidding Documents and others, In lieu thereof, a SSRS Certificate is issued to the registrant supplier which the latter may use in the procurement process. Evidently the objective behind the development and maintenance of the registry system is to facilitate eligibility check and expedite procurement process.

However, the SSRS would be rendered useless if not maintained current and updated such that registered suppliers must constantly renew their SSRS registration, when applicable, by submitting copies of the recent documents required to be submitted.

Furthermore, the coverage and applicability of the SSRS shall extend to, and mandatorily be recognized by, the Center for Health Development, DOH Hospitals, Special/Specialty Hospital, Medical Centers, Bureaus and Attached Agencies.

3.4 SUBMISSION AND RECEIPT OF BIDS

3.4.1 Bid/Proposal/Tender

Bids are signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of the Bidding Documents. For purposes of, and throughout the revised IRR, the term "Bid" shall be equivalent to and be used interchangeably with "Proposal" and "Tender" (Section 5.d of the revised IRR).

Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously.

A Bid has two (2) components, the Technical Proposal or the Technical Bid, and the Financial Proposal or the Financial Bid. The Technical and Financial Bids must each be contained in separate sealed bid envelopes. The first shall contain the

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technical component of the bid, including the eligibility requirements under Section 23.1 of the revised IRR, and the second shall contain the financial component of the bid.

3.4.1.1 Number of copies of bid

The BAC shall require one (1) original and at least three (3) duplicate copies of the Eligibility Documents, Technical Bid Documents and Financial Bid Documents. The original copy will be the one initialed by the BAC members or their authorized representatives and will be kept by the BAC Secretariat for check and balance purposes while the duplicate copies will be the ones used during Bid Evaluation.

3.4.1.2 Language use in the Bid Proposal

As indicated in the PBD, Third (3rd) Edition, it is most ideal that the bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation in English certified by the appropriate embassy or consulate in the Philippines, in which case the English translation shall govern for purposes of interpretation of the bid.

3.4.1.3 Period for the Submission and Receipt of Bid

Bids shall be received by the BAC on the date, time, and place specified in the IB. The maximum period for the submission and receipt of bid proposal for infrastructure projects shall follows the last day of posting the IB shall be followed (Section 25.4.b of the revised IRR):

APPROVED BUDGER FOR THE CONTRACT (IN PHILIPPINE CURRENCY)	PERIOD
Fifty (50) Million and below	50 calendar days
Above fifty (50) Million	65 calendar days

3.4.1.4 Late Submission of Bid

Bids, including the eligibility requirements under Section 23.1 of the revised IRR, submitted after the deadline shall not be accepted by the BAC (Section 25.5 of the revised IRR).

3.5 CONTENTS OF THE FIRST ENVELOPE

The Technical Proposal should contain, at the minimum, the following technical information/documents for the contract to be bid:

- **a.** Eligibility requirements under Section 23.1 of the revised IRR;
- **b.** Bid security in the prescribed form, amount and validity period;
- **c.** Project Requirements, which shall include the following:
 - Organizational chart for the contract to be bid;
 - ii. List of contractor's personnel (viz, Project Manager, Project Engineers, Materials Engineers, and Foremen), to be assigned to the contract to be bid, with their complete qualification and experience data;
 - *iii.* List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project; and
- **d.** Sworn statement by the prospective bidder or its duly authorized representative in the form prescribed by the GPPB as to the following:
 - i. It is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/ foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
 - ii. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
 - iii. It is authorizing the HOPE or his duly authorized representative/s to verify all the documents submitted;
 - iv. The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership or joint venture;
 - **v.** It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of R.A. 3019;
 - vi. It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs; and
 - vii. It complies with existing labor laws and standards.

3.6 CONTENTS OF THE SECOND ENVELOPE

The second envelope shall contain the financial information/documents as specified in the PBDs (**Section 25.3 of the revised IRR**).

The Financial Proposal as indicated in the PBD shall contain the following financial information/documents, at the least:

- **a.** Bid prices in the Bill of Quantities in the prescribed Bid Form;
- b. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used, indicating also the direct and indirect costs, in coming up with the bid; and
- **c.** Cash flow by the quarter and payments schedule.

3.6.1 Single Largest Contract (Track Record)

The prospective bidder must have an experience of having completed, within a period of ten (10) years from the date of submission and receipt of bids, at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: *Provided, however,* that contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost of their registration based on the guidelines as prescribed by the PCAB.

According to PCAB Board Resolution No. 001, series of 2004, and GPPB Resolution No. 012-2004, the ARCC is as follows:

Registration Particulars				
Category	Allowable Range of Contract Cost (in Million Pesos)			
	Prior and up to CFY 2003-2004 (For projects advertised for bidding prior and to June 30, 2004)	CFYs 2004-2005 & 2005-2006 (For projects advertised for bidding from July 1, 2004 to June 30, 2006)	CFYs 2006-2007 & 2007-2008 (For projects advertised for bidding from July 1, 2006 to June 30, 2008)	CFYs 2008-2009 & 2009-2010 (For projects advertised for bidding from July 1, 2008 to June 30, 2010)
Small A	Up to 0.5	Up to 0.5	Up to 0.5	Up to 0.5
Small B	Up to 3	Up to 10	Up to 20	Up to 30
Medium A	Up to 15	Up to 50	Up to 100	Up to 150
Medium B	Up to 30	Up to 100	Up to 200	Up to 300
Large A	Up to 50	Up to 150	Up to 300	Up to 500
Large B	Less than or above	Less than or above	Less than or above	Less than or above
	50	150	300	500

Last 28 February 2009, PCAB, through its Circular No. 001, series of 2009, resolved to implement the following second stage of Adjustments on the ARCC and they are as follows:

REGISTRATION PARTICULARS			
SIZE RANGE/ CATEGORY	LICENSE CATEGORY	SINGLE LARGEST PROJECT/ REQUIRED TRACK RECORD	ALLOWABLE RANGE OF CONTRACT COST
LARGE B	AAA	Above Php 150M	< or above Php 300 M
LARGE A	AA	Above Php 100M up to Php 150M	Up to Php 300 M
MEDIUM B	A	Above Php 50M up to 100M	Up to Php 200 M
MEDIUM A	В	Above Php 10 M up to 50 M	Up to Php 100 M
SMALL B	B&C	Php 10 M	Up to Php 15 M
SMALL C	TRADE	Php 500 Th	Up to Php 500Th

The procuring entity, however, must be keen in securing the latest guidelines prescribed by the PCAB regarding the ARCC.

For Foreign-funded Procurement, the GOP and the foreign government/ foreign or international financing institution may agree on another track record requirement.

Moreover, a contract shall be considered "similar" to the contract to be bid if it has the same major categories of work, such as in both bridges and flyover (Section 23.5.2.5 of the revised IRR).

3.6.1.1 Constructors Performance Evaluation System

All Procuring Entities implementing government infrastructure projects are mandated to evaluate the performance of their contractors using the NEDA-Approved CPES Guidelines for the type of project being implemented (Annex E Section 12.1 of the revised IRR).

The CPES rating and/or certificate of completion and owner's acceptance of the contract must be satisfactory (Section 23.5.2.4 of the revised IRR).

3.6.1.2 PCAB License

In accordance with R.A. 4566, entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefore, and for Other Purposes", the persons/entities enumerated in Section 23.5.1.1 of the revised IRR of R.A. 9184 may participate in public bidding if the prospective bidder has been issued a license by the PCAB to engage or act as a contractor (Section 23.5.2.3 of the revised IRR).

3.6.2 Financial requirements

The prospective bidder must meet the requirement for NFCC as discussed below. If the NFCC is not sufficient to meet the requirement, it must meet the requirement for the credit line commitment. The bidder's liquidity, its capacity to absorb the additional obligations in connection with the contract to be bid and to finance its implementation/completion is establish with either the NFCC or credit line.

Compliance with this eligibility requirement may be done on the alternative, such that submission of any of the two (2) is acceptable for purposes of determining a bidder's eligibility.

NFCC should be at least equal to the ABC, calculated as follows (Section 23.5.1.4 of the revised IRR):

NFCC = [(Current assets minus current liabilities) multiplied by (K)] minus the value of all outstanding works or projects under ongoing contracts, including awarded contracts yet to be started.

Where:

K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years.

Example:

Given:	
Current Assets=	P 3,000,000
Current Liabilities=	P 500,000
Value of Outstanding Works=	P 4,000,000
Contract Duration=	1 year
NFCC	=[(P 3,000,000 – P 500,000) x 10] - P 4,000,000
	= P 25,000,000 - P 4,000,000
	= P 21,000,000

The credit line commitment extended by the prospective bidder must be at least equal to ten percent (10%) of the ABC to be bid and issued by a universal or commercial bank only, if the credit line commitment is issued by a foreign universal or commercial bank, it shall be confirmed or authenticated by a universal or commercial bank.

3.7 BID SECURITY

A bid security is a guarantee that the successful bidder will:

- 1. Not default on its offer; and
- 2. All bids shall be accompanied by a bid security, payable to the procuring entity concerned as a guarantee that the successful bidder shall, within ten (10) calendar days or less, as indicated in the Instructions to Bidders, from receipt of the notice of award, enter into contract with the procuring entity and furnish the performance security required by the law, except when Section 37.1 of the revised IRR allows a longer period. Failure to enclose the required bid security in the form and amount prescribed herein shall automatically disqualify the bid concerned.

A bid security must be submitted together with every bid. It must be operative on the date of bid opening, and payable to the Procuring Entity.

3.7.1. Forms and corresponding amounts

The bid security shall be in any or a combination of the following forms, with the corresponding required amount (Section 27.2 of the revised IRR):

	FORMS OF BID SECURITY	AMOUNT OF BID SECURITY (EQUAL TO PERCENTAGE OF THE ABC)
a.	Cash or cashier's/manager's check issued by a Universal or Commercial Bank. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Two percent (2%)
C.	Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)
d.	Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

For FAPs, reference should be made to the appropriate standard bidding documents for the project in order to determine the requirement of a bid security and, if one is so required, the applicable amount and form thereof.

3.7.2 Who determines form

The Bid Security shall be in the form prescribed in the revised IRR and shall be left upon the discretion of the prospective bidders. The procuring entity cannot limit the allowable forms of bid security by enumerating the preferred forms in the bidding documents. With respect to surety bonds, it bears stressing that the GPPB is moving towards accreditation of surety companies. Once the guidelines on accreditation are issued by the GPPB, only surety bonds from companies accredited by the procuring entity may be allowed as bid securities.

The bid security shall be denominated in Philippine currency (Section 27.3 of the revised IRR).

If a bidder does not submit a bid security, its bid will be rejected.

3.7.3. Period of validity of Bids and Bid Security

Bids and bid securities shall be valid for a reasonable period as determined by the HOPE concerned, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids (Section 28.1 of the revised IRR). Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date there for. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security (Section 28.2 of the revised IRR).

Bidders shall have the right to refuse to grant such extension without forfeiting their bid securities. The bid security of bidders who refuse to grant the Procuring Entity's request for an extension of the validity of their respective bid securities will have these securities returned to them. However, they are deemed to have waived their right to further participate in the bidding.

In no case shall bid security be returned later than the expiration of the bid validity period indicated in the Bidding Documents, unless it has been extended in accordance with Section 28.2 of the revised IRR.

3.7.4 Currency/Denomination

The bid security must be denominated in Philippine currency (**Section 27.3** of the revised IRR), except in the case of foreign bidders, which may be allowed to submit foreign currency denominated bids allowed in the bidding documents.

3.7.5 Bidder does not submit a bid security

The bid will be rejected.

3.7.6 When to return

In no case shall the bid security be returned later than the expiration of the bid validity period indicated in the Bidding Documents, unless it has been extended in accordance with Section 28.2 of the revised IRR (Section 27.5 of the revised IRR). Furthermore, Section 27.4 of the revised IRR provides that bid securities shall be returned only after the bidder with the Lowest Calculated Responsive Bid has signed the contract and furnished the performance security, except to those declared by the BAC as failed or post-disqualified in accordance with the revised IRR, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest.

3.7.7. Forfeiture

A bidder's bid security may be forfeited when:

- **a.** The bidder withdraws its bid beyond the deadline therefore:
- **b.** The bidder does not accept corrections of arithmetical errors;
- c. The bidder being considered for award does not accept the award or does not sign the contract within the period prescribed in the bidding documents;
- **d.** The bidder being post-qualified is suspended for not providing the BAC required clarifications within the prescribed period; or
- **e.** The bidder is proven to commit any of the acts under Sections 65 and 69 of R.A. 9184 and the revised IRR.

3.8 MODIFICATION OR WITHDRAWAL OF BIDS

A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. If a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked or related to its original bid and marked as a "MODIFICATION" of the original, and stamped "RECEIVED" by the BAC. Bid modifications received after the applicable deadline will not be considered and must be returned to the bidder unopened (Section 26.1 of the revised IRR). Any discount should form part of the bid submission in the financial envelope.

A bidder may, through a Letter of Withdrawal, withdraw its bid, before the deadline for the receipt of bids. A bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped received by the BAC before the deadline for the receipt of bids. A bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. Moreover, an eligible bidder that withdraws its bid without any justifiable cause therefore shall be subject to the administrative sanctions provided in Section 69.1 of the revised IRR. It should be noted however that the act of habitually withdrawing from bidding, submitting late bids or patently insufficient bid for at least three (3) times within a year is a ground for the position of administrative penalties, except when done for a valid reason.

A bidder that withdraws its bid prior to the deadline for submission of bids, for a justifiable cause, does not forfeit its bid security. The bidder that withdraws its bid beyond the deadline for the submission of bids will forfeit its bid security, as well as the imposition of any applicable administrative, civil and/or criminal sanction prescribed in R.A. 9184 and the revised IRR.

3.9 OPENING OF BIDS

The BAC shall open the bids at the time, date, and place specified in the Bidding Documents. The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall adopt a procedure for ensuring the integrity, security, and confidentiality of all submitted bids. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.

The BAC shall open the first bid envelopes of prospective bidders in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in the revised IRR.

- 3.9.1 For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "passed/failed" criterion. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed".
- 3.9.2 Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible bidder whose first bid envelope was rated "passed". The second envelope of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC unless otherwise provided in ITB Clause of the PBD, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.

- 3.9.3 Letters of withdrawal shall be read out and recorded during bid opening, and the envelope containing the corresponding withdrawn bid shall be returned to the Bidder unopened. If the withdrawing Bidder's representative is in the attendance, the original bid and all copies thereof shall be returned to the representative during the bid opening. If the representative is not in attendance, the bid shall be returned unopened by registered mail. The Bidder may withdraw its bid prior to the deadline for the submission and receipt of bids, provided that the corresponding Letter of Withdrawal contains a valid authorization requesting for such withdrawal, subject to appropriate administrative sanctions.
- 3.9.4 If a Bidder has previously secured a certification from the Procuring Entity to the effect that it has previously submitted the above-enumerated Class "A" Documents, the said certification may be submitted in lieu of the requirements enumerated in PBD.
- 3.9.5 In the case of an eligible foreign Bidder, the Class "A" Documents may be substituted with the appropriate equivalent documents, if any, issued by the country of origin of the foreign Bidder concerned.
- 3.9.6 Each partner of a joint venture agreement shall likewise submit the requirements in the PBD and the revised IRR. Submission of documents required by any of the joint venture partners constitutes compliance.
- 3.9.7 A Bidder determined as "failed" has three (3) calendar days upon written notice or, if present at the time of bid opening, upon verbal notification, within which to file a request for reconsideration with the BAC: Provided, however, that the request for reconsideration shall not be granted if it is established that the finding of failure is due to the fault of the Bidder concerned: Provided, further, that the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. If a failed Bidder signifies his intent to file a request for reconsideration, the BAC shall keep the bid envelopes of the said failed Bidder unopened and/or duly sealed until such time that the motion for reconsideration or protest has been resolved.
- 3.9.8 The Procuring Entity shall prepare the minutes of the proceedings of the bid opening that shall include, as a minimum: (a) names of Bidders, their bid price, bid security, findings of preliminary examination; and (b) attendance sheet. The BAC members shall sign the abstract of bids as read.

The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials (Section 29 of the revised IRR).

3.10 REQUEST FOR RECONSIDERATION

A Request for Reconsideration is a written document which seeks for the reversal of a BAC decision.

3.10.1 Failure of the bidder to comply with the Technical and Financial Requirement

An eligible bidder that has failed to comply with any of the Technical or Financial requirements of the Bid will be rated as "failed" by the BAC and disqualified from participating therein. Similar to the case of ineligible bidders, it may file a written request for reconsideration within three (3) calendar days from the receipt of notice of its failure.

A bidder determined as "failed" has three (3) calendar days upon written notice or, if present at the time of bid opening, upon verbal notification, within which to file a request for a reconsideration with the BAC: *Provided, however,* That the request for reconsideration shall not be granted if it is established that the finding of failure is due to the fault of the bidder concerned: *Provided, further,* That the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. If a failed bidder signifies his intent to file a request for reconsideration, in the case of a bidder who fails in the first bid envelopes, the BAC shall hold the second bid envelope of the said failed bidder unopened and duly sealed until such time that the motion for reconsideration has been resolved.

3.10.2 Motion for Reconsideration by Ineligible bidders

A prospective bidder that was absent during the opening of the bids and was found ineligible or was declared failed has three (3) calendar days from receipt of the Notice of Ineligibility/Failure, within which to file a written request for reconsideration before the BAC. If the prospective bidder was present during bid opening and was duly notified (a verbal notification will suffice in this case) of its ineligibility/failure, it also has three (3) calendar days upon such notice within which to file a written request for reconsideration. Seven (7) calendar days after it receives a letter requesting for reconsideration, the BAC should resolve such request. In the meantime, it will hold on to the Eligibility, Technical and Financial envelopes of the prospective bidder until the request for reconsideration is resolved. In so doing, it can request the prospective bidder to clarify its eligibility documents, if necessary.

The BAC may return the Technical and Financial envelopes if the prospective bidder is declared "ineligible" and expressly waives his right to file a request for reconsideration. Such waiver shall be made in writing, to be executed by the authorized representative of the ineligible bidder.

If its request for reconsideration is denied, the ineligible bidder may protest the decision in writing with the HOPE within seven (7) calendar days from receipt of the resolution. A protest may be made by filing a verified position paper with the HOPE concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the ABC (Section 55.1 of the revised IRR).

The verified position paper shall contain the following information:

- a. Name of the bidder;
- **b.** Office address of the bidder;
- **c.** Name of the project/contract;
- **d.** Implementing office/agency or procuring entity;
- **e.** Brief statement of facts:
- f. Issue to be resolved; and
- g. Such other matters and information relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect, and results to the outright dismissal of the protest (Section 55.2 of the revised IRR).

The protests shall be resolved strictly based on records of the BAC. The HOPE shall resolve a protest within seven (7) calendar days from receipt thereof. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions or instrumentalities of the Government to approve contracts, the decisions of the HOPE concerned shall be final up to the limit of his contract approving authority (Section 56 of the revised IRR).

3.10.3 Motion for Reconsideration of BAC's Decision declaring a bidder eligible

The filing for a request for reconsideration of BAC's decision declaring another bidder eligible is allowed pursuant to Section 55.1 of the revised IRR.

3.11 IF A QUESTION IS RAISED AFTER THE DECLARATION OF ELIGIBILITY

Notwithstanding the eligibility of a prospective bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the Procuring Entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract. A prospective

bidder found guilty of false information faces imprisonment of not less that six (6) years and one (1) day but not more than fifteen (15) years (Section 65 of the revised IRR).

3.12 SINGLE CALCULATED RESPONSIVE BID SUBMISSION

Despites effort to promote competition among prospective bidders, there are instances when only a single bidder is declared eligible to participate in the next stage of the procurement process which is the bid evaluation. The following situations are those contemplated in the foregoing:

3.12.1 Only one bidder submits a bid envelope

Even if only one bidder submits a bid envelope, the bidding process may proceed. If its bid is found to be responsive to the bidding requirements, its bid will be declared as a SCRB and considered for contract award (Section 36 of the revised IRR).

3.12.2 Only one bidder passes the preliminary examinations of bids

The procurement process also proceeds with the subsequent step of detailed did evaluation. Again, if the eligible bidder submits a bid that is found to be responsive to the bidding requirements, its bid shall be declared as a SCRB and considered for contract award (Section 36 of the revised IRR).

3.13 FAILURE OF BIDDING

Failed bidding occurs when the procurement project undertaken was not successfully awarded pursuant to Section 35 of the revised IRR.

3.13.1. No eligible bidder submitted a bid

If no bidder submits a bid, the BAC should declare the bidding a failure. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions and specifications in the Bidding Documents, including its cost estimates. Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the revised IRR (Section 35.3 of the revised IRR). All bidders that have initially responded to the IB in the first bidding shall be allowed to submit new bids.

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it is may be necessary to reduce the scope of the project (or adjust the ABC should there be a second failure of bidding).

Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement (Sections 35.5 and 53 of the revised IRR). Once the bidding failed for the second time, the BAC again should conduct a mandatory review and evaluation of the reasons for failure of bidding. If based on the findings, there is a need to change the terms, conditions and specifications, and if necessary, adjust the ABC, it can do so, subject to the required approvals and the adjustment of the ABC shall only be limited to twenty percent (20%) of the ABC of the last failed bidding.

3.13.2 No prospective bidder is declared eligible

If no prospective bidder is found to be eligible, the BAC should declare the bidding a failure. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions and specifications in the Bidding Documents, including its cost estimates (Section 35.2 of the revised IRR).

Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the revised IRR. All bidders that have initially responded to the IB in the first bidding shall be allowed to submit new bids.

If the original estimate is found to be inadequate on reassessment to meet the objectives of the project, it is may be necessary to reduce the scope of the project (or adjust the ABC should there be a second failure of bidding).

Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement (Sections 35.5 and 53 of the revised IRR). Once the bidding failed for the second time, the BAC again should conduct a mandatory review and evaluation of the reasons for failure of bidding. If based on the findings, there is a need to change the terms, conditions and specifications, and if necessary, adjust the ABC, it can do so, subject to the required approvals and the adjustment of the ABC shall only be limited to twenty percent (20%) of the ABC of the last failed bidding.

3.14 PARTICIPANTS IN THE SUBMISSION AND RECEIPT OF BIDS AND IN THE OPENING OF BIDS

The following shall participate in the Submission and Receipt of Bids as well as the Opening of Bids:

a. BAC;

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- **b.** TWG;
- c. BAC Secretariat;
- **d.** Prospective bidders; and
- e. Observers.

3.15 SUBCONTRACTING

3.15.1 Extent of subcontracting

Unless otherwise specified in the bidding documents, the prospective bidder may subcontract portions of the Works to an extent as may be approved by the Procuring Entity and stated in the bidding documents, provided that only a maximum of fifty percent (50%) of the works may be subcontracted. However, subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project Subcontractors must submit the eligibility requirements and comply with the eligibility criteria provided in the revised IRR and the bidding documents. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Works shall be disallowed.

3.15.2 Notification of subcontracting arrangements

The Bidder may identify the subcontractor to whom a portion of the Works will be subcontracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

4. PROCEDURES

The following steps are undertaken in the receipt, opening and preliminary examination of bids:

- 4.1 Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including all the eligibility requirements under Section 23.1 of the revised IRR, and the second shall contain the financial component of the bid (Section 25.1 of the revised IRR).
- 4.2 The BAC convenes on the bid opening date. The presence of the majority of the BAC members shall constitute a quorum, provided that either the Chairperson or the Vice-chairperson is present. In cases where both the principal Chairperson and/or Vice-Chairperson are not present; then, their respective alternates can preside over the meeting.

- 4.3 The BAC receives the bids at the time, date and place specified in the bidding documents. Upon receipt of the bid envelope or container containing the Technical and Financial Proposals, the BAC Secretariat must stamp the face of the outer envelope/container as "RECEIVED," indicating there on the date and time of receipt, and have the stamp countersigned by an authorized representative.
- 4.4 The BAC then proceeds with the opening and preliminary examination of bids in public, using a non-discretionary "passed" or "failed" criteria. For each bid, the BAC first opens the envelope containing the Eligibility and Technical Proposal Documents to determine its compliance with the required documents for eligibility and the technical bid. The BAC checks the submitted documents in the First Envelope (Technical Proposal) of each bidder against a checklist of required documents to ascertain if they are all present, using non-discretionary "passed/failed" criteria (Section 30.1 of the revised IRR).
- 4.5 In case one or more of the above-required documents in the First Envelope (Technical Component and Eligibility Documents) is missing, incomplete or insufficient, the BAC rates the bid "failed." Otherwise, the BAC rates the Technical Proposal "passed".

When is a document deemed "complete" and "sufficient"?

For a document, to be deemed "complete" and "sufficient", it must be complete on its face, that is, contain all the information required, and must comply with the requirements set out in the bidding documents. For example, a Mayor's Permit should be current, and submission of an expired Mayor's Permit is deemed a "non- submission". Another example of an insufficient submission is a Bid Security in an amount below the requirement.

The BAC then immediately opens the envelope containing the Financial Proposal of each remaining bidder who's first Envelope (Eligibility and Technical Bid) was rated "passed." The Second Envelope (Financial Component) of each complying bidder shall be opened within the same day. The BAC determines whether all the requirements/documents required for the Second Envelope (Financial Component) are complete and sufficient, and if the total bid price does not exceed the ABC. If so, the BAC rates the bid "passed". If not, then the BAC rates the bid "failed". Only bids that are rated "passed" for both the Technical and Financial Proposals shall be considered for the next stage of the procurement process, i.e. detailed evaluation and comparison of bids (Sections 30.2 of the revised IRR).

In the case of foreign currency denominated bids, where allowed by the law and rules, the same shall be converted to Philippine currency, based on the exchange rate prevailing on the day of the bid opening. The BSP reference rate as of the date of the bid opening shall be used.

4.7 The BAC reads the total bid prices of the bidders that are rated "passed."

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- 4.8 All members of the BAC or their duly authorized representatives who are present during the bid opening, shall initial every page of the original copies of all bids received and opened. The BAC can also adopt other similar procedures for ensuring the integrity, security, and confidentiality of all submitted bids (Section 29 of the revised IRR).
- **4.9** The BAC members and the Observers (if they concur with the proceedings) shall also sign the "Abstract of Bids as Read" after the Preliminary Examination of Bids.
- 4.10 The BAC Secretariat shall record the proceedings using an electronic tape recorder, or a video recorder. The minutes of the bid opening should be prepared within three (3) calendar days after the bid opening date, so that copies thereof could immediately be sent to the BAC members, observers, bidders and other interested parties. Copies of the minutes shall also be made available to the public upon written request and payment of a specified fee to recover cost of materials.

STEP5. CONDUCT BID EVALUATION

1. LEGAL REFERENCE

Sections 30 and 32 of the revised IRR are the legal bases in the evaluation of bids.

2. PURPOSE

Bid evaluation is done to determine the LCB (Section 32.1 of the revised IRR). This is done by:

- **2.1** Establishing the correct calculated prices of the bids, through a detailed evaluation of the financial component of the bids; and
- 2.2 Ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the LCB (Section 32.2 of the revised IRR).

3. RULES AND GUIDELINES

3.1 Period of Bid Evaluation

The entire evaluation process for the bids shall be completed in not more than **seven (7)** days from the deadline for receipt of proposals. However, for projects costing Fifty Million PesosPhilippine (PhP 50,000,000.00) and below, the entire evaluation process should be completed in not more than five (5) calendar days from the deadline for receipt of proposals (**Section 32.3 of the revised IRR**). It is advisable that the BAC exert best efforts to complete the Bid Evaluation even before the lapse of the aforementioned periods as this will expedite the procurement process.

3.2 Participants

The following must participate in the bid evaluation process:

- a. BAC;
- **b.** TWG:
- c. BAC Secretariat; and
- d. Observers.

3.3 "No Contact Rule" during bid evaluation

There is a "No Contact" rule during bid evaluation. The BAC and the TWG shall not entertain clarifications from bidders, neither shall they initiate communication with the bidders, during the bid evaluation stage. There are two reasons for this rule:

a. There is no need for clarifications of technical issues since the evaluation is focused on arithmetical computations which are determined from the face of the bid itself; and

b. Communications with the Bidders might lead to possible collusion or the Bidder might try to influence the outcome of the bidding process.

3.4 Non acceptance of arithmetical corrections by Bidder

The BAC must disqualify the bid and forfeit the bid security of the bidder.

3.5 No bid complies with all bid requirements

If no bid complies with all bid requirements, the BAC should declare the bidding a failure. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates (Section 35.2 of the revised IRR). Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the revised IRR (Section 35.3 of the revised IRR). All bidders who have initially responded to the IB shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding (Section 35.4 of the revised IRR).

Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement, as provided for in Section 53.1 of the revised IRR of R.A. 9184.

4. PROCEDURES

- 4.1 After the preliminary examination of bids, the BAC, through the TWG, shall immediately conduct a detailed evaluation of all bids rated "passed," using a non-discretionary criteria, as stated in the IB and the ITB, which shall include a consideration of the following (Section 32.2.1 of the revised IRR):
 - a. The bid must be complete. Unless the ITB specifically allow partial bids, bids not addressing or providing all of the required items in the bidding documents including, where applicable, bill of quantities, shall be automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non- responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Government.
 - b. Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, to enable proper comparison of all eligible bids. Any adjustment shall be calculated in monetary terms to determine the calculated prices (Section 32.2.1.b of the revised IRR). The BSP reference rate prevailing on the date of the bid opening shall be used.
 - **c.** In the evaluation of bids, all bids shall be evaluated on an equal footing to ensure

fair and competitive bid evaluation. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax, income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison (Sections 32.2.2 of the revised IRR).

- d. In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; (b) total prices and unit prices, the latter shall prevail; (c) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail (Section 32.2.3 of the revised IRR). The corrected per item cost for all items shall be the basis for the corrected grand total cost.
- 4.2 Based on the detailed evaluation of bids, those that comply with the abovementioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, to identify the LCB. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall be disqualified (Section 32.2.4 of the revised IRR).
- 4.3 After all bids have been received, opened, examined, evaluated and ranked, the BAC shall prepare the corresponding Abstract of Bids. All members of the BAC shall sign the Abstract of Bids and attach thereto all the bids with their corresponding Bid Securities and the minutes or proceedings of the bidding (Section 32.3 of the revised IRR). The Observers shall also sign the Abstract of Bids if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure indicated under R.A. 9184 and the revised IRR. The Abstract of Bids shall contain the following:
 - **a.** Name of the contract and its location, if applicable;
 - **b.** Time, date and place of bid opening; and
 - **c.** Names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of Bid Security and the name of the issuing entity.
- The TWG, with the assistance of the BAC Secretariat, when directed by the BAC, should prepare the Evaluation Report, containing the details of the evaluation conducted, preferably within three (3) calendar days from the date the evaluation was concluded.
- 4.5 The entire evaluation process shall be completed within seven (7) calendar days from the deadline for the receipt of proposals. However, for infrastructure projects costing Fifty Million Philippine Pesos (PhP 50,000,000.00) and below, the entire evaluation process shall be completed in not more than five (5) calendar days from the deadline for receipt of bids.

STEP6. CONDUCT POST-QUALIFICATION

1. LEGAL REFERENCE

Section 34 of the revised IRR is the legal basis of post-qualification.

2. PURPOSE

Post-qualification is the process of verifying, validating and ascertaining all the statements made and documents submitted by the bidder with the LCB, which includes ascertaining the said bidder's compliance with the legal, financial and technical requirements of the bid.

The LCB shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents (Section 34.1 of the revised IRR).

The examination of eligibility documents does not ascertain the validity and genuineness of the eligibility documents submitted by the bidders. Neither does it determine the veracity of the claims made by the bidders in their financial and technical proposals.

The post-qualification process, on the other hand, does.

3. RULES AND GUIDELINES

3.1 Requirements in Post-qualification

Post-qualification involves the BAC verifying, validating and ascertaining that the bidder satisfies the following requirements: (Section 34.3 of the revised IRR)

- a. <u>Legal Requirements.</u> To verify, validate, and ascertain licenses, certificates, permits, and agreements submitted by the bidder, and the fact that it is not included in any "blacklist" as provided in Section 25.2 of the revised IRR. For this purpose, the GPPB shall maintain a consolidated file of all "blacklisted" suppliers, contractors, and consultants.
- **b.** <u>Technical Requirements.</u> To determine compliance of the goods, infrastructure projects, or consulting services offered with the requirements specified in the Bidding Documents, including, where applicable:
 - 1. Verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of infrastructure projects and consulting services;
 - Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts (if any of these on-going contracts shows a reported negative slippage of at least fifteen percent

(15%), or substandard quality of work as per contract plans and specifications, or unsatisfactory performance of the contractor's obligations as per contract terms and conditions, at the time of inspection, and if the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award), for the procurement of infrastructure projects;

- Verification and/or inspection and testing of the goods/product, after sales and/or maintenance capabilities, in applicable cases, for the procurement of goods; and
- **4.** Ascertainment of the sufficiency of the bid security as to type, amount, form and wording, and validity period.
- c. <u>Financial Requirements</u>. To verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, the required CLC in the amount specified and over the period stipulated in the Bidding Documents, or the bidder's NFCC to ensure that the bidder can sustain the operating cash flow of the transaction.

3.2 Period of Action

The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the LCB. In exceptional cases, the post-qualification period may be extended by the HOPE, but in no case shall the aggregate period exceed thirty (30) calendar days (Section 34.8 of the revised IRR).

3.3. Participants

The following parties ought to be involved in the conduct of post-qualification:

- a. BAC;
- **b.** TWG; and
- c. BAC Secretariat; and
- **d.** Contractor, ranked starting from bidder with the LCB.

3.4 Grounds for Disqualification

- **a.** A bidder that has been blacklisted by any government agency or instrumentality will be disqualified by the BAC from further participating in the bidding process.
- **b.** A bidder or its employees is related within the third (3rd) civil degree of consanguinity or affinity to the HOPE or any of officials of employees of the Procuring Entity with direct access to information that may substantially affect the results of the bidding.
- c. A bidder is found to have committed an act that constitutes fraud or

misrepresentation or to have colluded with others for the purpose of influencing the outcome of the Bidding. Such bidder will be disqualified by the BAC, its bid security forfeited and, upon conviction, it will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years, (Section 65.2 of the revised IRR) and likewise suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense (Section 69.1 of the revised IRR).

3.5 Motion for Reconsideration from Post-qualified LCB

If the bidder with the LCB fails to pass post-qualification, the BAC shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it. The post-disqualified bidder shall have three (3) calendar days from receipt of the said notification to request from the BAC, if it so wishes, a reconsideration of this decision. Similar to the cases of bidders deemed to be ineligible and whose bids are rated "failed," the bidder with the LCB who fails to pass post-qualification may likewise file a protest with the corresponding fee in case the BAC denies its request for reconsideration.

Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second LCB. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the BAC shall declare the second bidder as the bidder with the LCRB. The HOPE shall then award the contract to it (Section 34.6 of the revised IRR).

If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next LCB, and so on until the LCRB is determined for award (Section 34.7 of the revised IRR).

3.6 When all qualified bidders are post-qualified

If no bidder passes post-qualification, the BAC should declare a failure of bidding. In such a case, the BAC shall issue a Resolution declaring a failure of bidding. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates (Section 35.2 of the revised IRR). Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the revised IRR. All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding (Section 35.4 of the revised IRR).

Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement, as provided for in Section 53.1 of the revised IRR.

4. PROCEDURES

The following steps are followed in the conduct of post-qualification:

4.1 The BAC/TWG verifies, validates, and ascertains the genuineness, validity and accuracy of the legal, technical and financial documents submitted by the bidder with the LCB, using the non-discretionary criteria described above.

In verifying the information contained in such documents, the TWG may make inquiries with appropriate government agencies and examine the original documents kept in the bidder's place of business. The use of other means for verification and validation of such documents may be resorted to by the TWG, such as the Internet and other research methods that yield the same results.

The BAC/TWG inquires about the bidder's performance in relation with other contracts/transactions as indicated in its eligibility statement (statement of ongoing, completed or awarded contracts).

- **4.2** If the TWG conducts post-qualification, it TWG prepares a post-qualification report to be submitted to the BAC. The Report shall contain, among others, the activities undertaken with regard to the post-qualification process, including feedback from inquiries conducted.
- **4.3** The BAC reviews the Post-qualification Report submitted by the TWG.
- **4.4** The BAC determines whether the bidder with the LCB passes all the criteria for post-qualification.
- **4.5** If the LCB passes the post-qualification, the BAC declares it as the LCRB.
- 4.6 After the BAC has determined the LCRB, the Secretariat, with the assistance of the TWG, if necessary, prepares the BAC Resolution declaring the LCRB and the corresponding Notice to the said bidder informing it of its post-qualification.

STEP7. AWARD THE CONTRACT AND ISSUE NOTICE OF AWARD

1. LEGAL REFERENCE

Section 37 of the revised IRR is the legal basis for award of contract.

PURPOSE

This is the stage when the contract is granted to the lowest calculated and responsive bidder.

3. RULES AND GUIDELINES

3.1 Notice of Award

The contract shall be awarded to the bidder with the LCRB at its submitted bid price or its calculated bid price, whichever is lower.

The BAC shall recommend to the HOPE the award of contract to the bidder with the LCRB or the SCRB after the post-qualification process has been completed (Section 37.1.1 of the revised IRR).

To facilitate the approval of the award, the BAC shall submit the following supporting documents to the Head of the Procuring Entity:

- **a.** Resolution of the BAC recommending award;
- **b.** Abstract of Bids;
- **c.** Duly approved program of work or delivery schedule, and Cost Estimates;
- **d.** Document issued by appropriate entity authorizing the procuring entity to incur obligations for a specified amount; and
- **e.** Other pertinent documents required by existing laws, rules, and/or the procuring entity concerned.

Prior to the expiration of the period of bid validity, the Procuring Entity should notify the successful bidder in writing that its bid has been accepted, through a NOA received personally or sent by registered mail or electronically. It is important that, in case the NOA is not received personally, its receipt must be confirmed in writing within two (2) days by the successful bidder and submitted personally or sent by registered mail or electronically to the Procuring Entity (this particular instruction must be included in the ITB so that the bidder may be guided accordingly).

3.2 Period of Action

Within a period not exceeding seven (7) calendar days from the date of receipt of the BAC recommendation, the HOPE shall approve or disapprove the said recommendation. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000.00) and below, the HOPE shall approve or disapprove the said recommendation within four (4) calendar days (Section 37.1.2 of the revised IRR).

The NOA shall be given to the bidder with the LCRB immediately after approval of the recommendation. Simultaneously, a copy of the Notice shall be furnished to all losing bidders, and posted in the website of the PhilGEPS, as well as the websites of the Procuring Entity and its electronic procurement service provider, if any.

The procurement process from the opening of bids up to the award of the contract shall not exceed three (3) months or a shorter period to be determined by the procuring entity concerned (Section 38.1 of the revised IRR). The maximum period to be observed for the entire procurement process from advertisement or posting of the IB to the issuance of the NTP should not exceed seventy (70) calendar days for projects with ABC costing Fifty Million Pesos (P50, 000,000.00) and below and one hundred (100) calendar days for projects with ABC above Fifty Million Pesos (P50, 000,000.00)

Notwithstanding the issuance of the NOA, award of contract shall be subject to the following conditions.

3.3 Contract Signing

Submission of the following documents within the prescribed period:

- a. Valid JVA, if applicable, within ten (10) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the LCRB, as the case may be; or
- b. In the case of infrastructure projects, valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the LCRB, when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the contract to be as a pre- condition to the Notice of Award;
- **c.** Posting of performance security in accordance with Section 39 of the revised IRR;
- d. Signing of the contract as provided in Section 37.2 of the revised IRR; and
- Approval by higher authority, if required, as provided in Section 37.3 of the revised IRR.

Contract award shall be made within the bid validity period provided in Section. The BAC, through the Secretariat, shall post, within three (3) calendar days from its

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issuance, the Notice of Award in the PhilGEPS, the website of the procuring entity, if any, and any conspicuous place in the premises of the procuring entity.

The winning bidder shall post the required Performance Security and enter into contract with the procuring entity within ten (10) calendar days from receipt by the winning bidder of the NOA. The procuring entity shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

The following documents shall form part of the contract:

- 1. Contract Agreement;
- 2. Bidding Documents;
- **3.** Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/ statements submitted;
- 4. Performance Security;
- **5.** Credit line in accordance with the provisions of the revised IRR, if applicable;
- 6. Notice of Award of Contract; and
- 7. Other contract documents that may be required by existing laws and/or the procuring entity concerned in the Bidding Documents, such as the construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, construction safety and health program approved by the DOLE and PERT/CPM for infrastructure projects.

3.4 Participants

The following parties must participate in the activities related to the awarding of the contract:

- **a.** HOPE;
- **b.** BAC;
- c. Procurement Unit/Office;
- d. BAC Secretariat; and
- **e.** Bidder who submitted the LCRB/SCRB.

3.5 Non-acceptance of award of contract

If the bidder refuses to accept the award within the bid validity period, the BAC shall forfeit

the bid security of the bidder and shall initiate the blacklisting proceedings in accordance with the Uniform Guidelines for Blacklisting provided under GPPB Resolution No. 09-2004. It then initiates and completes the post-qualification of the bidder with the second bidder with the LCB. If found qualified, the said bidder shall be awarded the contract. This procedure is repeated until the LCRB is determined. Should all eligible bidders fail post-qualification, the BAC must declare the bidding a failure.

Refusal to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder, if proven, is meted with a penalty of imprisonment of not less than six (6) years and one (1) day by not more than fifteen (15) years (Section 65.3.d of the revised IRR). Additional penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense shall also be imposed on the bidder (Section 69.1 of the revised IRR).

4. PROCEDURES

The following steps are followed in the awarding of a contract:

- **4.1** The BAC Secretariat drafts the BAC Resolution recommending award.
- 4.2 The BAC Secretariat consolidates all the documents and/or records of the proceedings of the BAC with regard to the procurement at hand, and attaches the same to the BAC Resolution.
- **4.3** The BAC approves and signs its resolution recommending award, and transmits the same to the HOPE.
- 4.4 The HOPE or his/her duly authorized representative, acts on the recommendation for award within fifteen (15) calendar days from the date of determination and declaration by the BAC of the LCRB/SCRB. In the case of GOCCs and GFIs, the governing Board shall have thirty (30) calendar days within which to approve the recommendation for award.
- In case of a disapproval of the recommendation of award, the HOPE shall state the reason(s) for disapproval and instruct the BAC on the subsequent steps to be adopted. In case of approval of the recommendation, the Head of the Procuring Entity, through the procurement unit/office, issues the Notice of Award to the bidder with the LCRB/SCRB, while the BAC accordingly notifies the losing bidders.
- **4.6** The bidder with the LCRB/SCRB accepts the NOA.

STEP8. SIGN AND APPROVE CONTRACT

1. LEGAL REFERENCE

Section 37 of the revised IRR specifies the rules regarding contract signing and approval.

PURPOSE

This is the stage that the procuring entity enters into an agreement with the LCRB to undertake the project within the conditions and period set forth in the procurement process. This is also the stage when actual notice is given to LCRB to commence the project.

3. RULES AND GUIDELINES

3.1 Period of entering into contract

The winning bidder and the Procuring Entity must enter into a contract immediately after the former has submitted the performance security and all other documentary requirements within the period specified in the revised IRR. The parties must sign the contract within ten (10) calendar days from receipt by the winning bidder of the NOA (Section 37.2.1 of the revised IRR).

The Chief Accountant or the Chief Budget Officer may sign the contract as an instrumental witness thereto.

The Procuring Entity signatory is encouraged to sign within the same day as the signing of the bidder as there are penalties against delaying, without justifiable cause, the award of the contract (**Section 65.1 of the revised IRR**). Moreover, it would be best for the winning bidder and the HOPE, or its appropriate signing authority, to sign/execute the contract together – provided that all contract documents and requirements are complete – so that both may personally appear before a Notary Public.

3.2 Timelines in contract approval

When, after contract signing, further approval of a higher authority is required, the approving authority for the contract, or his duly authorized representative, shall be given a maximum of fifteen (15) calendar days from receipt thereof, together with all documentary requirements to perfect the said contract, to approve or disapprove it (Section 37.3 of the revised IRR).

3.3 Contract Effectivity

Unless otherwise specified in the contract, a contract is effective upon receipt of the NTP. If an effectivity date is provided in the NTP by the Procuring Entity, all notices called for by the terms of the approved contract shall be effective only from such effectivity date (Section 37 of the revised IRR).

3.4 Participants

The following parties are involved in contract signing and approval and in the issuance of the NTP:

- a. Procurement Unit/Office/End-User Unit;
- **b.** HOPE and/or higher contract approving authority; and
- c. Winning bidder.

3.5 Contract documents

The contract shall include the following. The first nine (9) requirements are provided by the Procuring Entity, while the winning bidder submits the rest:

- a. The Contract Agreement;
- **b.** Conditions of Contract
- **c.** Drawings/Plans, if applicable;
- **d.** Specifications, if applicable;
- **e.** Invitation to Bid;
- f. Bidding Documents;
- **g.** Addenda and/or Supplemental/Bid Bulletins, if any;
- **h.** Bid form including all the documents/statements contained in the winning bidder's two bidding envelopes, as annexes;
- *i.* Eligibility requirements, documents and/or statements;
- j. Performance Security and Contractor's All-Risk Insurance;
- **k.** Credit Line issued by a licensed bank in accordance with the provisions of the revised IRR, if applicable; (Actual credit line from the same bank who issued the written commitment. This is different from the written commitment from the bank submitted during eligibility);
- **I.** NOA with the winning bidder's "Conforme" thereto;
- **m.** PERT/CPM approved by the Procuring Entity; and
- **n.** Other contract documents that may be required by existing laws and/or the Procuring Entity concerned.

3.6 Performance Security

A performance security is a guarantee that the winning bidder will faithfully perform its obligations under the contract prepared in accordance with the bidding documents

(**Section 39.1 of the revised IRR**). It must be posted in favor of the Procuring Entity, and will be forfeited in the latter's favor in the event it is established that the winning bidder is in default in any of its obligations under the contract (**Section 39.2 of the revised IRR**).

3.6.1 When to Post performance security

Within a maximum period of ten (10) calendar days from the receipt of the NOA from the Procuring Entity, and in all cases upon the signing of the contract, the successful bidder should furnish the Procuring Entity with the performance security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents (Section 39.1 of the revised IRR). The performance security forms part of the contract (Section 37.2.3 of the revised IRR).

3.6.2 Forms and corresponding amounts required

The performance security must be in any of the following or a combination of forms with the corresponding required amounts:

AMOUNT OF PERFORMANCE SECURITY (EQUAL FORM OF PERFORMANCE SECURITY TO THE PERCENTAGEOF THE TOTAL CONTRACT PRICE) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial bank: Ten percent (10%) Provided, however, that is shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. c. Surety bond callable upon demand issued by any Thirty (30%) reputable surety or insurance company; or Proportionate to share of form with respect to total Any combination of the foregoing forms. amount of security

3.6.3 Determination of form of the Performance Security

The Procuring Entity can no longer limit the allowable forms of performance security provided under the revised IRR of R.A. 9184, even if it expressly states the same in their bidding documents. Prospective bidders have the option to choose from any of these allowable forms of performance security.

3.6.4 Additional Performance security in case of contract price amendment

The winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of change orders or extra work orders, as the case may be (Section 39.6 of the revised IRR). The percentages in the schedule above must be applied to increases in the original value of the contract. The winning bidder must also cause the extension of the validity of the performance security to cover approved contract time extensions.

For partially completed works under the contract which are usable and accepted by the government, and the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the Procuring Entity shall allow a proportional reduction in the original performance security. However, this proportional reduction in the value of the performance security is allowed only when the reductions are more than ten percent (10%) and the aggregate of such reductions is not more than fifty percent (50%) of the original performance security (Section 39.7 of the revised IRR).

3.6.5 Release of Performance Security

Subject to the conditions of the contract, the Procuring Entity may release the performance security to the winning bidder after the issuance of the Certificate of Completion of the contract, provided that there are no claims for labor and materials filed against the contractor or the surety company, (Section 39.5 of the revised IRR) and provided that it is replaced by a warranty covering the defects liability period in accordance with Section 62 of the revised IRR.

3.6.6 Parties involved in the posting of the Performance Security

The bidder with the LCRB, the Procuring Entity and the issuer of the security, *e.g.*, the banking/financial institution or the insurance company, are all involved in the posting of the performance security.

3.7 Refusal or inability of LCRB/SCRB to post the performance security and sign the contract within the prescribed period

If the bidder with the LCRB/SCRB refuses to, or is unable, through its own fault, to post the performance security and sign the contract within the prescribed period:

- a. Its bid security is forfeited;
- **b.** It is disqualified from further participating in the bidding at hand;
- **c.** Upon conviction, the relevant officers or individuals will suffer the penalty of imprisonment of not less than six (6) and one (1) day and not more than fifteen (15) years; and
- d. Upon determination of administrative liability, it will suffer the administrative penalties of suspension for one (1) year from participation in government procurement for the first offense, and suspension for two (2) years for the second offense. This is without prejudice to the blacklisting proceedings undertaken in accordance with the Uniform Guidelines for Blacklisting (Appendix 11 of the revised IRR).

If the failure of the bidder with the LCRB/SCRB to sign the contract within the prescribed period is not due to its fault, the sanctions mentioned above shall not be imposed (Section 40.1 of the revised IRR).

For its part, the BAC must initiate and complete the post-qualification of the bidder the second LCB. This procedure must be repeated until the LCRB is determined for award. If no bidder passes post-qualification, the BAC declares the bidding a failure and conducts a re-bidding with re-posting and re-advertisement. Should there be another failure of bidding after the conduct of the re-bidding, the Procuring Entity may enter into a negotiated procurement (Section 40.2 of the revised IRR).

If, on the other hand, the bidder that fails to post the performance security and sign the contract happens to be one with the SCRB, the BAC must declare the bidding a failure. It then conducts a re-bidding with re-posting and re- advertisement. Should there be another failure of bidding after the conduct of the re-bidding; the Procuring Entity may enter into a negotiated procurement (Section 40.3 of the revised IRR).

If the failure of the bidder with the LCRB/SCRB to sign the contract within the prescribed period is not due to its fault, the sanctions mentioned above shall not be imposed (Section 40.1 of the revised IRR).

3.8 Approving authorities

In most procuring entities, particularly the bureaus or lower-level offices of national government agencies or centrally managed GOCCs or GFIs, the contract signatory is a different official from the approving authority. For example, a bureau director may only be authorized to approve contracts up to Fifty Million Philippine Pesos (PhP 50,000,000.00). Contracts exceeding the said amount are brought up to the Secretary for approval. Different procuring entities have different levels of delegated authority, but the principle is essentially the same – the higher the contract amount, the higher is the level of the approving authority. In cases like this, the contract is considered approved upon the approval of such higher authority. The existence of this policy is the usual cause of delays in procurement transactions.

Section 38 and Section 38.2 of R.A. 9184 and the revised IRR are designed to remove this cause for delay. These provisions mandate that if further approval of a higher authority within or outside the procuring entity (other than the President of the Philippines) is required, and that authority does not take any action on the contract within the prescribed period, the contract concerned is deemed approved.

Only contracts that are duly signed by the appropriate signatory, but require further approval, are covered by this rule, because an unsigned contract is a mere piece of paper and cannot be the basis of a government liability. Refer to the most recent delegation of authorities AO 2006-003 (Reference D) and its subsequent amendment AO 2006-003-A (Reference E).

3.9 Rules governing the review and approval of government contracts

Executive Order 423, s. 2005, as amended by E.O. 645 prescribes the rules and regulations on the review and approval of government contracts. Essentially, E.O. 423 provides that, except for government contracts required by law to be acted upon and/or approved by the President, the HOPE shall have full authority to give final approval and/or enter into all government contracts of his respective government agency, awarded through public bidding, regardless of amount.

Provided, that the HOPE certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. The HOPE may also delegate in writing this full authority to give final approval and/or enter into government contracts awarded through public bidding as circumstances may warrant (*i.e.* to decentralization of procurement in a government agency), subject to such limitations as he may impose. For procurement undertaken through any of the alternative methods allowed by law, where the government contract involves an amount less than Five Hundred Million Philippine Pesos (PhP 500,000,000.00), except where action or approval of the President is required, the HOPE shall have full authority to give final approval and/or enter into such contract, provided that the Department Secretary concerned certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations. He may delegate in writing this authority, as circumstances may warrant (*i.e.* to decentralize procurement), subject to such limitations as he may impose.

Where the HOPE has made a determination that a Government contract, including Government contracts required by law to be acted upon and/or approved by the President, involving an amount of at least Five Hundred Million Philippine Pesos (PhP 500,000,000.00) falls under any of the exceptions from public bidding allowed by law, the HOPE shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain an approval from the GPPB that said Government contract falls within the exceptions from public bidding and the proposed specific alternative method of procurement is appropriate.

Except for Government contracts required by law to be acted upon and/or approved by the President, the Head of the Procuring Entity, after obtaining the foregoing requirements, shall have full contracts of their his respective agency, entered into through alternative methods of procurement allowed by law. Provided, that the head of the procurement entity certifies under oath that the contract has been entered into in faithful compliance with all applicable laws and regulations.

4. PROCEDURES

4.1 Signing and approval of Contract

The winning bidder submits all the documentary requirements, including the performance security, and signs the contract.

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The procurement unit/office transmits the contract and its attachments to the Budget Office (for issuance of OS) and the Chief Accountant (for issuance of the CAF).

The procurement unit/office transmits the contract documents to the appropriate signing authority for signature, together with the following documents:

- **a.** Duly approved program of work and cost estimates;
- **b.** CAF;
- **c.** Abstract of Bids as Calculated;
- d. Resolution of the BAC or duly designated procurement office recommending Award:
- **e.** Approval of award by appropriate government approving authority; and
- **f.** Other pertinent documents that may be required by existing laws and/or the Procuring Entity concerned.

After signing, if the contract needs the approval of a higher authority – such as, for bureaus, the Department Secretary, when required – the procurement unit/office transmits the contract and related documents to the approving authority or his authorized representative for approval.

In most Procuring Entities, particularly the bureaus or lower-level offices of National Government Agencies or centrally managed GOCCs or GFIs, the contract signatory is a different official from the approving authority. For example, a bureau director may only be authorized to approve contracts up to Fifty Million Philippine Pesos (PhP 50,000,000.00). Contracts exceeding the said amount are brought up to the Secretary for approval. Different Procuring Entities have different levels of delegated authority, but the principle is essentially the same – the higher the contract amount, the higher is the level of the approving authority. In cases like this, the contract is usually deemed effective upon approval of such higher authority. The existence of this policy is the usual cause of delays in procurement transactions.

Section 38 of R.A. 9184 and the revised IRR are designed to remove this cause for delay. These provisions mandate that if further approval of a higher authority (other than the President of the Philippines) is required, and that authority does not take any action on the contract within the prescribed period, the contract concerned is deemed approved.

Only contracts that are duly signed by the appropriate signatory are covered by this rule. An unsigned contract is a mere piece of paper and cannot be the basis of a government liability.

The approving authority or his authorized representative acts on the contract within twenty (20) calendar days, or thirty (30) calendar days for GOCCs and GFIs, from receipt thereof.

If higher approval is required (e.g., approval of the Office of the President), or a review by another government body is necessary (e.g., NEDA or DOJ review), the Head of the Procuring Entity transmits the contract documents to the appropriate approving authority or reviewing body. The periods indicated above for approvals of contracts still apply, except if the approving authority is the Office of the President.

The HOPE or his/her duly authorized representative issues the NTP within three (3) calendar days from the date of the approval of the contract by the appropriate government approving authority.

4.2 Posting of Performance Security

The following steps are followed in the posting of the performance security:

- **a.** The bidder with the LCRB posts a performance security. In so doing, it must comply with the following conditions:
 - *i.* The performance security must be executed in the form prescribed by the Procuring Entity in the ITB; and
 - ii. The following provisions shall form part of the performance security: "The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the contractor with labor and materials for the prosecution of the work is hereby acknowledged and confirmed."
- **b.** The procurement unit/office accepts the performance security and indicates such posting and acceptance by attaching the appropriate form to the contract.

STEP 9. ISSUE NOTICE TO PROCEED

1. LEGAL REFERENCE

Section 37.4 of the revised IRR is the legal basis for the issuance of the NTP and its subsequent posting.

PURPOSE

NTP is procurement document which signify that the procuring entity and the awarded bidder have already undergone contract signing and the latter shall now be obliged to perform its obligation based upon the terms and conditions of the contract.

3. PROCEDURES OF ISSUANCE OF THE NTP

3.1 Issuance of the NTP

The NTP shall be issued together with a copy or copies of the approved contract to the successful bidder within **three (3) calendar days** from the date of approval of the contract by the appropriate government approving authority (Section 37.4.1 of the revised IRR).

The contract effectivity date shall be provided in NTP by the procuring entity, which shall not be later than seven (7) calendar days from its issuance.

3.2 Participants in the issuance of the NTP

The following parties are involved in the issuance of the NTP:

- **3.2.1** Procurement Unit/Office/End-User Unit:
- 3.2.2 HOPE, or its duly authorized representative, and/or higher contract approving authority if so warranted; and
- 3.2.3 Winning bidder.

3.3 Posting of NTP

3.3.1 When NTP is posted

According to the revised IRR of RA 9184, the procuring entity, through the BAC Secretariat, shall post a copy of the procuring entity, if any, within fifteen (15) calendar days from the issuance of the NTP.

3.3.2 Where NTP is posted

For transparency purposes and to inform the public of the status of the various procurement projects, the NTP shall be posted in either of the following:

- a. PhilGEPS website; or
- **b.** Procuring Entity's website, if available

RESERVATION CLAUSE

1. LEGAL REFERENCE

Section 41 of the revised IRR is the legal basis of the Reservation Clause.

2. RULES AND GUIDELINES

2.1 RIGHT TO REJECT BIDS, DECLARE A FAILURE OF BIDDING, OR NOT AWARD THE CONTRACT

The Head of the Procuring Entity reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in any of the following situations:

- a. If there is prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- **b.** If the BAC is found to have failed in following the prescribed bidding procedures, for which the applicable sanctions shall be applied to the erring officers; or
- **c.** For any justifiable and reasonable ground where the award of the contract will not contribute to the benefit of the Government as follows:
 - If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the Head of the Procuring Entity;
 - *ii.* If the project is no longer necessary as determined by the Head of the Procuring Entity; and
 - *iii.* If the source of funds for the project has been cancelled, withheld or reduced through no fault of the Procuring Entity.

2.2 INSTANCES OF NOT FOLLOWING PRESCRIBED PROCEDURES

The following are some instances when a BAC fails to follow procedures:

- **a.** Prescribing an insufficient number of days in the advertisement and/or posting of the IB;
- Exceeding the required periods for eligibility screening, bid evaluation, postqualification for each lowest calculated bidder or for awarding the contract without justifiable cause;

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- **c.** Conducting the pre-bid conference or issuing the bidding documents in less than the required number of days before deadline for the submission and opening of bids;
- Requiring the bidder to submit additional documents which is tantamount to improving his bidding documents; and
- **e.** Allowing a bidder to be declared eligible or pass the post-qualification with incomplete documents.

SECTION 4

PROCUREMENT OF INFRASTRUCTURE THROUGH ALTERNATIVE METHOD OF PROCUREMENT

PART TWO – ALTERNATIVE METHODS OF PROCUREMENT

RULES ON THE USE ALTERNATIVE METHOD OF PROCUREMENT FOR INFRASTRUCTURE PROJECTS

Generally, procurement should be through public bidding. In preparing the APP, the Procuring Entity must ensure that there is sufficient time to undertake public bidding. However, the law allows the use of alternative methods of procurement in some exceptional instances, provided:

- 1. There is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; and
- 2. The conditions required by law for the use of alternative methods are present.

One of the reasons for the use of alternative methods of procurement is for administrative convenience. This means that the Procuring Entity is given the opportunity to procure infrastructure projects at advantageous terms without having to undergo the entire public bidding process which could be time-consuming. Or, there could be changes in circumstances that preclude the use of public bidding as originally proposed in the APP, like in those cases where the BAC has twice declared a failure of bidding.

In resorting to any of the alternative methods of procurement, the Procuring Entity must ensure that the method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.

While the law allows the use of alternative methods or procurement, it emphasizes that splitting of government contracts is not allowed. There is splitting of government contracts when, for the purpose of evading or circumventing the requirements of law and the revised IRR, especially the necessity of public bidding and the requirements for the alternative methods of procurement, The Procuring Entity:

- 1. Divides or breaks up government contracts into smaller quantities and amounts; or
- 2. Divides contract implementation into artificial phases or sub-contracts. (Section 54.1 of the revised IRR)

For the procurement of infrastructure projects, negotiated procurement is the only alternative method of procurement that may be used.

NEGOTIATED PROCUREMENT

1. NEGOTIATED PROCUREMENT DEFINED

Negotiated Procurement is a method of procurement whereby the Procuring Entity directly negotiates a contract with a legally, technically and financially capable contractor (Section 53 of the revised IRR).

2. RULES AND GUIDELINES

2.1 When to use

Negotiated procurement must be resorted to only if:

2.1.1 Two – Failed Bidding

Where there has been failure of public bidding for the second time as provided in Section 35 of RA 9184 and the revised IRR;

2.1.2 Emergency Cases

In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP.

Under these conditions, in the case of infrastructure projects, the Procuring Entity has the option to undertake the project through negotiated procurement or by administration (which *may include "pakyaw" labor contracts* in accordance with P.D. 950), or, in high security risk areas, through the Armed Forces of the Philippines;

2.1.3 Take-Over of Contracts

Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

2.1.4 Adjacent or Contiguous

Where the subject contract is adjacent or contiguous to an on-going Infrastructure Project or Consulting Service where the consultants have unique experience and expertise to deliver the required service: Provided, however, that:

- **a.** Original contract is the result of a Competitive Bidding;
- **b.** Subject contract to be negotiated has similar or related scopes of work;
- **c.** It is within the contracting capacity of the contractor/consultant;
- **d.** Contractor uses the same prices or lower unit prices as in the original contract less mobilization cost:
- **e.** Amount involved does not exceed the amount of the ongoing project; and
- **f.** Contractor has no negative slippage/delay:

Provided, further, that negotiations for the procurement are commenced before the expiry of the original contract;

2.1.5 Agency-to-Agency

Procurement of infrastructure projects, consulting services, and goods from another agency of the GOP, such as the PS-DBM, which is tasked with a centralized procurement of Common-Use Supplies for the GOP in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989;

2.1.6 Procurement Agent

In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the Head of the Procuring Entity concerned, may request other GOP agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function. The GPPB shall issue guidelines to implement this provision:

2.1.7 Small Value Procurement

Where the procurement does not fall under Shopping in Section 52 of the revised IRR and the amount involved does not exceed the thresholds prescribed in Annex "H" of the revised IRR:

- a. The procuring entity shall draw up a list of at least three (3) suppliers, contractors, or consultants of known qualifications which will be invited to submit proposals, in the case of goods and infrastructure projects, or curriculum vitae, in the case of consulting services;
- b. The thresholds prescribed in Annex "H" of the revised IRR shall be subject to the periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect the changes in economic conditions and for other justifiable reasons; and

c. According to Annex H of the revised IRR, there has been an increase in the threshold of the procuring entity for Small Value Procurement under Section 53.9, the threshold is increased to Five Hundred Thousand Pesos (PhP 500,000.00) from Two Hundred Fifty Thousand Pesos (PhP 250, 000.00).

2.1.8 NGO Participation

When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations, the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB;

2.1.9 Community Participation

Where, in the interest of project sustainability or to achieve certain specific social objectives, it is desirable in selected project components to call for participation of local communities in the delivery of services, the procuring entity shall propose the procedures, specifications, and contract packaging which is subject to the approval of the GPPB.

2.2 Invited contractors for negotiations

The Procuring Entity can invite for negotiations only bona fide contractors that:

- 2.2.1 Are licensed with the PCAB, whose eligibility documents are on file with the Procuring Entity concerned or the DPWH Contractors' Registry, as the case may be; and
- **2.2.2** Have been classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation.

Other contractors not previously deemed eligible may also apply for eligibility.

All Procuring Entities must maintain a registry of contractors, suppliers and consultants as basis for drawing up the short list and/or selecting the contractors for negotiations.

Eligible contractor(s) for the project under consideration shall be furnished copies of the instructions to bidders, plans, specifications, proposal book form, and other tender documents for their use in submitting their bids and other information called for in the format. The contractors shall submit, simultaneously with their bid, the bid security as stipulated above.

2.3 Participants

The following must participate in the undertaking of negotiated procurement:

- a. HOPE:
- **b.** BAC;
- c. TWG:
- **d.** BAC Secretariat;
- e. End-user unit or PMO; and
- f. Accredited or Registered Contractors.

2.4 Posting of performance security

Bid security is no longer required in negotiated procurement. As a general rule, performance security as prescribed under Section 39 of the revised IRR of R.A. 9184 shall be submitted for contract acquired through negotiated procurement, except for the following circumstances:

- a. Negotiated Procurement (Emergency Cases);
- **b.** Negotiated Procurement (Small Value Procurement);
- **c.** Negotiated Procurement (Lease of Real Property); and
- **d.** Negotiated Procurement (UN Agencies)

3. PROCEDURES

The following steps are followed in undertaking negotiated procurement:

- 3.1 If the original mode of procurement recommended in the APP was competitive bidding, the BAC recommends the change in the mode of procurement to negotiated procurement through a Resolution to be approved by the HOPE.
- **3.2** The BAC convenes the appropriate officials for the pre-procurement conference, if deemed necessary.
- 3.3 The BAC, through the Secretariat, posts for a period of seven (7) calendar days the procurement opportunity for Negotiated Procurement (Two-Failed Biddings), as well as, Negotiated Procurement (Lease of Real Property) with an ABC amounting to more than Fifty Thousand Philippine Pesos (P 50,000.00) and Negotiated Procurement (Small Value) with an ABC amounting to more than Fifty Thousand Philippine Pesos (P 50,000.00) in the:
 - a. PhilGEPS;

- **b.** Procuring Entity's website, if any; and
- **c.** Any conspicuous place in the premises of the Procuring Entity.

The Procuring Entity, however, need not post the procurement opportunity in the following cases of Negotiated Procurement:

- a. Emergency Cases;
- **b.** Take-Over of Contracts;
- c. Adjacent or Contiguous;
- d. Agency-to-Agency;
- e. Procurement Agents;
- f. NGO Participation;
- **g.** Community Participation;
- **h.** UN Agencies; and,
- i. Emergency Cases

However, the award of the contract must be posted in the aforementioned websites, except for the following Negotiated Procurement (Lease of Real Property) and Negotiated Procurement (Small Value)¹ with ABC of Fifty Thousand Philippine Pesos (P 50,000.00) and below.

3.4 If Negotiated Procurement is resorted because there has been a failure of bidding for the second time as provided un Section 35 of R.A. 9184 and the revised IRR, the BAC conduct a mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in Section 35 of the revised IRR of R.A. 9184 in order to determine the reason for the failure of bidding. Based on its findings, the BAC shall revise and agree on the minimum technical specifications, and if necessary, adjust the ABC, subject to the required approvals.

However, the ABC cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding. The BAC shall invite and engage in negotiations with a sufficient number of contractors to ensure effective competition. Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the procuring entity to a contractor shall be communicated on an equal basis to all other contractors engaging in negotiations with the procuring entity relative to the procurement.

Following completion of the negotiations, the procuring entity shall request all contractors

¹ GPPB Resolution No. 09-2009 dated 23 November 2009: Guidelines for Shopping and Small-Value Procurement, Section 3.i

remaining in the proceedings to submit, on a specified date, a best and final offer with respect to all aspects of their proposals. The procuring entity shall select the successful offer on the basis of such best and final offers which should meet the procuring entity's minimum technical requirements and should not exceed the ABC. In all stages of the negotiations, observers shall be invited.

- 3.5 If the procurement is being negotiated in case of imminent danger to life or property, the BAC, through the BAC Secretariat, may negotiate with any legally, technically and financially capable contractor.
- 3.6 Bona fide contractors licensed with the CIAP whose eligibility documents are on file with the DOH or DPWH Contractor's Registry, as the case may be, and who are classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation, provided that other contractors not previously deemed eligible may also apply for eligibility (Section 53.1.2.1 of the revised IRR). For this reason, DOH shall maintain a registry of contractors as basis for drawing up the short list and/or selecting the contractors (Section 53.1.2.2 of the revised IRR).
- 3.7 If the procurement is being negotiated as a result of a terminated or rescinded contract being taken over because immediate action is necessary to prevent damage to, or loss of, life or property, or to restore vital public services, infrastructure facilities and other public utilities, then the contract may be negotiated starting with the second lowest calculated bidder for the project under consideration at the bidder's original bid price (Section 53.3.1 of the revised IRR). If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder (Section 53.3.2 of the revised IRR). Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the Head of the Procuring Entity or other higher authorities, if required, within their respective limits of approving authority (Section 53.3.3 of the revised IRR).
- 3.8 If the procurement being negotiated is adjacent or contiguous, the procuring entity will directly negotiate with the previous winning contractor, provided that all the conditions under Section 53.4 of the revised IRR of the R.A. 9184; provided further, that negotiation for the procurement are commenced before expiry of the original contract.
- 3.9 In case of Agency-to-Agency, the procuring entity should follow the procedures provided under the Implementing Guidelines on Agency-to-Agency Agreements, approved and adopted by the GPPB through Resolution No. 18 2007, dated 31May 2007. The general conditions for implementing Agency-to-Agency Agreements are as follows:
 - **a.** Agency-to-Agency Agreements may only be resorted to if the following conditions are complied with:

- Conduct of a Cost-benefit Analysis by the Procuring Agency indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
- *ii.* Total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the Procuring Entity's total procurement budget for each category (*i.e.*, goods, infrastructure, or consulting) as reflected in its approved APP;
- *iii.* Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and
- *iv.* Servicing Agency owns or has access to the necessary tools and equipment required for the project.
- **b.** In addition, for procurement of infrastructure projects under Agency-to- Agency agreements, the Servicing Agency must comply with the following conditions:
 - i. It must have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand; and
 - *ii.* It shall not directly or indirectly engage private contractors to undertake the project and may only implement the infrastructure project in-house, by job-order, or through the *pakyaw* contracting system.
 - In-house labor is undertaken if the workers are employees or personnel occupying regular *plantilla* positions in the Servicing Agency. Job-order contracts shall be governed by the applicable rules of the Commission on Audit and/or Civil Service Commission. *Pakyaw Contracting* System shall be governed by the GPPB Revised Guidelines for the Implementation of Infrastructure Projects by Administration provided under GPPB Resolution No. 18-2006, as amended by GPPB Resolution No. 07-2009.
 - *iii.* Subject to appropriate guidelines, the Procuring Agency may require the Servicing Agency to post a performance security under Section 39 of R.A. 9184 and/or post a warranty security under Section 62 of R.A. 9184.
 - *iv.* All procurement to be undertaken by the Servicing Agency, including those required for the project, shall continue to be governed by the provisions of R.A. 9184.
 - **v.** All projects undertaken through Agency-to-Agency Agreements shall be subject to pertinent budgeting, accounting, and auditing rules.

The procedural requirements for implementing Agency-to-Agency Agreements are as follows:

- **a.** The end-user unit shall undertake a Cost-benefit analysis, taking into consideration the following factors: prevailing standard cost for the project in the market, absorptive capacity of the Servicing Agency, and such other factors.
- b. It shall likewise secure a certificate from the relevant officer of the Servicing Agency that the latter complies with the following conditions: (i) mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and (ii) owns or has access to the necessary tools and equipment required for the project.
- **c.** Based on the assessment and recommendation of the end-user unit, the BAC shall issue a resolution recommending the use of Agency-to-Agency Agreement to the head of the Procuring Agency.
- **d.** Upon approval of the BAC resolution, the Procuring Agency shall enter into a Memorandum of Agreement with the Servicing Agency.
- **e.** The MOA shall reflect the agreement of the parties with regard to the posting of a performance bond and/or a warranty security.
- **f.** For purposes of transparency, the Procuring Agency shall post the award of the contract, in the following areas:
 - i. PhilGEPS website:
 - *ii.* Website of the Procuring Agency and its electronic service provider, if any; an
 - *iii.* Any conspicuous place in the premises of the Procuring Agency.

INFRASTRUCTURE PROJECTS UNDERTAKEN BY ADMINISTRATION

1. BY ADMINISTRATION DEFINED

By administration refers to the procedure by which the implementation of an infrastructure project is carried out under the administration and supervision of the concerned agency through its own personnel.

2. LEGAL BASIS

Revised guidelines for the Implementation of Infrastructure Projects by Administration provided under GPPB Resolution No. 18–2006, dated 6 December 2006, as amended by GPPB Resolution No. 07-2009, dated 30 September 2009.

3. RULES AND GUIDELINES

3.1 CONDITIONS AND REQUIREMENTS

- 3.1.1 Projects undertaken by Administration shall be included in the approved APP of the procuring entity concerned. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, or the project to be undertaken by administration has not been previously included, the BAC, through a resolution shall justify and recommend the change in the mode of procurement or the updating of the APP to be approved by the Head of the Procuring Entity.
- **3.1.2** To undertake projects by administration, the implementing agency must:
 - a. Have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand, and
 - **b.** Own the tools and construction equipment to be used or have access to such tools and equipment owned by other government agencies.
- 3.1.3 Any project costing Twenty Million Philippine Pesos (PhP 20,000,000) or less may be undertaken by administration or force account by the implementing agency concerned. A project costing over Twenty Million Philippine Pesos (PhP 20,000,000) may be undertaken by the agency concerned only in the following cases:
 - **a.** Emergency arising from natural calamities or where immediate action is necessary to prevent imminent loss of life or property;
 - **b.** To comply with government commitments, as certified by the concerned government authority;

- **c.** Failure to award a contract after competitive bidding for a valid cause;
- **d.** Termination or rescission of contract;
- **e.** Areas with critical peace and order problems as certified by the Local Peace and Order Council.

Provided, that prior authority shall be obtained from the Secretary of Public Works and Highways, if the project cost is Twenty Million Philippine Pesos (PhP 20,000,000.00) up to Fifty Million Philippine Pesos (PhP 50,000,000.00), or from the President of the Philippines, upon the favorable recommendation of the Secretary of Public Works and Highways, if the project cost is more than Fifty Million Philippine Pesos (PhP 50,000,000.00).

- **3.1.4** No contractor shall be used by the procuring entity, directly or indirectly for works undertaken by administration.
- **3.1.5** Procurement of tools and construction equipment shall be subject to the rules on public bidding.
- **3.1.6** For projects funded by the National Government and implemented by a Local Government Unit, the latter shall be required to post the necessary warranty security in accordance with Section 62 of R.A. 9184 and the revised IRR.
- 3.1.7 The manual labor component of projects undertaken by administration may be undertaken in-house by the implementing agency concerned, by job-order or through the pakyaw contracting system. In-house labor is undertaken if the workers are employees or personnel occupying regular plantilla positions in the implementing agency. Job-order contracts shall be governed by relevant Commission on Audit and/or Civil Service Commission rules

SECTION 5

GUIDELINES ON CONTRACT IMPLEMENTATION

CONTRACT IMPLEMENTATION FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

1. LEGAL REFERENCE

Section 42 and Annex "E" of the revised IRR is the legal bases of contract implementation for the procurement of infrastructure projects.

2. RULES AND GUIDELINES

2.1 Coverage of Contract Implementation

Contract implementation covers the following milestones:

- a. Effectivity of the contract;
- **b.** Contractor's performance of his contractual obligations;
- c. Procuring Entity's performance of its contractual obligations, as specified in the contract;
- **d.** Final acceptance or project sign-off;
- e. All other related activities; and
- f. Payment by the Procuring Entity.

2.2 Period of Contract Implementation

The PMO or end-user unit should determine the period of contract implementation during the procurement planning stage, and include it in the PPMP. In determining the contract implementation period, it must ensure that the contractor is given ample time to undertake any preparatory activity/ies necessary for it to comply with the conditions of the contract.

2.3 Effectivity of contract

The contract effectivity date shall be provided in the NTP by the procuring entity, which date shall not be later than seven (7) calendar days from its issuance.

The contract effectivity date usually indicated is on the date of the receipt by the winning bidder of the NTP. Nonetheless, if an effectivity date is stated in the NTP, such date should not be later than seven (7) calendar days from its issuance.

All notices called for by the terms of the contract shall be effective only from either of foregoing effectivity date. These provisions must be stated clearly in the contract itself (Section 37.4 of the revised IRR).

2.4 Role of Chief Accountant

The PMO or end-user unit must ensure that the Chief Accountant of the procuring entity issues a CAF for the project. Only with a CAF can the contract be valid.

The Chief Accountant must also sign the contract as a witness.

2.5 Procuring Entity's Responsibilities

Whenever the implementation of the infrastructure project requires that the contractor obtain permits, approvals, and import and other licenses from national or local government agencies, the Procuring Entity may, if so requested by the contractor, assist the latter in complying with such requirements in a timely and expeditious manner. However, the contractor shall bear the costs of such permits and/or licenses. On the other hand, the Procuring Entity shall pay all costs involved in the performance of its responsibilities, in accordance with the contract.

The Health Infrastructure Division of the National Center for Health Facilities and Services not only provide Technical Assistance to the various DOH Procuring entities during planning but also contract implementation. The HID conducts monitoring and inspection of various DOH infrastructure projects as well.

2.6 Subcontracting

Generally, a contractor may be allowed to subcontract a portion of the contract or project. However, the contractor should not be allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed fifty percent (50%) of the total project cost. The bidding documents must specify what are considered as significant/material component(s) of the project. Moreover, except if otherwise provided by the contract, it should not subcontract any part of the works without the prior consent of the HOPE. However, this consent shall not relieve the contractor of any liability or obligation under the contract. The contractor will be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if these were its own acts, defaults or neglects, or those of its agents, servants or workmen.

The Bidder may identify the subcontractor to whom a portion of the Works will be subcontracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid

Subcontractors disclosed and identified during the bidding may be changed during the implementation of the contract, subject to compliance with the required qualifications and the approval of the Procuring Entity.

2.7 Inspection and Tests

All materials, plant/s and workmanship shall be of the kind described in the contract and in accordance with the Procuring Entity's engineer's instructions. To ensure that this, indeed, is the case, these materials, plant/s and workmanship will be subjected, from time to time, to such tests as the Procuring Entity's engineer may require. These tests must be at the place of manufacture, fabrication or preparation, or on site or at such other place or places as may be specified in the contract, or at all or any of such places.

The Procuring Entity's engineer, and any person authorized by him, must, at all reasonable times, have access to the site and to all workshops and places where materials or plant are being manufactured, fabricated or prepared for the works.

The contractor, for its part, shall afford every facility for, and every assistance in, obtaining the right to such access.

The Procuring Entity's engineer shall be entitled, during manufacture, fabrication or preparation of materials to be used in the project, to inspect and test these materials and the plant or plants where these materials are being manufactured, fabricated, and/or prepared. If the materials are being manufactured, fabricated or prepared in workshops or places other than those of the contractor, the contractor must obtain permission for the Procuring Entity's engineer to carry out inspection and testing in those workshops or places. Such inspection or testing will not release the contractor from any obligation under the contract.

If, at the time and place agreed above, the materials or plant are not ready for inspection or testing, the Procuring Entity's engineer may reject these materials or the plant and must notify the contractor of such rejection immediately. He/she must also do so if, as a result of the inspection or testing, he/she determines that the materials or plant are defective or otherwise not in accordance with the contract. The notice must state the Procuring Entity's engineer's objection and the reasons for the objection. The contractor, for its part, must then promptly make good the defect or ensure that rejected materials or plant comply with the contract. If the Procuring Entity's engineer so requests, the test of rejected materials or plant shall be made or repeated under the same terms and conditions.

The Procuring Entity's engineer will, after consultation with the contractor, determine all the costs incurred in the repetition of the test or tests. These costs are recoverable from the contractor by the Procuring Entity and may be deducted from any monies due to the contractor. The Procuring Entity's engineer must notify the contractor accordingly, with a copy being furnished the Procuring Entity.

2.8 Day works undertakings and compensate

If applicable, as indicated in the contract, the day works rates in the contractor's bid shall be used for small additional amounts of work, only when the Procuring Entity's engineer has given written instructions in advance for additional work to be paid for in that way.

All works to be paid for as day works shall be recorded by the contractor on forms approved by the Procuring Entity's engineer. Each completed form shall be verified and signed by the Procuring Entity's engineer within two (2) days of the work being done.

The contractor shall be paid for day works subject to obtaining signed day works forms.

2.9 Use of Accredited Testing Laboratories

To help ensure the quality of materials being used in infrastructure projects, the BRS of the DPWH, the DOST or the DTI shall accredit the testing laboratories that can be used in government infrastructure projects. All government agencies implementing infrastructure projects must use only these laboratories. Only tests done by these laboratories shall be recognized and accepted, except for the testing of new materials to be undertaken through procedures approved by the DPWH Secretary.

2.10 Evaluation of Contractor's Performance

All Procuring Entities implementing government infrastructure projects must evaluate the performance of their contractors using the NEDA-Approved CPES Guidelines for the type of project being implemented. These guidelines cover all infrastructure projects awarded by the government regardless of contract amount and funding source.

CPES evaluation must be done during construction and upon completion of the project. To ensure continuous implementation of CPES, all Procuring Entities concerned are required to include in their Projects' Engineering and Administrative Overhead Cost the budget for such system's implementation pursuant to NEDA Board Resolution No. 18 (s.2002).

2.10.1 If there are no CPES Guidelines

For project types that do not have specific CPES Guidelines, the Procuring Entities concerned may formulate and adopt their own implementing guidelines specific to their needs, provided that the NEDA Infrastructure Committee poses no objections to their adoption, and that the said guidelines are made known to all prospective bidders.

2.10.2 Establishment of Implementation mechanisms for the CPES Guidelines

All Procuring Entities implementing infrastructure projects are required to establish or designate CPES Implementing Units in their respective offices/ agencies/ corporations. The CPES Implementing Units shall be responsible for the implementation of the CPES Implementing guidelines, including but not limited to, the supervision of CPEs to be accredited by the CIAP. The Procuring Entity's CPES IU shall be responsible for the following: a) pre-screening of applications of CPEs; b) funding for CPEs accreditation and training, including seminars; and c) yearly evaluation of CPEs.

The Health Infrastructure Division of the National Center for Health Facilities Development shall be responsible for establishing a CPES at the DOH.

2.10.3 Submission and Dissemination of CPES evaluation results

All Procuring Entities implementing CPES shall submit the results of their performance evaluation to the CIAP on a monthly basis or as often as necessary. The Procuring Entity's CPES IU shall likewise develop and maintain a databank and disseminate the CPES reports to the concerned units/departments within the Procuring Entity and to other interested users.

For additional guidelines, refer to Administrative Order 161-A s. 2002, "Implementing Guidelines on Contractors Performance Evaluation System for DOH Infrastructure Projects."

2.10.4 Use of CPES evaluation results

The CIAP shall consolidate all of the CPES evaluation results it receives and disseminate these to all Procuring Entities concerned. The CPES ratings and other information shall be used by the concerned government agencies for the following purposes:

- a. Eligibility screening of constructors;
- **b.** Awarding of contracts;
- **c.** Project monitoring and control;
- **d.** Issuance of Certificate of Completion;
- e. Policy formulation/review;
- f. Industry planning;
- **g.** Granting of Incentives/Awards; and
- **h.** Adoption of measures to further improve performance of contractors in the prosecution of government projects.

2.11 Measurement of works

The quantities set out in the Bill of Quantities are the estimated quantities for the works. They should not therefore be taken as the actual and correct quantities of the works to be executed by the contractor in fulfillment of his obligations under the contract. They can vary to up to ten percent (10%) of the contract price to account for variation orders as provided for in Annex E of the revised IRR.

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The Procuring Entity's engineer must, except if otherwise stated in the Quantities of the Detailed Engineering, measure the value of the works actually in-place in accordance with the contract. This measurement will be the basis for the payment that will be made to the contractor in accordance with the Statement of Work Accomplished. The Procuring Entity's engineer must, when he/she needs to measure any part of the works, give reasonable notice to the contractor's authorized agent, who must:

- **a.** Forthwith attend or send a qualified representative to assist the Procuring Entity's engineer in making such measurement; and
- **b.** Supply all particulars required by the Procuring Entity's engineer.

2.12 Impact of infrastructure project on traffic and adjoining properties

All operations necessary for the execution and completion of the works and the remedying of any defects therein must, so far as compliance with the requirements of the contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- a. Flow of traffic;
- **b.** Convenience of the public; and
- **c.** Access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Procuring Entity or any other person.

The contractor shall save harmless and indemnify the Procuring Entity in all claims, proceedings, damages, costs, charges and expenses arising out of, or in relation to, any such matters insofar as the contractor is responsible for them.

2.13 Responsibilities of the contractor

During the execution of the works, the contractor must keep the site reasonably free from all unnecessary obstruction. It must also store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish or temporary works that are no longer required.

Upon the issue of the Taking-Over Certificate, the contractor shall remove from that part of the site to which the certificate relates all equipment, surplus material, rubbish and temporary works of every kind. It must leave such part of the site and works clean and in a workmanlike condition to the satisfaction of the Procuring Entity's engineer. However, it is entitled to retain until the end of the defects liability period such materials, equipment and temporary works he may need to fulfill his obligations in relation to the project.

2.14 Materials and equipment paid for by the Procuring Entity

Unless otherwise provided for in the contract, the contractor must turn-over to the Procuring Entity all excess, used, unused and/or reusable materials paid for in the contract such as, formworks, laboratory apparatus and equipment, vehicles, field office, safety gadgets and devices, etc. Vehicles and equipment should be in operating condition when turned over.

CONTRACT PRICE AND PAYMENT

1. LEGAL REFERENCE

Section 61 and Annex "E" of the revised IRR is the legal bases for contract price and payment.

2. RULES AND GUIDELINES

2.1 Fixed contract prices

Price escalation is generally not allowed.² For the given scope of work in the contract as awarded, the price must be considered as a fixed price, except under extraordinary circumstances as determined by the NEDA in accordance with the Civil Code of the Philippines, upon recommendation of the Procuring Entity concerned, and upon prior approval of the GPPB. Any request for price escalation under extraordinary circumstances should be submitted by the concerned entity to the NEDA with the endorsement of the Procuring Entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.

"Extraordinary circumstances" shall refer to events defined in the Civil Code of the Philippines, consistent with the guidelines issued by the GPPB. In particular, the Revised Guidelines for Contract Price Escalation provides that the term "extraordinary circumstances" shall refer to the following Articles of the Civil Code of the Philippines:

- a. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen to which could be reasonable foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents; provided that the following are present:
 - The cause of the extraordinary circumstances must be independent of the will of the parties;
 - *ii.* The event must be either unforeseeable or unavoidable;
 - **iii.** The event must be such as to render it difficult but not impossible for the supplier to fulfill his obligation in a normal manner or within the contemplation of the parties;

For FAPs, the bidding documents would have to state whether the bid prices will be fixed or whether price adjustments would be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving completion of works generally within twelve (12) months in the case of JBIC- or eighteen (18) months in the case of World Bank-funded projects, but should be included in contracts which extend beyond eighteen (18) months. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the contractor. The use of the formula method of price adjustment is preferable to that of

- *iv.* The supplier must be free from any participation in or aggravation of the injury to the Procuring Entity; and
- **v.** The allowance for price escalation, should an ordinary fortuitous event occur, is stipulated by the parties or the nature of the obligation requires the assumption of risk.
- b. Article 1250, as it pertains to Extraordinary Inflation or Deflation, which may refer to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed in accordance with the Guidelines for Contract Price Escalation, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.
- c. Article 1680, as it enumerated Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake; provided that the circumstances before, during and after the event shall be taken into consideration.

2.2 Denomination of contract prices

All contract prices must be denominated and payable in Philippine currency, and this shall be stated in the bidding documents. Should the Procuring Entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening (Section 61.4 of the revised IRR).

2.3 Method of payment for works

The method and conditions of payment shall be specified in the contract. Generally, payment for works can be made in two ways: unit price or lump-sum payment. Unit price payments are made based on the unit prices of specific items as applied to actual quantities accomplished according to the Statement of Work Accomplished. Lump-sum payments, on the other hand, are based on the value of actual accomplished work in proportion to total contract cost.

Procuring entity is allowed to issue a letter of credit in favor of a local or foreign manufacturers or suppliers, with respect to any procurement (Section 42.5 of the revised IRR).

2.4 Schedule of payments

Any kind of payment, including advance and progress payments, must be made by the Procuring Entity as soon as possible, but in no case later than forty-five (45) days after the submission of an invoice or claim by the contractor, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract. The Procuring Entity must also ensure that all accounting and auditing requirements are met prior to payment. The Procuring Entity should commence inspection within twenty-four (24) hours after delivery.

2.5 Currency of payments

Payments must be made in the Philippine currency.³

2.6 Advance payment for mobilization

A contractor may request for advance payment for mobilization. However, the payment must not exceed fifteen percent (15%) of the total contract price, and must be made in lump sum or, at the most, two (2) installments according to a schedule specified in the ITB and other relevant bidding documents. Moreover, it must be made only upon the submission by the contractor of a written request. The contractor must also submit to the Procuring Entity an irrevocable standby letter of credit from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the Procuring Entity. This letter of credit, surely bond or bank guarantee must be equal in value to the advance payment and must be accepted by the Procuring Entity.

2.7 Recovery of advance payment made to a contractor

The Procuring Entity must recover the advance payment by deducting from the progress payments to the contractor fifteen percent (15%) until the advance is fully liquidated within the duration of the contract, and before full payment is made to the contractor.

The contractor may reduce his standby letter of credit or guarantee/surety instrument by the amounts recovered to liquidate the advance payment.

For FAPs, payment of the contract price should be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder. When the bid price is required to be stated in local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments should be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain. At any rate, where the price is to be paid, wholly or partly, in a currency or currencies other than the currency of the bid, the exchange risk should not be borne by the supplier or contractor and, to this end, the contract should provide that amounts payable in a currency or currencies other than that of the bid should be calculated at the rates of exchange between these currencies specified for the purpose in the bidding documents.

2.8 Incentive bonuses

No incentive bonus, in whatever form or for whatever purpose, must be allowed.⁴ (Section 42.4 of the revised IRR)

2.9 Progress Payment

The first progress payment may be paid by the Procuring Entity to the contractor after twenty percent (20%) of the work had been accomplished. Thereafter, payments can be made once a month, provided that the latter submits a Progress Billing or a request for payment for work accomplished. Such request for payment, including the Statement of Work Accomplished by the contractor, must be verified and approved by the government project engineer concerned. Except as otherwise stipulated in the ITB, materials and equipment delivered on the site but not completely put in place shall not be included for payment.

The Procuring Entity has the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities. It must not process any progress payment unless the discovered defects are corrected.

2.10 Retention Money

"Retention money" refers to the amount equal to ten percent (10%) of the progress payments, before deductions are made, that is withheld by the Procuring Entity to cover the uncorrected discovered defects and third party liabilities. It is collected from all progress payments until works equivalent to fifty percent (50%) of the value of works, as determined by the Procuring Entity, is accomplished. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall continue to be imposed.

The total "retention money" shall be due for release after the defects liability period, upon final acceptance of the works.

The contractor may request the Procuring Entity that, instead of retention money being withheld from each progress billing, it issues in favor of the government, irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand. These financial instruments must be of amounts equivalent to the retention money substituted for and acceptable to government. They must also be valid for duration to be determined by the concerned implementing office/agency or Procuring Entity and will answer for the purpose for which the ten percent (10%) retention is intended. The

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⁴ For FAPs, provision may be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the procuring entity. The option to grant incentive bonus is given by the IFIs to the procuring entity

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Procuring Entity, for its part, may agree to the request, provided that the project is on schedule and is satisfactorily undertaken.⁵

2.11 Final Payment

The contractor may request for the penultimate payment for the project it is implementing when ninety percent (90%) of the work has been completed.

The final payment will be made upon one hundred percent (100%) completion of the work. This payment will be reduced by whatever balance remains of the amount that is needed in order to return to the government the 15% advance payment previously made. Ten percent (10%) of the remainder will then be retained to cover for all defects that may be detected, including maintenance costs for one year after project completion. This amount will be returned to the contractor only after the one-year defects liability period. An alternative to the ten percent (10%) final retention would be for the contractor to post a guarantee bond equivalent to 10% of the contract price.

 $^{^{5}\,}$ For FAPs, the usual percentage of retention is from five percent (5%) to ten percent (10%).

VARIATION ORDERS

1. LEGAL REFERENCE

Annex "E" of the revised IRR.

2. VARIATION ORDER DEFINED

A Variation Order refers to any increase/decrease in quantities within the general scope of the project as bid and awarded, in any of the following aspects:

- **a.** Introduction of new work items that are not included in the original contract; or
- b. Reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the pre- construction plans used for purposes of the bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the government after award of the contract, or during actual construction.

A Variation Order may either be in the form of a Change Order or Extra Work Order.

A Change Order covers any increase/decrease in quantities of original work of items in the contract.

An Extra Work Order covers the introduction of new work necessary for the completion/ improvement or protection of the project which are not included as items of work in the original contract. As an example, there may be subsurface or latent physical conditions at the site that differ materially from those indicated in the contract. There might also be duly unknown physical conditions at the site of an unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.

The addition/deletion of works should be within the general scope of the project as bid and awarded, and the deletion of the work should not affect the integrity and usefulness of the structure.

3. RULES AND GUIDELINES

3.1 When to issue

Variation Orders may be issued by the Procuring Entity concerned at any time during contract implementation. However, the adjustment provided for in these orders must be necessary to fully meet the requirements of the project. The issuance of a Variation Order must conform to the following:

- **a.** That there will not be any short changes in the original design;
- **b.** That it will not affect the structural integrity and usefulness of the structure; and
- **c.** That it is covered by a CAF.

3.2 Limits

The net cumulative amount of the Variation Order should not exceed positive ten percent (+10%) of the original project cost.

If the adjustments provided for in a Variation Order costs more than ten percent (10%) of the original project costs, these shall be the subjects of another contract to be bid out if the works are separable from the original contract. However, if these adjustments are urgently necessary to complete the original scope of work, the Head of the Procuring Entity may authorize the Variation Order beyond ten percent (10%) but not more than twenty percent (20%), subject to the guidelines to be determined by the GPPB.

In case the Variation Order exceeds ten percent (10%), the Procuring Entity must ensure that appropriate sanctions are imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the conditions that led to the need for adjustments costing more than ten percent (10%) of the original total contract price.

3.3 Start of work and Payments under Variation Orders

Under no circumstances can a contractor proceed to commence work under any Change Order or Extra Work Order unless the HOPE or his/her duly authorized representative has approved the order.

The Procuring Entity's Regional Director or equivalent official, under whose jurisdiction the project is located, may, subject to the issuance of the CAF, authorize the immediate start of work under any Change or Extra Work Order, subject to any or all of the following conditions:

- a. In the event of any emergency where the prosecution of the work is urgent to avoid any detriment to public service, or damage to life and/or property; and/or
- **b.** When time is of the essence, for works in the critical path based on the approved PERT/CPM;

However, the approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less. Furthermore, immediately after the start of work, the corresponding Change Order or Extra Work Order must be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the HOPE or his duly authorized representative.

For a Change Order or Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract, no work thereon may be commenced

unless said Change Order or Extra Work Order has been approved by the Secretary or his duly authorized representative.

3.4 Rules on price adjustments due to a Variation

The payment to the contractor for additional work under Variation Orders must be derived based on the following:

- **a.** For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items in the original contract shall be used.
- b. For additional/extra works duly covered by Extra Works Orders involving new work items that are not in the original contract, the unit prices will be based on the direct unit costs used in the original contract (e.g., unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the government and the contractor. The direct unit costs of new components must also be based on the contractor's estimate as validated by the Procuring Entity, in comparison with the construction price indices issued by the NSO. The Procuring Entity must validate these prices through a documented canvass among three eligible suppliers registered with the DPWH or PhilGEPS in accordance with existing rules and regulations. The direct cost of the new work item must then be combined with the mark-up factor (i.e. taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.

The request for payment by the contractor for any extra work must be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. This request for payment must be included in the contractor's statement for progress payment.

3.5 Participants in the issuance of a Variation Order

The following parties are involved in the issuance of a Variation Order:

- a. PMO or end-user unit;
- **b.** Contractor;
- **c.** HOPE or his duly authorized representative.

4. PROCEDURES

The following must be undertaken in issuing a Variation Order:

- 4.1 Within seven (7) calendar days after the contractor discovers that there is a need for variation order, the said contractor must communicate the same to the Procuring Entity by giving it notice of the findings. Afterwards, the contractor has twenty-eight (28) days to submit a full documentation of the variation order. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim.
- **4.2** If the Project Engineer finds that a Change Order or Extra Work Order is justified, he/she must prepare the proposed order, accompanied with the following:
 - **a.** Notices submitted by the contractor;
 - **b.** The plans to effect the adjustments;
 - c. The contractor's computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof; and
 - **d.** A detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order of Extra Work Order
 - The project engineer then submits the same to the Regional Director or equivalent official of the office/agency/corporation/LGU concerned.
- 4.3 The Head of End-User/PMO or equivalent official concerned, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such verification shall be submitted directly to the Head of the End-User/PMO.
- 4.4 The Head of the End User/PMO or equivalent official concerned, after being satisfied that such Change Order or Extra Work Order is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the head of Procuring Entity for consideration.
- 4.5 If, after review of the plans, quantities and estimated unit cost of the items of the work involved, the proper office of the Procuring Entity empowered to review and evaluate Change Orders or Extra Work Orders recommend approval thereof, the Head of the Procuring Entity or his duly authorized representative, finding that the Change Order or Extra Work Order is in order and covered by the CAF, shall approve the same.
- 4.6 Upon approval by the HOPE or his duly authorized representative, the PMO or end-user unit shall notify the contractor to proceed with the work/delivery of items in accordance with the amendment.

- 4.7 The PMO shall likewise post the Variation Order in the PhilGEPS and website of the Procuring Entity, if any.
- 4.8 The contractor shall proceed with the work/delivery of items in accordance with the amended contract.

The timeframe for the processing of Variation Orders from the preparation up to the approval by the Procuring Entity concerned should not exceed thirty (30) calendar days.

SUSPENSION OF WORK

1. LEGAL REFERENCE

Annex "E" of the revised IRR.

2. RULES AND GUIDELINES

2.1 Conditions on suspension of work by Procuring Entity

The Procuring Entity has the authority to suspend the work wholly or partly by written order due to the following:

- **a.** Force majeure or any fortuitous event;
- **b.** Failure on the part of the contractor to:
 - i. Correct bad conditions which are unsafe for workers or for the general public;
 - ii. Carry out valid orders given by the Procuring Entity; or
 - *iii.* Perform any provisions of the contract.
- **c.** Adjustment of plans to suit field conditions as found necessary during construction.

It is suggested that the contract specify a period of seven (7) calendar days from date of receipt of the written order or notice, after which the said order may take effect and thus bind the contractor to immediately comply therewith. The order/notice may specify the period deemed necessary for its effectivity.

2.2 Conditions on suspension of work by contractor

The contractor or its duly authorized representative has the right to suspend work operation on any or all projects/activities along the critical path of activities due to any of the following:

- a. There exist right-of-way problems that prohibit the contractor from performing work in accordance with the approved construction schedule;
- **b.** Requisite construction plans, which must be furnished by the Procuring Entity, are not issued to the contractor, in the process precluding any work called for by such plans.
- c. Peace and order conditions make it extremely dangerous, if not impossible, to work, such conditions having been certified in writing by the Philippine National Police station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government Regional Director;

- **d.** There is a failure on the part of the Procuring Entity to deliver government–furnished materials and equipment as stipulated in the contract; or
- e. The payment of the contractor's claim for progress billing beyond forty-five (45) calendar days from the time the claim has been certified by the Procuring Entity's authorized representative as having been supported by complete documentation, unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

The contractor may suspend work fifteen (15) calendar days after the district engineer/regional director/consultant or equivalent official, as the case may be, have received a written notice of the suspension of work.

2.3 Extension of contract time due to work suspension

Contract time is extended due to work suspension(s), but only in cases when the total suspension or suspension of activities along the critical path is not due to the fault of the contractor. In such cases, the elapsed time between the effective order suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

2.4 Contract price adjustment resulting from work suspensions

No payment can be made to the contractor for any standby time expense during the suspension period, except when prior clearance is secured from the HOPE and for justifiable reasons.

2.5 Resumption of work

Work must be resumed either upon notice from the Procuring Entity of the lifting of the suspension order or upon the expiration of the suspension order.

2.6 Participants in the issuance of Suspension Order

The following parties are involved in the issuance of a Suspension Order

- a. PMO or end-user unit;
- **b.** HOPE or his/her duly authorized representative; and
- c. Contractor.

3. PROCEDURES

The following steps are undertaken in the issuance of a suspension order by the Procuring Entity:

3.1 The PMO or end-user unit determines the existence of any of the grounds for suspension enumerated above.

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- 3.2 The PMO or end-user unit drafts the suspension order for the approval of the HOPE.
- **3.3** The suspension order is issued to the contractor, stating the grounds therefor.
- **3.4** Prior to the expiration of the suspension order, the PMO or end-user unit shall determine whether or not the grounds for suspension still exist.
 - *i.* If such grounds continue to exist, or if it is no longer practicable to continue with the work, it shall terminate the work subject of the order or cancel the delivery of the items subject of such suspension.
 - *ii.* If, however, the grounds for suspension no longer exist, and continuation of the work is practicable, the PMO, with the approval of the Head of the Procuring Entity or his/her duly authorized representative, shall lift the suspension order and notify the contractor to proceed with the work/delivery of items in accordance with the amended contract.

CONTRACT TIME EXTENSION

1. LEGAL REFERENCE

Annex "E" of the revised IRR.

2. RULES AND GUIDELINES

2.1 Conditions of contract time extension

- a. There is additional work or other special circumstances that would entitle the contractor to an extension of its contract:
- b. The affected activities fall within the critical path of the PERT/CPM network;
- c. The contractor shall have notified the Procuring Entity that the amount of additional work or the occurrence of the special circumstance merits the extension of its contract, and that it had done so before the expiration of the contract and within thirty (30) calendar days after the start of the additional work or of the special circumstance has arisen; and
- d. The Procuring Entity, after due investigation, finds the request justified, determines the appropriate extension period, and approves the request of the contractor for a contract extension.

If the contractor fails to notify the Procuring Entity within the time period provided for, it waives any claims to contract extension.

2.2 Special Circumstances of contract time extension

- **a.** Major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics;
- **b.** Non-delivery on time of materials, working drawings, or written information to be furnished by the procuring entity;
- Non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralysis of construction activities;
- Region-wide or nationwide shortage of construction materials, as certified by the DTI Secretary;
- Region-wide or nationwide general labor strikes, as certified by the DOLE Secretary; and
- **f.** Serious peace and order problems as certified by the DILG or AFP Provincial Commander and approved by the DND Secretary.

2.3 Circumstances for disapproving request for contract extension

No extension of contract time will be granted if the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents. The contract period includes a particular number of unworkable days, to cover days when unfavorable weather conditions and special circumstances not within the control of the contractor prevent any work from being done. This number of unworkable days should be consumed first before any contract extension can be considered. For example, if the total project duration is two hundred (200) calendar days inclusive of the forty-five (45) calendar days of unfavorable weather condition, the contractor cannot claim for time extension citing unfavorable weather condition if the forty-five (45) calendar days anticipated unfavorable weather condition has not been consumed.

Thus, no contract extension must be given to a contractor due to:

- a. Ordinary unfavorable weather conditions, in that such weather conditions had already been taken into consideration and anticipated in the computation of the unworkable days; and
- **b.** Inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.

If the reason of unfavorable weather condition will be used for the time extension, the considerations of both nationwide and region wide conditions should be looked into, using the records from PAG-ASA.

DELAY IN WORK COMPLETION AND LIQUIDATED DAMAGES

1. LEGAL REFERENCE

Section 68 and Annex "E" of the revised IRR and the Civil Code of the Philippines Article 2226 provide the rules in relation to delivery and liquidated damages.

2. LIQUIDATED DAMAGE DEFINED

Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof (Civil Code of the Philippines Article 2226).

3. RULES AND GUIDELINES

3.1 Applicable period for the completion of work

The contractor must complete the work procured within the period prescribed by the Procuring Entity as specified in the contract.

If delays are likely to be incurred, the contractor must notify the Procuring Entity in writing, stating therein the duration and causes of the expected delay. The Procuring Entity may grant time extensions, at its discretion, if such extensions are meritorious, with or without liquidated damages.

In all cases, the request for extension shall always be filed before the expiry of the original completion date. Maximum allowable extension shall not exceed the original construction period.

3.2 Grounds for imposition of liquidated damages

When the contractor refuses or fails to satisfactorily complete the works under the contract within the specified contract duration, plus any time extension duly granted, and is thus considered in default under the contract, it will be liable for liquidated damages for the delay. The Procuring Entity need not prove that it has incurred actual damages to be entitled to liquidate damages from the contractor, and the same shall not be by way of penalty. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or from the retention money or other securities posted by the contractor, whichever is convenient to the Procuring Entity.

3.3 Amount of Liquidated Damages

The formula for computing liquidated damages for the procurement of infrastructure projects is now the same with goods and consulting services which is one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay.

In no case shall the sum of liquidated damages reach ten percent (10%) of the contract amount. If it does, the contract shall automatically be rescinded by the Procuring Entity, without prejudice to other courses of action and remedies open to it. The Procuring Entity may also take over the contract or award the same to a qualified supplier through negotiation. In addition to the liquidated damages, the erring contractor's performance security shall also be forfeited.⁶

4. PROCEDURES

If a contractor incurs a delay and wishes to request for an extension of the completion or construction period:

- 4.1 It must submit a written request to the PMO or end-user unit for an extension of the completion or construction period, citing the reason/s for such delay.
- **4.2** The PMO or end-user unit shall either approve or disapprove the request for extension.
- **4.3** If the extension is granted, the liquidated damages shall not be imposed and the contractor will be so informed in writing.
- 4.4 If, however, the request for extension is denied, the PMO or end-user unit shall inform the contractor in writing of such denial, and ensure that the said notice or communication is received by the latter within a reasonable time from receipt of the request for extension. The Procuring Entity then imposes the liquidated damages in accordance with the provisions of the contract and the procedures outlined below Steps 2 to 3.

If the Contractor incurs a delay and there is no request for extension:

- **a.** The PMO or end-user unit shall, within a reasonable time from the first day of delay, inform the contractor that the Procuring Entity will impose the liquidated damages agreed upon by the parties.
- **b.** Upon contract completion, the PMO or end-user unit and the Acceptance Committee shall record the delay in the inspection documents, noting therein the amount of the liquidated damages imposable on the contractor.
- **c.** The amount of liquidated damages due shall be deducted from the total amount payable to the contractor, and the same shall be reflected in the disbursement vouchers. Or, if the contract provides that the liquidated damages shall be

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 $^{^6}$ For FAPs, the applicable liquidated damages is at least 1/10 of 1% of the cost of unperformed portion for every day of delay. The maximum deduction shall be 10% of the amount of the contract, and the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.

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collected from securities or warranties posted by the contractor, the PMO or enduser unit shall so inform the official authorized to call on the securities or warranties about the delay and the corresponding liquidated damages imposable.

CONTRACT TERMINATION FOR DEFAULT, UNLAWFUL ACTS OR INSOLVENCY

1. LEGAL REFERENCE

Guidelines on Termination of Contracts, approved by the GPPB through Resolution 018- 2004, dated December 22, 2004. Appendix 4 of the revised IRR attached in the Handbook on the Philippine Government Procurement, Fifth Edition.

2. RULES AND GUIDELINES

2.1 Grounds for contract termination for Default

The HOPE may terminate a contract for default when any of the following conditions attend its implementation:

- a. Due to the contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with P.D. 1870;
- **b.** Due to the contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or

c. The contractor:

- Abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
- *ii.* Does not actually have on the project site the minimum essential equipment listed on the bid necessary to prosecute the works in accordance with the approved work plan and equipment deployment schedule as required for the project;
- *iii.* Does not execute the works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
- *iv.* Neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
- **v.** Sub-lets any part of the contract works without approval by the Procuring Entity.

The rescission of the contract shall be accompanied by the confiscation by the Procuring Entity of the contractor's performance security. The contractor will also be recommended for blacklisting. The contractor shall be paid on a *quantum meruit* basis.

2.2 Grounds for contract termination due to Unlawful Acts

The Procuring Entity may terminate the contract in case it is determined *prima facie* that the contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- a. Corrupt, fraudulent, collusive and coercive practices;
- **b.** Drawing up or using forged documents;
- **c.** Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- **d.** Any other act analogous to the foregoing. The contractor shall be paid on a *quantum meruit* basis.

2.3 Grounds for Contract Termination due to Insolvency

The Procuring Entity should terminate the contract if the contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the contractor.

2.4 Conditions for contract termination by contractor

The contractor may terminate its contract with the Procuring Entity if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

- a. Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract; or
- b. The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the AFP Provincial Commander and approved by the DND Secretary.

The contractor must serve a written notice to Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

In cases of termination, the Procuring Entity shall return to the contractor its performance security and unpaid claims.

CONTRACT TERMINATION FOR CONVENIENCE

1. CONTRACT TERMINATION FOR CONVENIENCE DEFINED

The Procuring Entity, by written notice sent to the contractor, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the Procuring Entity's convenience, the extent to which performance of the contractor under the contract is terminated, and the date upon which such termination becomes effective.

2. GROUNDS FOR CONTRACT TERMINATION FOR CONVENIENCE

Any of the following circumstances may constitute sufficient grounds to terminate a contract for convenience:

- 2.1 If physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible, as determined by the Head of the Procuring Entity;
- 2.2 The HOPE has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
- **2.3** Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity;
- **2.4** Failure of the Procuring Entity to acquire the necessary right-of-way; or
- **2.5** Any circumstance analogous to the foregoing.

3. PROCEDURES

The following steps are undertaken in the termination of contracts:

- **3.1** Upon receipt of a written report of acts or causes which may constitute grounds for contract termination, or upon its own initiative, the end-user unit shall verify the existence of such grounds and cause the execution of a Verified Report with the Project Engineer.
- 3.2 The HOPE shall issue a written notice to terminate the contract upon recommendation of the PMO/End-user. The written notice shall include the following information: grounds for termination, extent of termination, action to be taken by the Contractor and special instructions to the PMO/End-User.
- **3.3** Upon receipt of the Notice of Termination, the Contractor shall submit to the HOPE a verified position paper stating why the contract should not be terminated.
- 3.4 The HOPE shall decide whether or not to terminate the contract upon receipt of the verified position paper. It may create a Contract Termination Review Committee to assist in the discharge of its functions. All decisions recommended by the CTRC shall be subject to the

approval of the Head of the Procuring Entity. The Head of the Procuring Entity shall serve a written notice to the Contractor of its decision.

- 3.5 If the Procuring Entity terminates the contract due to default, insolvency, or for cause, it may enter into a negotiated procurement pursuant to Section 53(c) of R.A. 9184 and the revised IRR.
- 3.6 In case of contract termination by the Contractor, the Contractor must serve a written notice to the Procuring Entity of its intention to terminate the contract. The Contract is deemed terminated if it is not resumed after the receipt of such notice by the Procuring Entity.

Also see the Guidelines on Termination of Contracts approved by the GPPB in Resolution No. 018-2004, dated December 22, 2004.

May termination be allowed for reasons other than those attributable to the contractor?

The Procuring Entity, by written notice sent to the contractor, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the Procuring Entity's convenience, the extent to which performance of the contractor under the contract is terminated, and the date upon which such termination becomes effective.

What circumstances may constitute sufficient grounds to terminate a contract for convenience?

Any of the following circumstances may constitute sufficient grounds to terminate a contract for convenience:

- 1. If physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible, as determined by the HOPE;
- 2. The HOPE has determined the existence of conditions that make project implementation impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies;
- Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity; or
- **4.** Any circumstance analogous to the foregoing.

Also see the Guidelines on Termination of Contracts approved by the GPPB in Resolution 018-2004, dated December 22, 2004.

CONTRACT COMPLETION

1. LEGAL REFERENCE

Annex "E" of the revised IRR.

2. PROCEDURE

Once the project reaches an accomplishment level of ninety-five percent (95%) of the total contract amount, the Procuring Entity may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. This punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not prejudice the Procuring Entity's claim for liquidated damages.

WARRANTY

1. LEGAL REFERENCE

Section 62 of the revised IRR provides for the statutory basis on Warranty.

2. PURPOSE

A warranty is required to ensure that the contractor will correct structural defects and failures. It should be noted that a one-year period after the completion of the project, called the defects liability period, is observed until final acceptance by the Procuring Entity. At any rate, the length of the warranty period will depend on the nature of the project.

3. RULES AND GUIDELINES

3.1 Arrangements during the Defects Liability Period

The defects liability period for infrastructure projects shall be one year from project completion up to issuance of the Certificate of Final Acceptance by the government. As such, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the government and shall be held responsible for any damage or destruction of the works except those occasioned by force *majeure*. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work. During this period, the contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure projects on account of the use of materials of inferior quality within ninety (90) days from the time the HOPE has issued an order to undertake repair.

In case of contractor's failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand at the cost of the contractor (Section 62.2.2.1 of the revised IRR).

Any contractor who fails to comply with the preceding paragraph shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs (Section 62.2.2.2 of the revised IRR).

To guarantee that the contractor shall perform his responsibilities as prescribed in Section 62.2.3.1 (a) of the revised IRR, it shall be required to post a warranty security in accordance with the following schedule:

	FORM OF WARRANTY SECURITY	AMOUNT OF WARRANTY SECURITY (EQUAL TO PERCENTAGE OF THE TOTAL CONTRACT PRICE)
a.	Cash or Letter of Credit issued by a Universal or Commercial Bank: Provided, however, that the LC shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Five percent (5%)
b.	Bank guarantee confirmed by a Universal or Commercial Bank.	Ten percent (10%)
C.	Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized issue such security.	Thirty percent (30%)

The warranty security shall be denominated in Philippine Pesos, remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the procuring entity, and returned only after the lapse of the said one (1) year period.

During the defects liability period, the security posted is still the performance security. Hence, the coverage of the performance security is from contract signing until issuance of the Certificate of Final Acceptance; thereby covering contract execution, completion and the defects liability period.

3.2 Arrangements during the Warranty Period

After issuance of the Certificate of Final Acceptance of the project by the government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties (Section 62.2.2 of the revised IRR):

a. Permanent Structures: Fifteen (15) years

Buildings of types 4 (steel, iron, concrete, or masonry construction with walls, ceilings, and permanent partitions of incombustible fire resistance) and 5 (steel, iron, concrete, or masonry construction), steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures;

b. Semi -Permanent Structures: Five (5) years

Buildings of types 1 (wooden), 2 (wood with 1 hour fire resistance), and 3 (masonry and wood construction), concrete roads, asphalt roads, river control, drainage, irrigation and drainage canals, municipal ports and river landing, deep wells, rock causeway, pedestrian overpass, and other similar structures; and

c. Other Structures: Two (2) years

Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.

3.3 Warranty if the project is a combination of different types of structures

A schedule of warranty shall be made to cover the warranty for the different types of structures for the project.

3.4 Responsible for defects/failures during the Warranty period

In cases where structural defects and/or failures arise during the warranty period, the following persons/parties shall be held liable individually or solidarily, as the case may be (Section 62.2.3 of the revised IRR):

- a. Contractor Where structural defects and/or failures arise due to faults attributable to improper construction use of inferior quality/substandard materials, and any violation of the contract plans & specifications, the contractor shall be held liable;
- b. Consultants Where structural defects and/or failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or undertook construction supervision for the project shall be held liable;
- c. Procuring Entity's Representatives/Project Manager/Construction Managers and Supervisors The project owner's representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the structural defects/failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;
- d. Third Parties Third Parties shall be held liable in cases where structural defects/failures are caused by work undertaken by them such as leaking pipes, diggings/excavations, underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.
- e. Users In cases where structural defects/failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable.

The term "structural defects" shall mean major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure. The term "Structural Failures" is defined as an occurrence where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public (Section 62.2.3.1 of the revised IRR).

In case of structural defects/failures occurring during the applicable warranty period provided above, the government shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable, of expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of warranty securities posted in favor of the government (Section 62.2.4 of the revised IRR).

SECTION 6

GUIDELINES ON THE PROCUREMENT AND IMPLEMENTATION OF CONTRACT FOR DESIGN AND BUILD INFRASTRUCTURE PROJECT

DESIGN AND BUILD

1. LEGAL REFERENCE

Annex "G" of the revised IRR of the Handbook on Philippine Government Procurement, Fifth (5th) Edition, entitled the Guidelines for the procurement and implementation of contract for design and build infrastructure projects which was took effect through GPPB Resolution No. 22-2007 dated 10 November 2007.

2. PURPOSE

The guideline was formulated to determine the conditions for the use of the design and build scheme for infrastructure projects and the procedures for the implementation thereof.

3. SCOPE AND APPLICATION

The guideline shall govern the procurement and implementation of contracts for design and build infrastructure projects and shall supplement applicable provisions of Republic Act No. 9184 and its Implementing Rules and Regulations Part A in particular Section 17.6 and Annex E.

4. RULES AND GUIDELINES

4.1 GUIDING PRINCIPLES

The procuring entity, prior to resorting to the design and build scheme, should consider the following advantages and disadvantages of said scheme:

4.1.1 Advantages:

- a. In making use of the design and build scheme, the procuring entity is assured that only one contractor shall bear all responsibilities, which shall include the risks related to design;
- **b.** The design and construction periods, as well as the final project cost, will definitely be reduced; and
- **c.** The procuring entity is assured of the quality of the structure, considering that only infrastructure and design experts are involved in a construction utilizing the design and build scheme.

4.1.2. Disadvantages:

a. Procuring entities should, however, take into account that in utilizing the design and build scheme for a particular project, contractors are given too much discretion in determining the project cost and there is difficulty in predicting its final cost until the actual commencement of construction; and b. Considering that the extent of the integration of design and construction of the project is exceptionally dependent on the contractor, there may be cases when the end-result may not be exactly in accordance with what the procuring entity has required.

4.2 DEFINITION OF TERMS

4.2.1 Approved Budget for the Contract

This shall be a lump sum amount that shall cover the cost of design and construction works (at the option of the procuring entity) based on the conceptual design and performance specifications and in accordance with applicable provisions of the law or agency guidelines. The ABC shall be calculated based on either the approximate quantities of work of the conceptual design, from standardized designs or from cost records of previous projects of similar kind.

4.2.2 Bidding Documents for Design and Build Scheme

These shall basically be similar to the bidding documents for infrastructure projects and shall also include the performance specifications and parameters to be followed by the design and build contractors and the method for allocation of risks for the design and build contract, among others.

4.2.3 Conceptual Design

This shall describe the general idea of the procuring entity with regard to the completed facility and shall identify the scope or physical components and structures, specific outputs and requirements of the structures and proposed methods of construction, where necessary.

4.2.4 Design and Build Projects

This refers to infrastructure projects where the procuring entity awards a single contract for the architectural/engineering design and construction to a single firm, partnership, corporation, joint venture or consortium.

4.2.5 Performance Specifications and Parameters

The procuring entity shall define the required performance specifications and criteria and its means of measurement based on the operating outputs and in accordance with appropriate design and construction standards, legal and technical obligations and any other relevant government commitments as required by existing laws and regulations. It shall not be drawn up to favor a particular solution, design and construction method.

4.2.6 Preliminary Investigations

These shall include, among others, information on soil, geotechnical, hydrologic, hydraulic, seismic, traffic, and environmental conditions that shall be used to define project design criteria, to set the basis for any changed conditions and establish preliminary project cost estimates.

4.2.7 Preliminary Survey and Mapping

These shall determine boundaries and provide stationing along control lines to establish feature and design criteria location, and identify existing and future right-of-way limits and construction easements associated with the procuring entity's conceptual design.

4.2.8 Project Description

This shall define the objectives, purpose, limitations or constraints, as well as the allocation of risks between the procuring entity and the winning bidder.

4.2.9 Utility Locations

The procuring entity shall provide information on existing utilities in and around the project's area.

4.3. CONDITIONS FOR THE USE OF THE DESIGN AND BUILD SCHEME

- **4.3.1** The Design and Build scheme shall be applied under any of the following cases:
 - a. For flagship, priority and fast track projects that need to be completed on a tight completion schedule, as included in the Medium Term Public Investment Program for national projects and in the Regional Development Investment Plan for regional and provincial projects;
 - **b.** For infrastructure projects requiring advanced engineering or construction technologies or whose intellectual property rights belong to private companies;
 - c. For infrastructure projects where design, equipment, plant and construction can be provided exclusively by a company or where manufacturer's know-how is important in the construction of such facility; or
 - d. For small projects where there are previously approved drawings or standardized designs and an innovation in design and construction methods under the design and build scheme will result in lower costs and higher quality projects. Examples of these are school buildings, rural health units, among others.

4.3.2 All design and build projects shall be included in the Annual Procurement Plan of the procuring entity concerned and shall be subject to prior approval by the head of the procuring entity or his/her duly authorized representative.

4.4. CREATION OF DESIGN and BUILD COMMITTEE

The procuring entity may create a Design and Build Committee composed of highly technical personnel experienced in the field of architecture, engineering and construction in the particular type of project to be bid. The DBC shall assist the project management office in the preparation of the conceptual design and performance specifications and parameters, review of detailed engineering design and supervision of the project. It shall, likewise, assist the Bids and Awards Committee and the Technical Working Group in the evaluation of technical proposals in accordance with the criteria set in the bid documents.

4.5. PRELIMINARY DESIGN AND CONSTRUCTION STUDIES

No bidding and award of design and build contracts shall be made unless the required preliminary design and construction studies have been sufficiently carried out and duly approved by the head of the procuring entity that shall include, among others, the following:

- a. Project Description
- **b.** Conceptual Design
- **c.** Performance Specifications and Parameters
- d. Preliminary Survey and Mapping
- e. Preliminary Investigations
- f. Utility Locations
- **g.** Approved Budget for the Contract
- **h.** Proposed Design and Construction Schedule
- *i.* Minimum requirements for a Construction Safety and Health Program for the project being considered
- j. Tender/Bidding Documents

The above data are for reference only. The procuring entity does not guarantee that these data are fully correct, up to date, and applicable to the project at hand. The contractor is responsible for the accuracy and applicability of all data, including the above, that it will use in its design and build proposal and services.

The acquisition of right-of-way and the conduct of eminent domain proceedings shall still be the responsibility of the procuring entity, which shall include a preliminary budget for this purpose.

4.6. DETAILED ENGINEERING REQUIREMENTS

- 4.6.1 Upon award of the design and build contract, the winning bidder shall be responsible for the preparation and submission of all necessary detailed engineering investigations, surveys and designs in accordance with the provisions of Annex "A" of the revised IRR (with the exception of the bid documents and the ABC).
- 4.6.2 The procuring entity shall ensure that all the necessary schedules with regard to the submission, confirmation and approval of the detailed engineering design and the details of the construction methods and procedures shall be included in the contract documents.
- 4.6.3 The procuring entity shall review, order rectification, and approve or disapprove for implementation only the submitted plans within these schedules. All instructions for rectification shall be in writing stating the reasons for such rectification. The design and build contractor shall be solely responsible for the integrity of the detailed engineering design and the performance of the structure irrespective of the approval/confirmation by the procuring entity.

4.7. ELIGIBILITY REQUIREMENTS

- **4.7.1.** The eligibility requirements for Design and Build Infrastructure Projects shall comply with the applicable provisions of Sections 23-24 of the revised IRR.
- **4.7.2.** A modified set of requirements integrating eligibility documents and criteria for infrastructure projects and consulting services shall be adopted, as follows:
 - Class "A" Documents (Legal, Technical and Financial Documents) and Class "B" Documents

The prospective bidder shall submit all the required Class "A" and Class "B" documents for infrastructure projects and the following:

i. Relevant statements of all on-going, completed, awarded but not yet started design/design and build related contracts, curriculum vitae of key staff, partners or principal officers; and

ii. Valid licenses issued by the Professional Regulatory Commission for design professionals in accordance with the provisions under Section 24.7.1 (Technical Documents) of the revised IRR.

b. Eligibility Criteria

- i. The eligibility of design and build contractors shall be based on the legal, technical and financial requirements abovementioned. In the technical requirements, the design and build contractor (as solo or in joint venture/consortia) should be able to comply with the experience requirement under the revised IRR of R.A. 9184, where one of the parties (in a joint venture/consortia) should have at least one similar project, both in design and construction, with at least 50% of the cost of the ABC.
- ii. If the bidder has no experience in design and build projects on its own it may enter into partnerships or joint venture with design or engineering firms for the design portion of the contract.
- *iii.* The relevant provisions under Section 23.11.2.1 of the revised IRR of R.A. 9184 on eligibility requirements shall be observed, with the following exceptions:

Joint ventures/consortia among Filipino contractors and consultants shall be allowed subject to pertinent laws and the relevant provisions of the revised IRR of R.A. 9184. The joint venture/consortia shall be jointly and severally responsible for the obligations and the civil liabilities arising from the design and build contract: Provided, however, That Filipino ownership or interest thereof shall be at least seventy five percent (75%): Provided further, That joint ventures/consortia in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by Filipinos and that Filipino ownership or interest shall not be less than twenty-five percent (25%): Provided, finally, that when the design services in which the joint venture wishes to engage involve the practice of professions regulated by law, all those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions and where foreign designers are required, the foreign designer must be authorized by the appropriate Philippine Government professional regulatory body to engage in the practice of those professions and allied professions.

5. PROCEDURES

5.1 SUBMISSION AND RECEIPT OF BIDS

- 5.1.1 In the submission of bids, the first envelope (Technical Proposal) shall contain all the required documents for infrastructure projects under Section 25.3 (b) of the revised IRR of R.A 9184 and the following additional documents:
 - **a.** Preliminary Conceptual Design Plans in accordance with the degree of details specified by the procuring entity;
 - **b.** Design and construction methods;
 - **c.** List of design and construction personnel, to be assigned to the contract to be bid, with their complete qualification and experience data; and
 - **d.** Value engineering analysis of design and construction method.
- **5.1.2.** The second envelope (Financial Proposal) shall contain all the required documents for infrastructure projects under Section 25.3 (b) of the revised IRR of R.A. 9184 and the following additional documents:
 - Lump sum bid prices, which shall include the detailed engineering cost, in the prescribed Bid Form;
 - **b.** Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid; and
 - **c.** Cash flow by the quarter and payments schedule.

5.2 BID EVALUATION

For the detailed evaluation of the design and build proposals a two-step procedure shall be adopted by the BAC, which may be undertaken with the assistance of the DBC.

5.2.1. First-Step Procedure

- a. The first step of the evaluation shall involve the review of the preliminary conceptual designs and track record submitted by the contractor as indicated in the bid documents using non-discretionary "passed/failed" criteria that involve compliance with the following requirements:
 - *i.* Adherence of preliminary design plans to the required performance specifications and parameters and degree of details;
 - ii. Concept of approach and methodology for detailed engineering, design and construction with emphasis on the clarity, feasibility,

innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions;

- iii. Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;
- b. For complex or unique undertakings, such as those involving highly specialized or advanced engineering technology, eligible bidders may be required, at the option of the agency concerned, to make an oral presentation within fifteen (15) calendar days after the deadline for submission of technical proposals.

5.2.2 Second-Step Procedure

Only those bids that passed the above criteria shall be subjected to the second step of evaluation. The BAC shall open the financial proposal of each "passed" bidder and shall obtain the correct calculated prices. The financial bids as so calculated shall be ranked, in ascending order, from lowest to highest. The bid with the lowest price shall be identified as the Lowest Calculated Bid.

5.3. POST-QUALIFICATION and AWARD OF THE CONTRACT

- 5.3.1. The LCB shall be subject to post-qualification in accordance with Section 34, Rule X of the revised IRR to determine its responsiveness to the eligibility and bid requirements. If after post-qualification the Lowest Calculated Bid is determined to be post-qualified it shall be considered the Lowest Calculated and Responsive Bid and the contract shall be awarded to the bidder. In case of post-disqualification of the LCB, the procedure under Section 34 of the revised IRR shall also be followed.
- **5.3.2.** The head of the procuring entity shall approve or disapprove the recommendations of the BAC within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the LCRB.
- **5.3.3.** The head of the procuring entity concerned shall award the contract to the said bidder pursuant to the provisions of Section 37, Rule XI of the revised IRR.

5.4 CONTRACT IMPLEMENTATION

As a rule, contract implementation guidelines for the procurement of infrastructure projects shall comply with Annex "E" of the revised IRR. The following provisions shall supplement these procedures:

- **5.4.1.** No works shall commence unless the contractor has submitted the required documentary requirements and the procuring entity has given written approval. Work execution shall be in accordance with reviewed and approved documents.
- **5.4.2.** The contractor shall be responsible for obtaining all necessary information as to risks, contingencies and other circumstances which may affect the works and shall prepare and submit all necessary documents specified by the procuring entity to meet all regulatory approvals as specified in the contract documents.
- **5.4.3.** The Contractor shall submit a detailed program of work within fourteen (14) calendar days after the issuance of the NTP for approval by the procuring entity that shall include, among others:
 - **a.** The order in which it intends to carry out the work including anticipated timing for each stage of design/detailed engineering and construction;
 - **b.** Periods for review of specific outputs and any other submissions and approvals;
 - **c.** Sequence of timing for inspections and tests as specified in the contract documents;
 - **d.** General description of the design and construction methods to be adopted;
 - **e.** Number and names of personnel to be assigned for each stage of the work;
 - f. List of equipment required on site for each major stage of the work; and
 - **g.** Description of the quality control system to be utilized for the project.
- 5.4.4. Any errors, omissions, inconsistencies, inadequacies or failure submitted by the contractor that do not comply with the requirements shall be rectified, resubmitted and reviewed at the contractor's cost. If the Contractor wishes to modify any design or document which has been previously submitted, reviewed and approved, the contractor shall notify the procuring entity within a reasonable period of time and shall shoulder the cost of such changes.
- 5.4.5. As a rule, changes in design and construction requirements shall be limited only to those that have not been anticipated in the contract documents prior to contract signing and approval. The following guidelines shall govern approval for change or variation orders:
 - **a.** Change Orders resulting from design errors, omissions or non-conformance with the performance specifications and parameters and the

- contract documents by the contractor shall be implemented by the contractor at no additional cost to the procuring entity.
- **b.** Provided that the contractor suffers delay and/or incurs costs due to changes or errors in the procuring entity's performance specifications and parameters, he shall be entitled to either one of the following:
 - An extension of time for any such delays under Section 10 of Annex E of the revised IRR; or
 - ii. Payment for such costs as specified in the contract documents, provided, that the cumulative amount of the variation order does not exceed ten percent (10%) of the original project cost.
- **5.4.6.** The contract documents shall include the manner and schedule of payment specifying the estimated contract amount and installments in which the contract price will be paid.
- **5.4.7.** The contractor shall be entitled to advance payment subject to the provisions of Section 4 of Annex E of the revised IRR.
- **5.3.8.** The procuring entity shall define the quality control procedures for the design and construction in accordance with agency guidelines and shall issue the proper certificates of acceptance for sections of the works or the whole of the works as provided for in the contract documents.
- **5.4.9.** The contractor shall provide all necessary equipment, personnel, instruments, documents and others to carry out specified tests.
- 5.4.10. All design and build projects shall have a minimum Defects Liability Period of one (1) year after contract completion or as provided for in the contract documents. This is without prejudice, however, to the liabilities imposed upon the engineer/architect who drew up the plans and specification for a building sanctioned under Section 1723 of the New Civil Code of the Philippines.
- 5.4.11 The contractor shall be held liable for design and structural defects and/or failure of the completed project within the warranty periods specified in Section 62.2.2 of the revised IRR.

5.5 AMENDMENTS AND FORMS

In the implementation of these guidelines, the GPPB may issue additional guidelines or introduce modifications thereto through the amendment of its specific provisions as the need arises, as well as, formulate, approve and disseminate standard bidding documents, forms and evaluation documents, whenever necessary.

SECTION 7

PERIOD OF ACTION OF PROCUREMENT ACTIVITIES

PERIOD OF ACTION ON PROCUREMENTACTIVITIES FOR INFRASTRUCTURE PROJECT

	PERIOD OF ACTION						
		Latest Possible Time					
Stage	Activities	Deadline	For ABC 50 M and below	For ABC above 50 M	Earliest Possible Time		
1	Advertisement/ Posting of Invitation to Bid/Request for Expression of Interest		7 cd	7cd	7cd		
2	Eligibility Check (and Short Listing, in case of Consulting Service)		Refer to	Stage 5	Refer to Stage 5		
3	Issuance and availability of Bidding Documents	From 1 st day of Stage 1 until Stage 5					
	Pre-bid Conference	12 cd before Stage 5	1 cd	1cd	1cd		
4	Request for Clarification	10 cd before Stage 5					
	Supplemental/Bid Bulletin	7cd before Stage 5					
5	Submission and Receipt of Bids	45 cd from last day of Stage 1 for Goods 50/65 cd from last day of Stage 1 for Infrastructure Projects 75 cd from the last day of Stage 1 for Consulting Services	1 cd (includes opening of bids and	1 cd (includes opening of bids and eligibility check)			
	Submission of additional requirements	3 cd after Stage 5					
6	Bid Evaluation		5 cd	7cd	1cd		
7	Notification for Negotiation		n/a	n/a	n/a		
8	Negotiation		n/a	n/a	n/a		
9	Post-qualification		30 cd	30 cd	1cd		

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

10	Approval of Resolution/Issuance of Notice of Awards	4 cd	7cd	2cd (1 cd for BAC Resolution and 1 cd for
11	Contract preparation and signing	10 cd	10 cd	2cd (1 cd for Contract Preparation and 1 cd for Contract Signing)
12	Approval of Contract by higher authority	5 cd	15 cd	1cd
13	Issuance of Notice to Proceed	2 cd	3cd	1cd
	TOTAL	113 cd	144 cd	28 cd

Note: The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. All members of the BAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the head of the procuring entity in order to complete the entire procurement process at the earliest possible time.

	PROCUREMENT ACTIVITY	MAXIMUM NUMBER OF DAYS AS PRESCRIBE	PROCUREMENT UNDERTAKING OR REQUISITE DOCUMENTS AI CORRESPONDING DELIVERABLES			PROCUREMENT UNDERTAKING OR REQUISITE DOCUMENTS AND ITS CORRESPONDING DELIVERABLES	
		D IN RA 9184 AND THE REVISED IRR	NECESSARY INPUT	RESPONSIBLE ENTITY	EXPECTED OUTPUT	RESPONSIBLE ENTITY	
A	. Procurement Planning		 Project Procurement Management Plan Purchase Request Approved Budget for the Contract Certificate of Availability of Funds Clearance from the clearing office 		 Evaluation and inclusion into the Agency Budget Proposal Consolidation of the PPMP to the Annual Procurement Plan Approval of the APP 	 Budget Officer (Section 7.3.3.) BAC Secretariat (Section 7.3.4) Head of the Procuring Entity 	
В	. Preparation of the Invitation to Bid and Bidding Documents		 Duly approved APP Duly approved and signed PR 	 BAC Secretariat TWG/ Technical Expert, if needed Consultants hired to prepare the PBD 	 Invitation to Bid Philippine Bidding Documents 	BAC Secretariat	
C	Pre- procurement Conference	Prior to the advertisement of IB	Notices to pre- procurement conference Attendance sheet	 BAC BAC Secretariat End-users TWG/ Technical Expert, if needed Consultants hired to prepare the PBD 	procurement conference 2. Duly signed attendance sheet	BAC Secretariat End-users	

F	PROCUREMENT ACTIVITY	MAXIMUM NUMBER OF DAYS AS PRESCRIBED		PROCUREMEN'	T UNDERTAKING OR RE CORRESPONDING		AND ITS
		IN RA 9184 AND THE REVISED IRR		NECESSARY INPUT	RESPONSIBLE ENTITY	EXPECTED OUTPUT	RESPONSIBLE ENTITY
D.	Advertisement/ Posting of the Invitation to Bid	Advertisement/ posting in the following media for at least seven (7) calendar days	 1. 2. 3. 	Invitation to Bid Bidding Documents Checklist of eligibility requirements for suppliers and contractors		 Newspaper advertisement Proof of posting in the PhilGEPS website Certification from the BAC Secretariat of posting in the Procuring Entity's premises 	BAC Secretariat
E.	and Issuance of the Bidding Documents	From the time the IB is first advertised/ posted until the deadline of submission and receipt of bids	 2. 3. 	Bidding Documents List of suppliers Checklist of technical and financial envelope requirements for suppliers	BAC Secretariat	Receipt of payment for Bidding Documents List of bidders who purchased the Bidding Documents	BAC Secretariat
F.	Pre-bid Conference	Twelve (12) calendar days before the submission and receipt of bids	1.	Notices to pre- bid conference Attendance sheet	 Prospective bidders BAC BAC Secretariat End-users/PMO TWG Observers 	Minutes of the pre-bid conference made available within three (3) calendar days	BAC Secretariat
	Written request clarification	Ten (10) calendar days before the submission and receipt of bids	clari	ten request for fication on the ling Documents	Prospective Bidder	Written response/ comment	BAC or appropriate authority

PROCUREMENT ACTIVITY	MAXIMUM NUMBER OF DAYS AS	FRUCUKEMENT UNDERLAKING OK KEGUISHE DUCUMENIS AND			
ACIIVIII	PRESCRIBED IN RA 9184 AND THE REVISED IRR	NECESSARY INPUT	RESPONSIBLE ENTITY	EXPECTED OUTPUT	RESPONSIBLE ENTITY
G. Issuance of Bid Bulletins	Seven (7) CD before the submission and receipt of bids	Supplemental/ Bid Bulletin	BAC Secretariat	Posting 1. PhilGEPS Website 2. Website of the procuring entity, if available 3. Conspicuous places within the procuring entity's premises	BAC Secretariat
H. Submission and Receipt of Bids	Forty-five (45) calendar days after advertisement/ posting of IB	Notice of bid opening (BAC, TWG, End-user) Attendance	 BAC BAC Secretariat Prospective Bidders 	 Abstract of Bids as Read Minutes of Opening of Bids Duly accomplished 	BAC BAC Secretariat
H1. Opening of Bids and Conduct of Preliminary Examination	One (1) calendar day for the submission, receipt, and opening of bids. Bids are opened immediately after the deadline for submission and receipt of bids	sheet 3. Eligibility Requirement Checklist 4. Invitation letters addressed to observers	4. Observers5. TWG6. End-user	and signed eligibility requirement checklist 4. Notice of Eligibility/ Ineligibility 5. Duly accomplished attendance sheet	
H2. Submission of Additional Requirement	Three (3) calendar days after submission and receipt of bids	Notice to submit additional requirements	BAC Secretariat	Additional requirements submitted by the Lowest Calculated Bidder	BAC Secretariat
I. Conduct Bid Evaluation and determine the Lowest Calculated and Responsive Bid	Must be completed within seven (7) calendar days from the deadline of receipt of bids	 Notice for Bid Evaluation Eligible bid proposals 	BAC Secretariat	 Bid Evaluation Report Abstract of Bid as Calculated Minutes of the BAC/TWG Evaluation 	1. BAC 2. TWG

PROCUREMENT ACTIVITY	MAXIMUM NUMBER OF DAYS AS PRESCRIBED IN	PROCUREMENT UNDERTAKING OR REQUISITE DOCUMENTS AND ITS CORRESPONDING DELIVERABLES				
	RA 9184 AND THE REVISED IRR	NECESSARY INPUT	RESPONSIBL E ENTITY	EXPECTED OUTPUT	RESPONSIBLE ENTITY	
qualification	Must be completed in not more than seven (7) calendar days from the determination of the Lowest Calculated Bid Extendible to not more than thirty (3) calendar days in exceptional cases	Post- qualification requirements Notice for post- qualification	BAC Secretariat	 Post- qualification evaluation report Minutes of post- qualification Notice of post- qualification 	BAC/TWG BAC Secretariat	
K. Drafting and Approval of the Resolution to Declare Lowest Calculated and Responsive Bidder and recommend award	Approval of the resolution to declare LCRB and recommend award shall not exceed seven (7) calendar days	BAC resolution to declare the LCRB and recommend award (or BAC resolution to declare a failure of bidding)	BAC Secretariat	Approval or disapproval of the BAC resolution to declare LCRB and recommend award	HOPE	
L. Issuance and Posting of Notice of Award	After approval, HOPE shall cause the immediate issuance of the NOA to consultant declared as the LCRB	1. Notice of Award 2. Submission of the following: a. JVA within ten (10) CD, if applicable b. Performance security 3. Notification of the bidding results	BAC Secretariat	1. Acceptance (through signing of conforme by the supplier) and posting of performance security 2. Posting of NOA within three (3) CD in the following media: a. PhilGEPS b. Website of procuring entity	Awarded bidder BAC Secretariat	

PROCUREMENT ACTIVITY	MAXIMUM NUMBER OF DAYS AS PRESCRIBED	CORRESPONDING DELIVERABLES				
	IN RA 9184 AND THE REVISED IRR	NECESSARY INPUT	RESPONSIBLE ENTITY	EXPECTED OUTPUT	RESPONSIBLE ENTITY	
M. Contract Preparation		Draft of Contract (Services) or Purchase Order (Goods)	BAC Secretariat	Contract (Services) or PO (Goods)	BAC Secretariat	
N. Contract Signing	Enter into contract with the winning bidder within ten (10) CD after posting of performance security and submission of documentary requirements In contract approval, the approving authority shall have fifteen (15) CD from receipt thereof for approval or disapproval	Contract (Services) or PO (Goods)	BAC Secretariat	Duly approved and signed contract (Services) or PO (Goods)	 HOPE or authorized signatory Winning bidder 	
O. Issuance of the Notice to Proceed	NTP and approved contract shall be issued within three (3) CD	NTP Approved contract (Services) or PO (Goods)	BAC Secretariat	Proof of receipt (Return Card) and/or Registry or delivery receipt of the NTP and approved contract	BAC Secretariat	
P. Posting of NTP	Within fifteen (15) CD from the issuance of NTP	NTP Approved contract (Services) or PO (Goods)	BAC Secretariat	Posting: 1. PhilGEPS 2. Website of the procuring entity	BAC Secretariat	

SECTION 8 ANNEXES

ANNEX A. ABBREVIATIONS AND ACRONYMS

ABC	Approved Budget for the Contract	CIP	Carriage and Insurance Paid to (named place of destination)
ABM	Agency Budget Matrix	CLC	Credit Line Certification
ADB	Asian Development Bank	COA	Commission on Audit
AFP	Armed Forces of the Philippines	COBAC	Central Office Bids and Awards Committee
AFS	Audited Financial Statement	COFILCO	Confederation of Filipino Consulting Organizations
AO	Administrative Order	CPES	Contractors Performance Evaluation System
APP	Annual Procurement Plan	CPESIU	Contractors Performance Evaluation System Implementing Unit
APR	Annual Procurement Report	СРМ	Customized Procurement Manual
BAC	Bids and Awards Committee	CSC	Civil Service Commission
ВС	Budget Circular	CSO	Civic Society Organization
BDS	Bid Data Sheet	DBCC	Development Budget Coordination Committee
BIR	Bureau of Internal Revenue	DBM	Department of Budget and Management
BRS	Bureau of Research and Standards	DBM-PS/ PS- DBM	Department of Budget and Management-Procurement Service
BSP	Bangko Sentral ng Pilipinas	DOH	Department of Health
CAF	Certificate of Availability of Funds	DTI	Department of Trade and Industry
CDA	Cooperatives Development Authority	DV	Delivery Voucher
CHD	Center for Health Development	E.O.	Executive Order
CIAP	Construction Industry Authority of the Philippines	ESAO	Engineering Supervision and Administration Overhead
CIF	Cost, Insurance and Freight	EXW	Ex Works, Ex Factory or Off- the- Shelf

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

FAPs	Foreign Assisted Projects	ITB	Instructions to Bidders
FDA	Food and Drug Administration	ITR	Income Tax Return
FMIS	Financial Management Information System	JBIC	Japan Bank for International Cooperation
GAA	General Appropriations Act	JVA	Joint Venture Agreement
GCC	General Conditions of Contract	LC	Letter of Credit
GFI	Government Financial Institution	LCB	Lowest Calculated Bid
GOCC	Government-Owned or – Controlled Corporation	LCRB	Lowest Calculated and Responsive Bid
GOP	Government of the Philippines	LGU	Local Government Unit
GPM	Generic Procurement Manual	MOOE	Maintenance and Other Operating Expenses
GPPB	Government Procurement Policy Board	NACAP	National Constructors Association of the Philippines
GPPB-TSO	Government Procurement Policy Board – Technical Support Office	NBC	National Budget Circular
GPRA	Government Procurement Reform Act of 2003	NCB	National Competitive Bidding
HOPE	Head of Procuring Entity	NFCC	Net Financial Contracting Capacity
HRB	Highest Rated Bid	NGA	National Government Agency
HRRB	Highest Rated and Responsive Bid	NGO	Non-Government Organization
IB	Invitation to Bid	NOA	Notice of Awards
ICB	International Competitive Bidding	NSO	National Statistics Office
ICT	Information and Communications Technology	NTP	Notice to Proceed
IFI	International Financing Institution	os	Obligation Slip
IPR	Intellectual Property Rights	PA	Professionals' Association
IRR	Revised Implementing Rules and Regulations	PAPs	Program, Activities and Programs
IRR-A	Implementing Rules and Regulations Part-A of RA 9184	PBDs	Philippine Bidding Documents

PCA	Philippine Constructors Association, Incorporated	ROW	Right-of-Way
PCAB	Philippine Contractors Accreditation Board	SARO	Special Allotment Release Order
PCCI	Philippine Chamber of Commerce and Industry	SBD	Standard Bidding Documents
PERT/CPM	Project Evaluation Review Technique / Critical Path Method	scc	Special Conditions of Contract
PhilGEPS/ GEPS	Philippine Government Electronic Procurement System	SEC	Securities and Exchange Commission
PICE	Philippine Institute of Civil Engineers	SME	Small and Medium Enterprises
PICPA	Philippine Institute of Certified Public Accountants	sow	Scope of Work
РМО	Project Management Office	SRRB	Single Rated and Responsive Bid
PNDF	Philippine National Drug Formulary	SSRS	Simplified Supplier's Registration System
PNP	Philippine National Police	SUC	State Universities and Colleges
PPMP	Project Procurement Management Plan	SWA	Statement of Work Accomplished
PR	Procurement Request	TACT	Technical Assistance Coordinating Team
PRC	Professional Regulation Commission	TOR	Terms of Reference
PWI	Procurement Watch Incorporated	TSO	Technical Support Office
R.A.	Republic Act	TWG	Technical Working Group
R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"	UNDB	United Nations Development Business
REI	Request for Expression of Interest	VAT	Value-Added Tax
RFP	Request for Proposal	WB	The World Bank
RFQ	Request for Quotation	WFP	Work and Financial Plan
RIS	Requisition and Issuance Slip		

ANNEX B. GLOSSARY

Abstract of Bids The corresponding document prepared by the BAC after all bids

have been received, opened, examined, evaluated and ranked.

Abstract of Bidding Documents A summary containing general information on the procurement at

hand that is posted in the PhilGEPS.

Advance payment Refers to any payment made prior to the delivery and acceptance of

Goods, Works, or Consulting Services.

Approved Budget for the Contract
The budget for the contract duly approved by the head of the

procuring entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of national government agencies; the corporate budget for the contract approved by the governing board, pursuant to Executive Order No. 518, series of 1979 ("E.O. 518"), in the case of GOCCs and GFIs, and Republic Act No. 8292 in the case of SUCs; and the budget

approved by the Sanggunian in the case of LGUs.

Bids and Awards Committee It is also referred to as the BAC which is established in accordance with Rule V of the revised IRR of R.A. 9184. It primarily perform the

following functions: (a) advertise and/or post the invitation to bid/request for expressions of interest; (b) conduct pre-procurement and pre-bid conferences; (c) determine the eligibility of prospective bidders; (d) receive bids; (e) conduct the evaluation of bids; (f) undertake post-qualification proceedings; (g) resolve motions for reconsideration; (h) recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: (i) recommend the imposition of sanctions in accordance with Rule XXIII; (j) recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof; and (k) perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial, and/or legal experts to assist in the procurement process, particularly in the eligibility screening,

evaluation of bids, and post-qualification.

Bid A signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of

the bidding documents. Also referred to as *Proposal* and *Tender*, particularly when referring to the procurement of consulting

services.

Bid Evaluation The process of determining the Bidder with the Lowest Calculated

Bid or the Highest Rated Bid.

Bid Opening Date

The date specified in the IB for the opening of bids.

Bid Security

Cash, check, bank draft, letter of credit, bank guarantee, surety bond or a foreign government guarantee that serves as a guarantee that the successful bidder shall not default on his offer, and shall enter into contract with the Procuring Entity and furnish the performance security.

Bid Validity

A reasonable period determined by the head of the Procuring Entity concerned, but in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids, wherein a Bid Security is considered valid.

Bidder

An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives. More specifically, a contractor, manufacturer, supplier, distributor and/or consultant competing for the award of a contract in any government procurement. See *Eligible bidder*, *Prospective bidder*.

Bidding Documents

The documents issued by the procuring entity as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required by the procuring entity.

Blacklisting

To place on, or as if on, a list of persons or organizations that have incurred disapproval or suspicion or are to be boycotted or otherwise penalized.

Brand Name

A trade name or product name, which identifies a product as having been made by a particular manufacturer.

Calculated Bid Price

The price of a bid, after taking into account minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed.

Civil Works

See Infrastructure Projects.

Collusion

An agreement between two or more persons, to commit acts to accomplish a fraudulent or deceitful purpose.

Common-Use Supplies

Goods, materials and equipment that are repetitively used in the day-to-day operations of procuring entities in the performance of their functions, which are included in the Price List of the Procurement Service of the Department of Budget and Management.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

Competitiveness A principle in Government procurement that allows broad

participation by eligible and qualified suppliers, contractors,

consultants to put forward offers for a project.

Competitive Bidding Use interchangeably with term Public Bidding: It is a method of

procurement which is open to participation by any interested party and which consists of the following processes: advertisement, prebid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and

award of contract.

Communication costsMail and fax costs, plus cost of advertising, meetings, internet/web

posting and other costs incurred for the dissemination of information

about the bidding.

Conference Notice A formal written communication sent to the participants of the

conference (such as the Pre-procurement, Pre-bid and Post- Award Conference) informing them when and where the conference will be

held.

Conflict of Interest Refers to a clash between public interest and the private pecuniary

interest of the individual concerned (Black's law Dictionary, 5th ed.)

Consulting Services Refer to services for Infrastructure Projects and other types of

projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services

or special studies (Sec. 5 i of the revised IRR).

Consolidated Blacklisting Report A report issued by the GPPB that contains a list of people and/or

organizations that are barred from participating in any Government

procurement project.

Consulting Services Services for Infrastructure Projects and other types of projects or

activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special

studies.

Contract Completion Project sign-off or acceptance of the project/goods by the end- user.

Contract Implementation

The execution of a contract, covering the following milestones: effectivity of the contract; contractor's performance of his contractual obligations; procuring entity's performance of its contractual obligations, as specified in the Contract; final acceptance or project sign-off; all other related activities; and payment by the Procuring Entity.

Contractor

One who undertakes to perform a work or service, or supply goods for a public or private entity.

Contract Termination

Ending of a contract prior to its completion.

Corrupt practice

The offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. Compare *fraudulent practice*.

Cost Recovery Component

Direct and indirect costs accounted for in determining the price of Bidding Documents to be sold to interested suppliers/contractors.

Demand Regulation Component

A positive (+) or negative (-) unit amount allocated to the bidding activity for the purpose of regulating the participation of bidders

Development Cost

Costs incurred in developing the original content of the documents, designs, plans and specifications. The design cost may be excluded if the same is to be included in the capitalized cost of the project which is to be recovered from the usage of the completed project facility.

Direct Costs

Costs directly incurred such as development, reproduction, and communication costs allocated to the bidding activity. See *Communication Cost*, Development *Cost*, *Reproduction Cost*. Compare *Indirect Costs*.

Disclosure

The act of disclosing, uncovering, or revealing

Disqualification

The act of barring a bidder from further participation in the procurement at hand, even if, in some instances, it has initially been declared eligible or post-qualified.

Domestic Bid

Any offer of unmanufactured articles, materials, or supplies of the growth or production of the Philippines, or manufactured articles, materials or supplies manufactured or to be manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production or manufacture, as the case may be, of the Philippines.

Eligible Bidder

A contractor, manufacturer, supplier, distributor or consultant who meets all the eligibility requirements issued by the procuring entity.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

Eligibility Refers to the status of a Bidder in relation to its legal, technical and

financial competence to comply with the requirements of the contract to be bid, as shown by eligibility documents submitted to

and checked by the BAC.

Eligibility Check The process of determining the compliance of Prospective Bidders

with the eligibility requirements prescribed, using a non-

discretionary, "passed/failed" criteria.

Eligibility Screening (see) Eligibility Check.

Financial Bid One of two components comprising a bid, the other being the

Technical Bid.

Force Majeure (see) Fortuitous events.

Foreign Bid Any offer of articles, materials or supplies not manufactured or to be

manufactured in the Philippines, substantially from articles, materials or supplies of the growth, production, or manufacture, as

the case may be, of the Philippines.

Foreign Supplier A supplier who is not a local supplier.

Fortuitous events It is an event which could not be foreseen, or which though

foreseen, was inevitable. (Art. 1174, Civil Code)

Fraudulent practice Misrepresentation of facts in order to influence a procurement

process or the execution of a contract to the detriment of the

Procuring Entity. Compare *corrupt practice*.

Goods Refer to all items, supplies, materials and general support services,

except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non- personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity (Sec. 5 r of the

revised IRR).

Head of the Procuring Entity (i) the head of the agency or body, or his duly authorized official, for

NGAs and the constitutional commissions or offices, and branches of government; (ii) the governing board or its duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local

chief executive, for LGUs: Provided, however, that in an agency, department, or office where the procurement is decentralized, the Head of each decentralized unit shall be considered as the head of the procuring entity subject to the limitations and authority delegated by the head of the agency, department, or office.

Invitation to Bid

This serves as the notice to the public and all interested parties of the procurement opportunity.

Incidental Services

This are services ancillary to the supply of the Goods, such as transportation and insurance; installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the contract, RFP, TOR, and/or bidding documents.

Indirect Costs

Costs indirectly incurred such as overhead, supervision, and administrative costs allocated to the bidding activity. Compare *Direct Costs*.

Ineligible Bidder

A contractor, manufacturer, supplier, distributor or consultant who fails to meet any or all of the eligibility requirements issued by the procuring entity.

Infrastructure Projects

Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. Referred also as *civil works* (Sec. 5.u of the revised IRR).

Inspection

Examination and/or testing of merchandise to determine whether it has been received in the proper quantity and condition and to verify that it conforms to the applicable specifications.

Latent Defect

A defect that is not apparent to the buyer by reasonable observation. A latent defect is "hidden" or one that is not immediately determinable.

Liquidated Damages

Damages agreed upon by the parties to a contract, to be paid in case of breach thereof.

Request for Reconsideration

In procurement, it is an application made to the BAC for the purpose of obtaining a rule or order setting aside a previous decision.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

Negotiated Procurement An alternative method of procurement of goods, infrastructure

projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and

financially capable supplier, contractor or consultant.

Notice of Award The document issued by the HOPE to the bidder to whom the

contract is awarded.

Notice of EligibilityThe document issued by the BAC to the eligible bidder/s formally

informing the same that he/she/they met the eligibility requirements

issued by the procuring entity.

Notice of IneligibilityThe document issued by the BAC to the bidder/s who failed to meet

any or all of the eligibility requirements issued by the procuring

entity.

Notice of Post-qualificationThe document issued by the BAC to the bidder with LCB whose bid

is found responsive.

Notice to ProceedThe document issued by the Head of the Procuring Entity to the

winning bidder to proceed with the implementation of the contract.

Observer One who is invited to attend and observe all stages of the

procurement, especially: the pre-bid conference; opening of bids; bid evaluation; post-qualification; contract award; and special

meetings of the BAC.

Patent Defect A defect that is apparent to the buyer on normal observation. An

apparent or obvious defect.

Performance Security A security posted by the winning bidder to guarantee the faithful

performance by the same of its obligations under the contract

prepared in accordance with the bidding documents.

Portal A website that integrates a wide variety of contents for the

purpose of attracting and aggregating multiple users together in a

central virtual space.

Post-qualification The process of validating and verifying the documents, information

and statements made in the Eligibility Documents by the Bidder who submitted the Lowest Calculated Bid, as well as ascertaining the said Bidder's compliance with the legal, financial and technical

requirements of the bid.

Post-qualification Report The report prepared by the TWG containing the findings/results of

the post-qualification conducted on the bidder with the LCB or HRB,

as the case may be.

Pre-bid Conference

It is the forum where the Procuring Entity's representatives and the Prospective Bidders discuss the different aspects of the procurement at hand.

Pre-procurement Conference

It is the forum called by the BAC for procurements undertaken through public bidding, where all officials involved in the procurement meet and discuss all aspects of the transaction, including the technical specifications, the Approved Budget for the Contract, the applicability and appropriateness of the recommended method of procurement and the milestones, the bidding documents, availability of the pertinent budget release for the project / contract, among others.

Procurement

The acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects b Cthe Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 8974 and other applicable laws, rules and regulations.

Procurement Observation Report

The report submitted by the Observer to the Head of the Procuring Entity based on the procurement checklist.

Procurement Unit

Refers to the organic office of the Procuring Entity that carries out the procurement function.

Procuring Entity

Any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the Government, including GOCC, GFI, SUC and LGU procuring Goods, Consulting Services and Infrastructure Projects.

Project Management Office

The unit/office/department of the procuring entity that is primarily responsible for implementing and managing a project.

Proposal

(see) Bid.

Protest

A formal declaration made by a person interested or concerned in some acts to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such declaration is usually to save some right which would be lost to him if his implied anent could be made nil, or to exonerate himself from some responsibility which would attach to him unless he expressly negate his assent (Black's Law Dictionary, 5th Ed.)

Provincial bidder

A contractor who participates in the bidding of provincial priority programs and infrastructure projects as defined in Section 44 of the revised IRR of R.A. 9184, and whose principal office is within the same province.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

Public Bidding (see) Competitive Bidding.

Public Monitoring It is one of the governing principles of public procurement which

seeks to ascertain compliance of a procuring entity to the provisions

of R.A. 9184 and its revised IRR.

Reproduction cost It is the labor, supplies and equipment rental costs incurred in the

reproduction of the documents.

Request for Clarification A written request submitted by the bidder to the BAC, asking the

latter to clarify a particular provision of the Bidding Documents.

Request for Proposal A written request for proposals concerning goods or services the

government intends to acquire by means of alternative method of procurement such as Shopping or Negotiated Procurement (Small-value Procurement). The solicitation document used in acquiring quotations. The procedure allows changes to be made after other proposals are opened and contemplates that the nature of the

proposals and/or prices offered will be negotiated prior to award.

Spare parts Refer to extra components, equipment, tools, instruments or parts

of machinery or apparatus that replace the ones that are damaged

or worn out.

Specification A description of what the purchaser requires and what a bidder

must offer.

Splitting of Contracts Splitting of Government Contracts means the division or breaking

up of GOP contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts for the purpose of evading or circumventing the requirements of law and the revised IRR, especially the necessity of public bidding and the requirements for the alternative methods of

procurement (Section of the revised IRR 54.1)

Standard The established and fixed measure used in assessing quality or

performance.

Subcontractor One who takes a specific part of the work undertaken by the

principal contractor (Black's Law Dictionary, 5th Ed.)

Submitted bid price The bid price as indicated in the financial proposal submitted by the

bidder.

Supplemental/Bid bulletin A notice issued by the Procuring Entity to Prospective Bidders with

respect to any clarifications or modifications in the Bidding Documents, including those affecting the technical specifications, eligibility requirements, procurement schedule, and other similar

matters.

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Technical Bid One of two components comprising a bid, the other being the

Financial Bid.

Tender (see) Bid.

Warranty An undertaking by the supplier, manufacturer or distributor to

guarantee that it will correct any manufacturing defects of the goods

procured by the government.

ANNEX C. REFERENCES

REFERENCE				
REFERENCE NO.	NAME OF ADMINISTRATIVE ISSUANCE NUMBER AND TITLE	DATE OF EFFECTIVITY		
REFERENCE A:	Administrative Order No. 2006-0004 (Guidelines for the Issuance of Certificate of Need to Establish a New Hospital)	13 MARCH 2006		
REFERENCE B:	Administrative Order No. 2006-0004-A (Amendment to Administrative Order No. 2006-004: Guidelines for the Issuance of Certificate of Need to Establish a New Hospital)	27 JANUARY 2007		
REFERENCE C:	Administrative Order No. 2006-0004-B (Amendment to Certain Provisions of Administrative Order No. 2006-0004- A on the Guidelines for the Issuance of Certificate of Need to Establish a New Hospital	17 JUNE 2009		
REFERENCE D:	Administrative Order No. 2006-0034 (Delegation of Authorities for certain Transactions in the Offices under the Department of Health)	10 OCTOBER 2006		
REFERENCE E:	Administrative Order No. 2006-0034-A: Amendment of Administrative Order No. 2006-0034 "Delegation of Authorities for Certain Transactions in the Offices under the Department of Health" dated October 10, 2006	07 DECEMBER 2009		

SECTION 9 SAMPLE FORMS

A. PROJECT PROCUREMENT MANAGEMENT PLAN

PROJECT PROCUREMENT MANAGEMENT PLAN

CAPITAL OUTLAY ADMINISTRATIVE SERVICE

CY 2009

CONTRACT PACKAGE (Discription)	OHANTITY	UNIT	LINIT COST	TOTAL	FUNDING SOURCE	EXPECTED USE OF GOODS	PROPOSED	DEMARKS
ITEMS (per categoryt)	QUANTITY	DISCRIPTION	UNIT COST	PROPOSED ABC	(Specify whether GOP of FAPs)	COMMENCEMENT OF SERVICES	PROCUREMENT METHOD	REMARKS
Construction of MMD Warehouse	1	LOT	9,933,252.67	9,933,252.67	GOP	4 TH QTR.	PUBLIC BIDDING	2010 BUDGET
Roofing works								
Downspout								
Concrete/Masonry Works								
Ceiling Works								
Painting Works								
Structural Works								
Purlins & Sag rods								
Roof Beam								
Electrical Works								
Insulation Works								
Other Works								
Total Budget Amount				9,933,252.67				
Adjusted Amount with 10%				_				
Requested by:			Recommending	g Approval:		Approved by:	<u>I</u>	

B. ANNUAL PROCUREMENT PLAN

	DEPARTMENT OF HEALTH ANNUAL PROCUREMENT PLAN CY 2010								
ITEMS	SPECIFICATIONS	TOTAL QUANTITY	UNIT	UNIT COST	TOTAL COST/ PROPOSED ABC	REQUESTING OFFICE	FUNDING SOURCE	EXPECTED TIME OF USE OF GOODS OR SERVICES	MODE OF PROCUREMENT
Construction of MMD Warehouse	Construction of MMD Warehouse	1	LOT	9,933,252.67	9,933,252.67	NCHP	GOP	4™ QTR.	BIDDING
		SUB	- TOTAL	9,933,252.67	9,933,252.67				

C. SUBMISSION OF PROCUREMENT REQUEST



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

09 August 2010

XYZ

Director Procurement Service This Department

Dear Dir. XYZ,

We are respectfully forwarding the following documents submitted by Dir. ABC, Administrative Service per memorandum dated August 3, 2010 for the proposed procurement of Design and Build for the Construction of MMD Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse, DOH Compound, Manila:

- 1. Scope of Works
- 2. Terms of Reference
- 3. Detailed Estimates
- 4. Existing Floor Plans
- 5. Proposed Floor Plans
- 6. Sections
- 7. Elevations
- 8. Supplemental APP

For immediate procurement work. Thank you very much.

Very truly yours,

(Sgd.) ARCH. MRP Director NCHFD

D. NOTICE OF PRE-PROCUREMENT CONFERENCE



Republic of the Philippines
Department of Health

BIDS AND AWARDS COMMITTEE

NOTICE OF MEETING

FOR: Vice Chairperson

COBAC Regular Member COBAC Regular Member COBAC Regular Member

End-user

FROM: COBAC Chairperson

SUBJECT: Pre-Procurement Conference for the procurement of Design and Build for the

Constructions of Material and Management Warehouse Extension and

Repair/Renovation/elevation of MMD Warehouse

DATE: 24 August 2010, Wednesday, 10:30 A.M.

WHERE: COBAC Conference Room

1st Floor, Bldg. #6, San Lazaro Compound, Department of Health, Sta. Cruz, Manila

For details and confirmation, please contact BAC Secretariat at 651-7800 local 1601-1602; 1608; 1624-1627; 1649-1651.

E. MINUTES OF PRE-PROCUREMENT CONFERENCE



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

Pre-Procurement Conference for the procurement of Design and Build for the Constructions of Material and Management Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse

IB NO. 2010-09-27

24 August 2010

Present:

- 1. VICE-CHAIRPERSON
- 2. REGULAR MEMBER
- 3. REGULAR MEMBER
- 4. END-USER MEMBER
- 5. END-USER MEMBER
- 6. TWG MEMBER
- 7. BAC SECRETARIAT
- 8. BAC SECRETARIAT

The Pre-Procurement meeting took place as scheduled on 24 August 2010, 1:00 pm at the BAC Conference Room, F/F, Building 6, Department of Health, San Lazaro Compound, Sta. Cruz, Manila. The meeting was called to order by Dir. ABC, BAC Vice Chairperson.

The following requirements for the pre-procurement in accordance with the IRR Section 20.1 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 were discussed by BAC.

- 1. Procurement is in accordance with the Supplemental APP for 2010.
- 2. Approved Budget for the Contract (ABC) amounting to Nine Million Nine Hundred Thirty-Three Thousand Two Hundred Fifty-Two and 67/100 Philippine Pesos (PhP 9,933,252.67).
- 3. Readiness of the procurement at hand, including among others aspects, the following:
 - a. The detailed engineering investigations, surveys and designs.
 - b. Adherence of the bidding documents, technical plans, specifications and scope of work to relevant general procurement guidelines.
- 4. Invitation to Bid for publication on 04 September 2010 in leading newspaper of general circulation and posting at PhilGEPS and DOH websites.
- 5. Completion of Works is required by 120 calendar days.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

- 6. Review, modify and agree on the criteria for eligibility screening, evaluation and post qualification.
- 7. Review and adopt the procurement schedule, including deadlines and time frames, for different activities.
- 8. Reiterate and emphasize the importance of confidentiality, in accordance with the IRR Section 19 and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.

Having no other matters to be discussed, the pre-procurement adjourned at 1:30 P.M.

Prepared by: Approved by:

MS. ABC
BAC Secretariat
BAC Chairperson

F. DEPARTMENT PERSONNEL ORDER



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

12 March 2010

DEPARTMENT PERSONNEL	ORDER
BAC NO. 2010-	

SUBJECT: Composition of Technical Working Group (TWG) re: Procurement of Design and Build for

the Constructions of Material and Management Warehouse Extension and Repair/

Renovation/ Elevation of MMD Warehouse IB NO. 2010-09-27:

Relative to the bidding for the Procurement of Design and Build for the Constructions of Material and Management Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse IB NO. 2010-09-27, the following are hereby designated as members of the Technical Working Group:

- 1. Chairperson
- 2. Vice-Chairperson
- 3. Member
- 4. Member
- 5. Member

The Committee is expected to submit their recommendation and technical evaluation report seven (7) days upon receipt of the proposals at the office of the undersigned.

Under this order, the above listed personnel are entitled to claim all expenses incurred such as meal, gasoline and other incidental expenses related to the above activity, chargeable against the funds of the Procurement System Development Fund subject to the usual accounting and auditing rules and regulations.

BAC CHAIRPERSON

G. INVITATION TO BID



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

Invitation to Bid

PROCUREMENT OF DESIGN AND BUILD FOR THE CONSTRUCTIONS OF MATERIAL AND MANAGEMENT WAREHOUSE EXTENSION AND REPAIR/RENOVATION/ELEVATION OF MMD WAREHOUSE, DOH COMPOUND, MANILA IB NO. 2010-09-27

- 1. The Department of Health (DOH), through the General Appropriations Act CY 2010 intends to apply the sum of Nine Million Nine Hundred Thirty Three Thousand Two Hundred Fifty Pesos and Sixty Seven Centavos (PhP9,933,252.67) being the Approved Budget for the Contract (ABC) to payments under the contract for the Procurement of Constructions of Material and Management Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse IB NO. 2010-09-27. Bids received in excess of the ABC shall be automatically rejected at bid opening.
- 2. The DOH now invites bids for the procurement of the above-caption package. Completion of the Works is required by One Hundred Twenty (120) calendar days. Bidders should have completed, within ten (10) years from the date of submission and receipt of bids, a contract similar to the Project. The description of an eligible bidder is contained in the Bidding Documents, particularly, in Section II. Instructions to Bidders.
- 3. Bidding will be conducted through open competitive bidding procedures using a non-discretionary "passed/failed" criterion as specified in the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) 9184, otherwise known as the "Government Procurement Reform Act."
 - Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens, pursuant to R.A. 5183 and subject to Commonwealth Act 138.
- 4. Interested bidders may obtain further information from the BAC Secretariat, 3/F, Building 6, Department of Health, San Lazaro Compound, Sta. Cruz, Manila and inspect the Bidding Documents at the address given above during 8:00 am to 5:00 P.M.
- 5. A complete set of Bidding Documents may be purchased by interested Bidders on 03-21 May 2010 from the address below and upon payment of a nonrefundable fee for the Bidding Documents in the amount of Three Thousand Philippine Pesos (Php3,000.00).

It may also be downloaded free of charge from the website of the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the Procuring Entity, provided that Bidders shall pay the nonrefundable fee for the Bidding Documents not later than the submission of their bids.

6. The DOH will hold a Pre-Bid Conference on 13 September 2010; 2:00 p.m. at BAC Conference Room, Building 6, which shall be open only to all interested parties who have purchased the Bidding Documents.

Only bidders who purchase the bidding documents are allowed to attend and ask questions.

7. Bids must be delivered to the address below on or before September 27, 2010; 9:00 A.M. All Bids must be accompanied by a bid security in any of the acceptable forms and in the amount stated in ITB Clause 18.

Bids will be opened in the presence of the Bidders' representatives who choose to attend at the address below. Late bids shall not be accepted.

8. The DOH reserves the right to accept or reject any Bid, to annul the bidding process, to reject all Bids and may not award the contract without incurring any liability and make no assurance that a contract shall be entered into as a result of the bidding when the funds for the program/project activity has been withheld ore reduced though no fault of the DOH at any time prior to contract award, without thereby incurring any liability to the affected Bidder or Bidders.

For further information, please refer to:

BAC Secretariat Department of Health San Lazaro Compound Sta. Cruz, Manila Tel. Nos. 651-7800 local 1601-1602; 1608; 1624-1627; 1649-1651

Facsimile No.: 741-9775

(SIGNATURE OVER PRINTED NAME) **BAC CHAIRPERSON**

H. BID DATA SHEET

ITB Clause	
1.1	The Procuring Entity is Department of Health (DOH). The identification of the
1.1	contract is IB No. 2010-0927
2	The Funding Source is:
	The Government of the Philippines (GOP) through General Appropriations Act CY
	2009 in the amount of Nine Million, Nine Hundred Thirty Three Thousand, Two
	Hundred Fifty Two Pesos and Sixty Seven Centavos (PhP9,933,252.67).
	The name of the Project is: "Design and Build for the Construction of MMD
	Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse, DOH
	Compound, Manila "
4.1	All DOH personnel are expected to uphold the Code of Conducts of DOH (AO
	#2007-0042 Norms of Behavior for Officials and Employees of the DOH) in each
	dealing with all procurement activities including declaring conflict of interest when
	determined at any stage of process and consequently inhibiting him/her in any
	deliberation and activities thereafter.
5.1	As State Party of the World Health Organization, Framework Convention on
	Tobacco Control (FCTC) ratified as treaty on April 2005, the DOH prohibits
	participation of any bidder with any current engagement and/or partnership, joint
	sponsorship or any other activity with the tobacco industry.
5.2	Bidding is restricted to eligible bidders as defined in ITB Clause 5.1.
5.4	The Bidder must have completed, within ten (10) years from the submission of bids,
	a single contract that is similar to this Project, equivalent to at least fifty percent
	(50%) of the ABC.
	For this purpose, similar contracts shall refer to pre-detail design, detailed design
	and construction for the construction of MMD Warehouse
5.5	No further instructions.
6.3	No further instructions.
7	No further instructions.
8.1	"Subcontracting is allowed
8.2	"Not applicable".
9.1	The Procuring Entity will hold a pre-bid conference for this Project on:
	September 13, 2010 @ 2:00 pm
	Department of Health
	BAC Conference Room
	Ground Floor, Building 6, San Lazaro Compound, Rizal Avenue
	Sta. Cruz, Manila 1003
	"Only bidders who purchased the bidding documents are allowed to attend or
40.4	ask questions."
10.1	The Procuring Entity's address is:
	Ground Floor, Building No. 6
	Department of Health
	San Lazaro Compound, Rizal Avenue
	Sta. Cruz, 1003 Manila
	BAC Secretariat: 651-7800 local 1601-1602; 1608; 1624-1627; 1649-1651

12.1 The Bidder shall submit the following Eligibility and Technical Documents arranged, numbered and tabbed as enumerated below.

Eligibility Documents –

cooperatives, or any proof of such registration;

Class "A" Documents:

- 1. Registration certificate from the Securities and Exchange Commission (SEC), including articles of incorporation, Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for
- 2. Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.
- 3. Statement of all its ongoing and completed government and private contracts within the last ten (10) years, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following:
 - a. name of the contract:
 - b. date of the contract;
 - c. contract duration;
 - d. owner's name and address;
 - e. nature of work;
 - f. contractor's role (whether sole contractor, subcontractor, or partner in a JV) and percentage of participation;
 - g. total contract value at award;
 - h. date of completion or estimated completion time:
 - i. total contract value at completion, if applicable;
 - j. percentages of planned and actual accomplishments, if applicable;
 - k. value of outstanding works, if applicable;
 - The statement shall be supported by the notices of award and/or notices to proceed issued by the owners; and
 - The statement shall be supported by the Constructors Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance, if applicable;
- Valid Philippine Contractors Accreditation Board (PCAB) license and registration for the type and cost of the contract for this Project – Small B License Category C & D, General Building
- 5. Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission;
- 6. NFCC computation or Credit Line Certificate (CLC) From a Universal or Commercial Bank in accordance with **ITB** Clause 5.5;
 - In lieu of 1, 2,4 and 5 the Bidder may submit a certified true copy of valid and current SSRS Certificate issued by the DOH.

Class "B" Document:

7. If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful; and

Technical Documents

8. The bid security in the form amount, and one hundred twenty 120 calendar days validity period in accordance with **ITB** Clause 18 and in BDS 18.2.

- 9. Project Requirements, which shall include the following:
 - a. Organizational chart for the contract to be bid;
 - b. List of contractor's personnel (viz, Project Manager, Project Architect and Engineers), to be assigned to the contract to be bid, with their complete qualification and experience data, thus, will include submission of:
 - Curriculum vitae; and
 - PRC license, if applicable; and
 - Other proof to gauge compliance to requirement for at least one for the following technical personnel in the Pre-detailed Design and Detailed Design Preparation. The following list is however comprehensive, the prospective bidders shall input the necessary expertise and number of personnel required to complete the project and stages from Pre-detailed Design and Detailed Design Preparation then implementation. To wit:

Personnel	Minimum qualification		
Project Coordinator	 Licensed Architect or Engineer At least 10 years experience in overall project management Excellent oral and written communication and organization skills and administrative abilities. 		
Architect	 Licensed Architect At least 5 years licensed and preferably with training and/or experience in Design and Build Project Proficient in Autocad software 		
Civil/Structural Engineer	 Licensed Civil Engineer Preferably at least 5 years licensed and preferably with training and/or experience on Design and Build Project Proficient in Autocad software 		
Mechanical engineer	Licensed Professional Mechanical Engineer Preferably at least 5 years licensed preferably with training and/or experience in Design and Build Project Proficient in Autocad softwares		
Electrical Engineer	 Licensed Professional Electrical Engineer Preferably at least 5 years licensed and preferably with training and/or experience in Design and Build Project Proficient in Autocad software 		
Sanitary Engineer	 Licensed Sanitary Engineer Preferably at least 3 years licensed and preferably with training and/or experience in Design and Build Project Proficient in Autocad software 		
CADD Operator	At least Bachelor's Degree in Architecture or Engineering Proficient in Autocad software		

 List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project;

	d. Construction schedule and S-Curve;
	e. Manpower Schedule;
	f. Construction Method in narrative form;
	g. Equipment Utilization Schedule;
	h. Construction Safety and Health Program;
	i. PERT/CPM;
	j. Affidavit of Site Inspection;
	k. Summary of Works;
	10. Sworn statement in accordance with Section 25.2(b)(iv) of the IRR of RA 9184 and using the form prescribed in Section IX Bidding Forms
	11. Authority of the signatory
	12. Certification of least one single similar contract (BDS 5.4) of whose cost it
	at least 50% of the project's ABC with the CPES rating and/or certificate of completion and owner's acceptance of the contract must be satisfactory, if already finished.
	Failure to observe any of the above responsibilities shall be at the risk of the
	prospective bidder or eligible bidder concerned. For this purpose, a bidder shall
	execute a sworn statement attesting to the foregoing responsibilities, to be
	submitted by the bidder as an annex to its technical proposal.
13.1	The Bidder shall submit the following Financial Documents arranged, numbered
10.1	and tabbed as enumerated below.
	a. Financial Bid Form in accordance with the form prescribed in Section IX, Bidding
	Form;
	b. Bid prices in Bill of Quantities in the prescribed Bid Form; Bid Prices should be
	supported by signed detailed estimates with corresponding prices.
	c. Detailed estimates of project including a summary sheet indicating the unit
	prices of construction materials, labor rates and equipment rentals or other cost
	items computed in coming up with the Bid;
	d. Cash Flow by quarter and payments schedule;
13.2	The ABC is Nine Million, Nine Hundred Thirty Three Thousand, Two Hundred Fifty
	Two Pesos and Sixty Seven Centavos (PhP 9,933,252.67).
	Any bid with a financial component exceeding the TOTAL amount shall not be
	accepted.
14.2	"No further instructions."
15.4	Bid Prices shall be fixed. Adjustable price proposals shall be treated as non-
	responsive and shall be rejected.
	Price escalation may be allowed in extraordinary circumstances as may be
	determined by the National Economic and Development Authority in accordance
	with the Civil Code of the Philippines, and upon the recommendation of the
	Procuring Entity.
16.1	The bid prices shall be quoted in Philippine Pesos.
16.3	No further instructions.
17.1	Bids will be valid for one hundred twenty (120) calendar days from the Opening of
	Bids.
18.1	The bid security shall be in the following amount:
	1. 2% of ABC, if bid security is in cash, cashier's/manager's check, bank
	draft/guarantee or irrevocable letter of credit;

	 5% of the ABC, If bid security is in the form of a surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. Any combination of the foregoing proportionate to the share of form with 				
	respect to total amount of security.				
18.2	The bid security shall be valid until one hundred twenty (120) calendar days from the Opening of bids.				
18(a)(iv)	The following as additional grounds for forfeiture of bid security:				
	Submission of eligibility requirements containing false information or falsified documents.				
	 Submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding. Allowing the use of one's name, or using the name of another for purposes 				
	of public bidding.				
	4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the Lowest Calculated and Responsive Bid.				
	5. Refusal or failure to post the required performance security within the prescribed time.				
	6. Refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.				
	7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.				
	8. Failure of the potential joint venture partners to enter into the joint venture after the bid is declared as successful.				
	 All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons. 				
18(b)(iii)	No further instructions.				
20.1	No further instructions.				
20.3	Each Bidder shall submit <i>one</i> (1) original and <i>two</i> (2) copies of the first and second				
	components of its bid.				
21	The address for submission of bids is:				
	BAC Conference Room, Ground Floor, Building 6				
	Department of Health, San Lazaro Compound , Sta. Cruz, Manila				
	The deadline for submission of bids is:				
	September 27, 2010 @ 11:00 am				
24.1	The place of bid opening is:				
	Department of Health				
	BAC Conference Room, Ground Floor, Building 6 San Lazaro Compound, Sta. Cruz, Manila				
	The date and time of bid opening is September 27, 2010 @ 11:00 am				
25.1	No further instructions.				
27.3	No further instructions.				
-	The fartier mediadens.				

27(d)	Bid modification is <i>not allowed.</i>
27.5	No further instructions.
28(b)	Bidders have option to submit manually filed tax returns or tax returns filed through the Electronic Filing and Payments System (EFPS). NOTE: The latest income and business tax returns are those within the last six (6) months preceding the date of bid submission.
28(d)	 The LCB shall submit the following documentary requirements within a non-extendible period of three (3) calendar days from receipt of the notification: a. Tax clearance certificate issued by BIR main office Collection Enforcement Division (per Executive Order 398, Series of 2005); b. Latest Annual Tax Return filed thru Electronic Filing and Payment System (EFPS) and must be duly validated with the tax payments made thereon for the preceding Tax Year be it on a calendar or fiscal year income (per Revenue Regulations 3-2005); c. Latest Business Tax Return filed thru Electronic Filing and Payment System (EFPS) duly validated with the tax payments made thereon also refers to the Value Added Tax (VAT) or Percentage Tax Returns covering the previous six (6) months (per Revenue Regulations 3-2005); d. Valid and current Certificate of PhilGEPS Registration;
31(g)	"No additional Requirements."
33.2	The effective date of the Contract is the date of the Contractor's receipt of the Notice to Proceed.

I. GENERAL CONDITIONS OF THE CONTRACT

1. Definitions

For purposes of this Clause, boldface type is used to identify defined terms.

- **1.1** The **Arbiter** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in **GCC** Clause 21.
- **1.2 Bill of Quantities** refers to a list of the specific items of the Work and their corresponding unit prices, lump sums, and/or provisional sums.
- **1.3** The **Completion Date** is the date of completion of the Works as certified by the Procuring Entity's Representative, in accordance with **GCC** Clause 49.
- **1.4** The **Contract** is the contract between the Procuring Entity and the Contractor to execute, complete, and maintain the Works.
- **1.5** The **Contract Price** is the price stated in the Letter of Acceptance and thereafter to be paid by the Procuring Entity to the Contractor for the execution of the Works in accordance with this Contract.
- **1.6 Contract Time Extension** is the allowable period for the Contractor to complete the Works in addition to the original Completion Date stated in this Contract.
- **1.7** The **Contractor** is the juridical entity whose proposal has been accepted by the Procuring Entity and to whom the Contract to execute the Work was awarded.
- **1.8** The **Contractor's Bid** is the signed offer or proposal submitted by the Contractor to the Procuring Entity in response to the Bidding Documents.
- **1.9** Days are calendar days; months are calendar months.
- **1.10 Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- **1.11** A **Defect** is any part of the Works not completed in accordance with the Contract.
- **1.12** The **Defects Liability Certificate** is the certificate issued by Procuring Entity's Representative upon correction of defects by the Contractor.
- 1.13 The **Defects Liability Period** is the one year period between project completion and final acceptance within which the Contractor assumes the responsibility to undertake the repair of any damage to the Works at his own expense.
- **1.14 Drawings** are graphical presentations of the Works. They include all supplementary details, shop drawings, calculations, and other information provided or approved for the execution of this Contract.
- 1.15 Equipment refers to all facilities, supplies, appliances, materials or things required for the execution and completion of the Work provided by the Contractor and which shall not form or are not intended to form part of the Permanent Works.

- 1.16 The Intended Completion Date refers to the date specified in the <u>SCC</u> when the Contractor is expected to have completed the Works. The Intended Completion Date may be revised only by the Procuring Entity's Representative by issuing an extension of time or an acceleration order.
- **1.17 Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- 1.18 The **Notice to Proceed** is a written notice issued by the Procuring Entity or the Procuring Entity's Representative to the Contractor requiring the latter to begin the commencement of the work not later than a specified or determinable date.
- **1.19 Permanent Works** all permanent structures and all other project features and facilities required to be constructed and completed in accordance with this Contract which shall be delivered to the Procuring Entity and which shall remain at the Site after the removal of all Temporary Works.
- **1.20 Plant** refers to the machinery, apparatus, and the like intended to form an integral part of the Permanent Works.
- 1.21 The **Procuring Entity** is the party who employs the Contractor to carry out the Works stated in the <u>SCC</u>.
- 1.22 The **Procuring Entity's Representative** refers to the Head of the Procuring Entity or his duly authorized representative, identified in the <u>SCC</u>, who shall be responsible for supervising the execution of the Works and administering this Contract.
- 1.23 The **Site** is the place provided by the Procuring Entity where the Works shall be executed and any other place or places which may be designated in the <u>SCC</u>, or notified to the Contractor by the Procuring Entity's Representative as forming part of the Site.
- **1.24 Site Investigation Reports** are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- 1.25 Slippage is a delay in work execution occurring when actual accomplishment falls below the target as measured by the difference between the scheduled and actual accomplishment of the Work by the Contractor as established from the work schedule. This is actually described as a percentage of the whole Works.
- **1.26 Specifications** means the description of Works to be done and the qualities of materials to be used, the equipment to be installed and the mode of construction.
- **1.27** The **Start Date**, as specified in the <u>SCC</u>, is the date when the Contractor is obliged to commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- **1.28** A **Subcontractor** is any person or organization to whom a part of the Works has been subcontracted by the Contractor, as allowed by the Procuring Entity, but not any assignee of such person.
- **1.29 Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Permanent Works.
- 1.30 Work(s) refer to the Permanent Works and Temporary Works to be executed by the Contractor in accordance with this Contract, including (i) the furnishing of all labor, materials, equipment and others incidental, necessary or convenient to the complete execution of the Works; (ii) the passing of any tests before acceptance by the Procuring Entity's Representative; (iii) and the carrying out of all duties and obligations of the Contractor imposed by this Contract as described in the SCC.

2. Interpretation

- 2.1 In interpreting the Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of this Contract unless specifically defined. The Procuring Entity's Representative will provide instructions clarifying gueries about the Conditions of Contract.
- 2.2 If sectional completion is specified in the <u>SCC</u>, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

3. Governing Language and Law

- 3.1 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. All correspondence and other documents pertaining to this Contract which are exchanged by the parties shall be written in English.
- 3.2 This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines.

4. Communications

Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is received by the concerned party.

5. Possession of Site

- 5.1 On the date specified in the <u>SCC</u>, the Procuring Entity shall grant the Contractor possession of so much of the Site as may be required to enable it to proceed with the execution of the Works. If the Contractor suffers delay or incurs cost from failure on the part of the Procuring Entity to give possession in accordance with the terms of this clause, the Procuring Entity's Representative shall give the Contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by Procuring Entity.
- 5.2 If possession of a portion is not given by the date stated in the <u>SCC</u> Clause 5.1, the Procuring Entity will be deemed to have delayed the start of the relevant activities. The resulting adjustments in contact time to address such delay shall be in accordance with **GCC** Clause 47.
- 5.3 The Contractor shall bear all costs and charges for special or temporary right-of-way required by it in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by it for purposes of the Works.
- 5.4 The Contractor shall allow the Procuring Entity's Representative and any person authorized by the Procuring Entity's Representative access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.

6. The Contractor's Obligations

6.1 The Contractor shall carry out the Works properly and in accordance with this Contract. The Contractor shall provide all supervision, labor, Materials, Plant and Contractor's Equipment, which may be required. All Materials and Plant on Site shall be deemed to be the property of the Procuring Entity.

- 6.2 The Contractor shall commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program of Work submitted by the Contractor, as updated with the approval of the Procuring Entity's Representative, and complete them by the Intended Completion Date.
- **6.3** The Contractor shall be responsible for the safety of all activities on the Site.
- 6.4 The Contractor shall carry out all instructions of the Procuring Entity's Representative that comply with the applicable laws where the Site is located.
- 6.5 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the <u>SCC</u>, to carry out the supervision of the Works. The Procuring Entity will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are equal to or better than those of the personnel listed in the Schedule.
- 6.6 If the Procuring Entity's Representative asks the Contractor to remove a member of the Contractor's staff or work force, for justifiable cause, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the Work in this Contract.
- During Contract implementation, the Contractor and his subcontractors shall abide at all times by all labor laws, including child labor related enactments, and other relevant rules.
- 6.8 The Contractor shall submit to the Procuring Entity for consent the name and particulars of the person authorized to receive instructions on behalf of the Contractor.
- 6.9 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the schedule of other contractors particularly when they shall require access to the Site. The Contractor shall also provide facilities and services for them during this period. The Procuring Entity may modify the schedule of other contractors, and shall notify the Contractor of any such modification thereto.
- 6.10 Should anything of historical or other interest or of significant value be unexpectedly discovered on the Site, it shall be the property of the Procuring Entity. The Contractor shall notify the Procuring Entity's Representative of such discoveries and carry out the Procuring Entity's Representative's instructions in dealing with them.

7. Performance Security

- 7.1 Unless otherwise specified in the <u>SCC</u>, within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity but in no case later than the signing of the contract by both parties, the Contractor shall furnish the performance security in any the forms prescribed in **ITB** Clause 32.2.
- 7.2 The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the Contractor is in default in any of its obligations under the Contract.
- **7.3** The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.
- 7.4 The performance security may be released by the Procuring Entity and returned to the Contractor after the issuance of the Certificate of Final Acceptance subject to the following conditions:
 - a. There are no pending claims against the Contractor or the surety company filed by the Procuring Entity;

- b. The Contractor has no pending claims for labor and materials filed against it; and
- c. Other terms specified in the SCC.
- 7.5 The Contractor shall post an additional performance security following the amount and form specified in ITB Clause 32.2 to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements, as the case may be. The Contractor shall cause the extension of the validity of the performance security to cover approved contract time extensions.
- 7.6 In case of a reduction in the contract value or for partially completed Works under the contract which are usable and accepted by the Procuring Entity the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.
- 7.7 The Contractor, by entering into the Contract with the Procuring Entity, acknowledges the right of the Procuring Entity to institute action pursuant to Act 3688 against any subcontractor be they an individual, firm, partnership, corporation, or association supplying the Contractor with labor, materials and/or equipment for the performance of this Contract.

8. Subcontracting

- **8.1** Unless otherwise indicated in the <u>SCC</u>, the Contractor cannot subcontract Works more than the percentage specified in **ITB** Clause 8.1.
- 8.2 Subcontracting of any portion of the Works does not relieve the Contractor of any liability or obligation under this Contract. The Contractor will be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Contractor's own acts, defaults, or negligence, or those of its agents, servants or workmen.
- **8.3** Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the Procuring Entity.

9. Liquidated Damages

- 9.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, the Procuring Entity shall rescind this Contract, without prejudice to other courses of action and remedies open to it.
- 9.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer of the Procuring Entity shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Clause 40.1.

10. Site Investigation Reports

The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the <u>SCC</u> supplemented by any information obtained by the Contractor.

11. The Procuring Entity, Licenses and Permits

The Procuring Entity shall, if requested by the Contractor, assist him in applying for permits, licenses or approvals, which are required for the Works.

12. Contractor's Risk and Warranty Security

- 12.1 The Contractor shall assume full responsibility for the Works from the time project construction commenced up to final acceptance by the Procuring Entity and shall be held responsible for any damage or destruction of the Works except those occasioned by *force majeure*. The Contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the Works, Equipment, installation, and the like to be affected by his construction work.
- The defects liability period for infrastructure projects shall be one year from project completion up to final acceptance by the Procuring Entity. During this period, the Contractor shall undertake the repair works, at his own expense, of any damage to the Works on account of the use of materials of inferior quality within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the Procuring Entity shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.
- 12.3 In case the Contractor fails to comply with the preceding paragraph, the Procuring Entity shall forfeit its performance security, subject its property (ies) to attachment or garnishment proceedings, and perpetually disqualify it from participating in any public bidding. All payables of the GOP in his favor shall be offset to recover the costs.
- After final acceptance of the Works by the Procuring Entity, the Contractor shall be held responsible for "Structural Defects", *i.e.*, major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure, or "Structural Failures", *i.e.*, where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public:
 - **a.** Contractor Where Structural Defects/Failures arise due to faults attributable to improper construction, use of inferior quality/substandard materials, and any violation of the contract plans and specifications, the contractor shall be held liable:
 - b. Consultants Where Structural Defects/Failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or undertook construction supervision for the project shall be held liable;
 - c. Procuring Entity's Representatives/Project Manager/Construction Managers and Supervisors The project owner's representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the Structural Defects/Failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;

- d. Third Parties Third Parties shall be held liable in cases where Structural Defects/Failures are caused by work undertaken by them such as leaking pipes, diggings or excavations, underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.
- e. Users In cases where Structural Defects/Failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable.
- The warranty against Structural Defects/Failures, except those occasioned on force majeure, shall cover the period specified in the <u>SCC</u> reckoned from the date of issuance of the Certificate of Final Acceptance by the Procuring Entity.
- 12.6 The Contractor shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS or surety bond callable on demand, in accordance with the following schedule:

Form of Warranty	Minimum Amount in Percentage (%) of Total Contract Price
Cash or letter of credit issued by Universal or Commercial bank: provided, however, that the letter of credit shall be confirmed or authenticated by a Universal or Commercial bank, if issued by a foreign bank	Five Percent (5%)
Bank guarantee confirmed by Universal or Commercial bank: provided, however, that the letter of credit shall be confirmed or authenticated by a Universal or Commercial bank, if issued by a foreign bank	Ten Percent (10%)
Surety bond callable upon demand issued by GSIS or any surety or insurance company duly certified by the Insurance Commission	Thirty Percent (30%)

- 12.7 The warranty security shall be stated in Philippine Pesos and shall remain effective for one year from the date of issuance of the Certificate of Final Acceptance by the Procuring Entity, and returned only after the lapse of said one year period.
- 12.8 In case of structural defects/failure occurring during the applicable warranty period provided in GCC Clause12.5, the Procuring Entity shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable for expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons as well as the forfeiture of the warranty security posted in favor of the Procuring Entity.

13. Liability of the Contractor

Subject to additional provisions, if any, set forth in the <u>SCC</u>, the Contractor's liability under this Contract shall be as provided by the laws of the Republic of the Philippines.

14. Procuring Entity's Risk

- **14.1** From the Start Date until the Certificate of Final Acceptance has been issued, the following are risks of the Procuring Entity:
 - a. The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
 - *i.* Any type of use or occupation of the Site authorized by the Procuring Entity after the official acceptance of the works; or
 - **ii.** Negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.
 - b. The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

15. Insurance

- **15.1** The Contractor shall, under his name and at his own expense, obtain and maintain, for the duration of this Contract, the following insurance coverage:
 - a. Contractor's All Risk Insurance:
 - b. Transportation to the project Site of Equipment, Machinery, and Supplies owned by the Contractor;
 - c. Personal injury or death of Contractor's employees; and
 - d. Comprehensive insurance for third party liability to Contractor's direct or indirect act or omission causing damage to third persons.
- 15.2 The Contractor shall provide evidence to the Procuring Entity's Representative that the insurances required under this Contract have been effected and shall, within a reasonable time, provide copies of the insurance policies to the Procuring Entity's Representative. Such evidence and such policies shall be provided to the Procuring Entity's through the Procuring Entity's Representative.
- 15.3 The Contractor shall notify the insurers of changes in the nature, extent, or program for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of this Contract and shall produce to the Procuring Entity's Representative the insurance policies in force including the receipts for payment of the current premiums.
- **15.4** The above insurance policies shall be obtained from any reputable insurance company approved by the Procuring Entity's Representative.
- 15.5 If the Contractor fails to obtain and keep in force the insurances referred to herein or any other insurance which he may be required to obtain under the terms of this Contract, the Procuring Entity may obtain and keep in force any such insurances and pay such premiums as may be necessary for the purpose. From time to time, the Procuring Entity may deduct the amount it shall pay for said premiums including twenty five percent (25%) therein from any monies due, or which may become due, to the Contractor, without prejudice to the Procuring Entity exercising its right to impose other sanctions against the Contractor pursuant to the provisions of this Contract.

MANUAL PROCEDURES FOR THE PROCUREMENT OF CIVIL WORKS

- 15.6 In the event the Contractor fails to observe the above safeguards, the Procuring Entity may, at the Contractor's expense, take whatever measure is deemed necessary for its protection and that of the Contractor's personnel and third parties, and/or order the interruption of dangerous Works. In addition, the Procuring Entity may refuse to make the payments under GCC Clause 40 until the Contractor complies with this Clause.
- 15.7 The Contractor shall immediately replace the insurance policy obtained as required in this Contract, without need of the Procuring Entity's demand, with a new policy issued by a new insurance company acceptable to the Procuring Entity for any of the following grounds:

The issuer of the insurance policy to be replaced has:

- a. become bankrupt;
- b. been placed under receivership or under a management committee;
- c. been sued for suspension of payment; or
- d. been suspended by the Insurance Commission and its license to engage in business or its authority to issue insurance policies cancelled; or
- **e.** Where reasonable grounds exist that the insurer may not be able, fully and promptly, to fulfill its obligation under the insurance policy.

16. Termination for Default of Contractor

- **16.1** The Procuring Entity shall terminate this Contract for default when any of the following conditions attend its implementation:
- Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870, regardless of whether or not previous warnings and notices have been issued for the Contractor to improve his performance;
- 16.3 Due to its own fault and after this Contract time has expired, the Contractor incurs delay in the completion of the Work after this Contract has expired; or

16.4 The Contractor:

- a. Abandons the contract Works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;
- **b.** Does not actually have on the project Site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approved Program of Work and equipment deployment schedule as required for the project;
- **c.** Does not execute the Works in accordance with this Contract or persistently or flagrantly neglects to carry out its obligations under this Contract;
- d. Neglects or refuses to remove materials or to perform a new Work that has been rejected as defective or unsuitable; or
- e. Sub-lets any part of this Contract without approval by the Procuring Entity.

All materials on the Site, Plant, Equipment, and Works shall be deemed to be the property of the Procuring Entity if this Contract is rescinded because of the Contractor's default.

17. Termination for Default of Procuring Entity

The Contractor may terminate this Contract with the Procuring Entity if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

- **a.** Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of this Contract; or
- **b.** The prosecution of the Work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

18. Termination for Other Causes

- The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate this Contract for the convenience of the Procuring Entity if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and National Government policies.
- **18.2** The Procuring Entity or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.
- **18.3** Fundamental breaches of Contract shall include, but shall not be limited to, the following:
 - a. The Contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the Procuring Entity's Representative;
 - b. The Procuring Entity's Representative instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty eight (28) days;
 - c. The Procuring Entity shall terminate this Contract if the Contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Contractor. In the case of the Contractor's insolvency, any Contractor's Equipment which the Procuring Entity instructs in the notice is to be used until the completion of the Works;
 - d. A payment certified by the Procuring Entity's Representative is not paid by the Procuring Entity to the Contractor within eighty four (84) days from the date of the Procuring Entity's Representative's certificate;
 - e. The Procuring Entity's Representative gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Procuring Entity's Representative:
 - f. The Contractor does not maintain a Security, which is required;

- g. The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the **GCC** Clause 9; and
- h. In case it is determined prima facie by the Procuring Entity that the Contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following:
 - *i.* Corrupt, fraudulent, collusive and coercive practices as defined in ITB Clause 3.1 (a);
 - ii. Drawing up or using forged documents;
 - *iii.* Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
 - iv. Any other act analogous to the foregoing.
- 18.4 The Funding Source or the Procuring Entity, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with corrupt, fraudulent, or coercive practices.
- When persons from either party to this Contract gives notice of a fundamental breach to the Procuring Entity's Representative in order to terminate the existing contract for a cause other than those listed under GCC Clause 18.3, the Procuring Entity's Representative shall decide whether the breach is fundamental or not.
- **18.6** If this Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

19. Procedures for Termination of Contracts

- 19.1 The following provisions shall govern the procedures for the termination of this Contract:
 - a. Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached:
 - b. Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate this Contract only by a written notice to the Contractor conveying the termination of this Contract. The notice shall state:
 - *i.* That this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - *ii.* Extent of termination, whether in whole or in part;
 - iii. An instruction to the Contractor to show cause as to why this Contract should not be terminated; and
 - *iv.* Special instructions of the Procuring Entity, if any.
 - v. The Notice to Terminate shall be accompanied by a copy of the Verified Report;

- c. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the Head of the Procuring Entity a verified position paper stating why the contract should not be terminated. If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating the contract;
- d. The Procuring Entity may, at anytime before receipt of the Bidder's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Contractor's receipt of the notice:
- e. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate this Contract. It shall serve a written notice to the Contractor of its decision and, unless otherwise provided in the said notice, this Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and
- f. The Head of the Procuring Entity may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Entity.
- Pursuant to Section 69(f) of RA 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:
 - a. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed ("NTP");
 - b. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:
 - *i.* Employment of competent technical personnel, competent engineers and/or work supervisors;
 - **ii.** Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - *iii.* Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 - *iv.* Deployment of committed equipment, facilities, support staff and manpower; and
 - **v.** Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
 - **c.** Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.

- d. Poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:
 - *i.* Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 - **ii.** Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
- **e.** Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.
- f. In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

20. Force Majeure, Release From Performance

- 20.1 For purposes of this Contract the terms "force majeure" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor.
- 20.2 If this Contract is discontinued by an outbreak of war or by any other event entirely outside the control of either the Procuring Entity or the Contractor, the Procuring Entity's Representative shall certify that this Contract has been discontinued. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any Work carried out afterwards to which a commitment was made.
- 20.3 If the event continues for a period of eighty four (84) days, either party may then give notice of termination, which shall take effect twenty eight (28) days after the giving of the notice.
- **20.4** After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the materials and Plant reasonably delivered to the Site, adjusted by the following:
 - a. Any sum to which the Contractor is entitled under GCC Clause 28;
 - **b.** The cost of his suspension and demobilization;
 - c. Any sum to which the Procuring Entity is entitled.
- **20.5** The net balance due shall be paid or repaid within a reasonable time period from the time of the notice of termination.

21. Resolution of Disputes

21.1 If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

- 21.2 If the Contractor believes that a decision taken by the PROCURING ENTITY's Representative was either outside the authority given to the PROCURING ENTITY's Representative by this Contract or that the decision was wrongly taken, the decision shall be referred to the Arbiter indicated in the SCC within fourteen (14) days of the notification of the PROCURING ENTITY's Representative's decision.
- 21.3 Any and all disputes arising from the implementation of this Contract covered by the R.A. 9184 and its IRR shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law" and Republic Act 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": *Provided, however*, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR-A: *Provided, further*, That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. Additional instructions on resolution of disputes, if any, shall be indicated in the SCC.

22. Suspension of Loan, Credit, Grant, or Appropriation

- In the event that the Funding Source suspends the Loan, Credit, Grant, or Appropriation to the Procuring Entity, from which part of the payments to the Contractor are being made:
- 22.2 The Procuring Entity is obligated to notify the Contractor of such suspension within seven (7) days of having received the suspension notice.
- 22.3 If the Contractor has not received sums due it for work already done within forty five (45) days from the time the Contractor's claim for payment has been certified by the Procuring Entity's Representative, the Contractor may immediately issue a suspension of work notice in accordance with SCC Clause 45.2.

23. Procuring Entity's Representative's Decisions

- 23.1 Except where otherwise specifically stated, the Procuring Entity's Representative will decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity's
- 23.2 The Procuring Entity's Representative may delegate any of his duties and responsibilities to other people, except to the Arbiter, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

24. Approval of Drawings and Temporary Works by the Procuring Entity's Representative

- 24.1 All Drawings prepared by the Contractor for the execution of the Temporary Works, are subject to prior approval by the Procuring Entity's Representative before its use.
- **24.2** The Contractor shall be responsible for design of Temporary Works.
- **24.3** The Procuring Entity's Representative's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- **24.4** The Contractor shall obtain approval of third parties to the design of the Temporary Works, when required by the Procuring Entity.

25. Acceleration and Delays Ordered by the Procuring Entity's Representative

When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Procuring Entity's Representative will obtain priced proposals for achieving the necessary acceleration from the

- Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
- 25.2 If the Contractor's Financial Proposals for acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

26. Extension of the Intended Completion Date

- 26.1 The Procuring Entity's Representative shall extend the Intended Completion Date if a Variation is issued which makes it impossible for the Intended Completion Date to be achieved by the Contractor without taking steps to accelerate the remaining work, which would cause the Contractor to incur additional costs. Unless specified in the SCC, no payment shall be made for any event which may warrant the extension of the Intended Completion Date.
- 26.2 The Procuring Entity's Representative shall decide whether and by how much to extend the Intended Completion Date within twenty one (21) days of the Contractor asking the Procuring Entity's Representative for a decision thereto after fully submitting all supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

27. Right to Vary

- 27.1 The Procuring Entity's Representative with the prior approval of the Procuring Entity may instruct Variations, up to a maximum cumulative amount of ten percent (10%) of the original contract cost.
- **27.2** Variations shall be valued as follows:
 - a. At a lump sum price agreed between the parties;
 - **b.** where appropriate, at rates in this Contract;
 - **c.** in the absence of appropriate rates, the rates in this Contract shall be used as the basis for valuation; or failing which
 - **d.** at appropriate new rates, equal to or lower than current industry rates and to be agreed upon by both parties and approved by the Head of the Procuring Entity.

28. Contractors Right to Claim

If the Contractor incurs cost as a result of any of the events under **GCC** Clause 13, the Contractor shall be entitled to the amount of such cost. If as a result of any of the said events, it is necessary to change the Works, this shall be dealt with as a Variation.

29. Dayworks

- 29.1 Subject to **GCC** Clause 43 on Variation Order, and if applicable as indicated in the <u>SCC</u>, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Procuring Entity's Representative has given written instructions in advance for additional work to be paid for in that way.
- 29.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Procuring Entity's Representative. Each completed form shall be verified and signed by the Procuring Entity's Representative within two days of the work being done.
- **29.3** The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

30. Early Warning

- 30.1 The Contractor shall warn the Procuring Entity's Representative at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Procuring Entity's Representative may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 30.2 The Contractor shall cooperate with the Procuring Entity's Representative in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Procuring Entity's Representative.

31. Program of Work

- 31.1 Within the time stated in the <u>SCC</u>, the Contractor shall submit to the Procuring Entity's Representative for approval a Program of Work showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 31.2 An update of the Program of Work shall the show the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 31.3 The Contractor shall submit to the Procuring Entity's Representative for approval an updated Program of Work at intervals no longer than the period stated in the <u>SCC</u>. If the Contractor does not submit an updated Program of Work within this period, the PROCURING ENTITY's Representative may withhold the amount stated in the <u>SCC</u> from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program of Work has been submitted.
- The Procuring Entity's Representative's approval of the Program of Work shall not alter the Contractor's obligations. The Contractor may revise the Program of Work and submit it to the Procuring Entity's Representative again at any time. A revised Program of Work shall show the effect of any approved Variations; and if allowed, any Compensation Event.
- 31.5 When the Program of Work is updated, the Contractor shall provide the Procuring Entity's Representative with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- **31.6** All Variations shall be included in updated Program of Work produced by the Contractor.

32. Management Conferences

- 32.1 Either the Procuring Entity's Representative or the Contractor may require the other to attend a Management Conference. The Management Conference shall review the plans for remaining work and deal with matters raised in accordance with the early warning procedure.
- The Procuring Entity's Representative shall record the business of Management Conferences and provide copies of the record to those attending the Conference and to the Procuring Entity. The responsibility of the parties for actions to be taken shall be decided by the PROCURING ENTITY's Representative either at the Management Conference or after the Management Conference and stated in writing to all who attended the Conference.

33. Bill of Quantities

- 33.1 The Bill of Quantities shall contain items of work for the construction, installation, testing, and commissioning of work to be done by the Contractor.
- 33.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 33.3 If the final quantity of any work done differs from the quantity in the Bill of Quantities for the particular item and is not more than twenty five percent (25%) of the original quantity, provided the aggregate changes for all items do not exceed ten percent (10%) of the Contract price, the Procuring Entity's Representative shall make the necessary adjustments to allow for the changes subject to applicable laws, rules, and regulations.
- 33.4 If requested by the Procuring Entity's Representative, the Contractor shall provide the Procuring Entity's Representative with a detailed cost breakdown of any rate in the Bill of Quantities.

34. Instructions, Inspections and Audits

- 34.1 The Procuring Entity's personnel shall at all reasonable times during construction of the Work be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the construction.
- 34.2 If the Procuring Entity's Representative instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no defect, the test shall be a Compensation Event.
- 34.3 The Contractor shall permit the Funding Source named in the <u>SCC</u> to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Funding Source, if so required by the Funding Source.

35. Identifying Defects

The Procuring Entity's Representative shall check the Contractor's work and notify the Contractor of any defects that are found. Such checking shall not affect the Contractor's responsibilities. The Procuring Entity's Representative may instruct the Contractor to search uncover defects and test any work that the Procuring Entity's Representative considers below standards and defective.

36. Cost of Repairs

Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

37. Correction of Defects

- The Procuring Entity's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion Date up to final acceptance by the Procuring Entity's unless otherwise specified in the <u>SCC</u>. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- **37.2** Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified in the Procuring Entity's Representative's notice.

- 37.3 The Contractor shall correct the defects which he notices himself before the end of the Defects Liability Period.
- 37.4 The Procuring Entity shall certify that all defects have been corrected. If the Procuring Entity considers that correction of a defect is not essential, he can request the Contractor to submit a quotation for the corresponding reduction in the Contract Price. If the Procuring Entity accepts the quotation, the corresponding change in the SCC is a Variation.

38. Uncorrected Defects

- The Procuring Entity shall give the Contractor at least fourteen (14) days notice of his intention to use a third party to correct a Defect. If the Contractor does not correct the Defect himself within the period, the Procuring Entity may have the Defect corrected by the third party. The cost of the correction will be deducted from the Contract Price.
- The use of a third party to correct defects that are uncorrected by the Contractor will in no way relieve the Contractor of its liabilities and warranties under the Contract.

39. Advance Payment

- 39.1 The Procuring Entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most two, installments according to a schedule specified in the SCC.
- 39.2 The advance payment shall be made only upon the submission to and acceptance by the Procuring Entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the Procuring Entity.
- 39.3 The advance payment shall be repaid by the Contractor by an amount equal to the percentage of the total contract price used for the advance payment.
- **39.4** The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.
- 39.5 The Procuring Entity will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to the maximum amount stated in <u>SCC</u> Clause 39.1.

40. Progress Payments

- 40.1 The Contractor may submit a request for payment for Work accomplished. Such request for payment shall be verified and certified by the Procuring Entity's Representative/Project Engineer. Except as otherwise stipulated in the SCC, materials and equipment delivered on the site but not completely put in place shall not be included for payment.
- **40.2** The Procuring Entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:
 - a. Cumulative value of the work previously certified and paid for.
 - **b.** Portion of the advance payment to be recouped for the month.
 - **c.** Retention money in accordance with the condition of contract.

- d. Amount to cover third party liabilities.
- **e.** Amount to cover uncorrected discovered defects in the works.
- 40.3 Payments shall be adjusted by deducting there from the amounts for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Procuring Entity's Representative within twenty eight (28) days from the date each certificate was issued. Unless otherwise indicated in the SCC, no payment of interest for delayed payments and adjustments shall be made by the Procuring Entity.
- 40.4 The first progress payment may be paid by the Procuring Entity to the Contractor provided that at least twenty percent (20%) of the work has been accomplished as certified by the Procuring Entity's Representative.
- 40.5 Items of the Works for which a price of "0" (zero) has been entered will not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.

41. Payment Certificates

- **41.1** The Contractor shall submit to the Procuring Entity's Representative monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- **41.2** The Procuring Entity's Representative shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- **41.3** The value of Work executed shall:
 - a. be determined by the Procuring Entity's Representative;
 - b. comprise the value of the quantities of the items in the Bill of Quantities completed; and
 - **c.** include the valuations of approved variations.
- The Procuring Entity's Representative may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

42. Retention

- **42.1** The Procuring Entity shall retain from each payment due to the Contractor an amount equal to a percentage thereof using the rate as specified in **SCC** Clause 42.2.
- Progress payments are subject to retention of ten percent (10%), unless otherwise specified in the SCC, referred to as the "retention money." Such retention shall be based on the total amount due to the Contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of Works, as determined by the Procuring Entity, are completed. If, after fifty percent (50%) completion, the Work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall again be imposed using the rate specified therefor.
- 42.3 The total "retention money" shall be due for release upon final acceptance of the Works. The Contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to the Procuring Entity, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten (10%) percent retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the concerned implementing

- office/agency or Procuring Entity and will answer for the purpose for which the ten (10%) percent retention is intended, *i.e.*, to cover uncorrected discovered defects and third party liabilities.
- 42.4 On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee in a form acceptable to the Procuring Entity.

43. Variation Orders

- Variation Orders may be issued by the Procuring Entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the Contractor and the Procuring Entity after award of the contract, provided that the cumulative amount of the Variation Order does not exceed ten percent (10%) of the original project cost. The addition/deletion of Works should be within the general scope of the project as bid and awarded. The scope of works shall not be reduced so as to accommodate a positive Variation Order. A Variation Order may either be in the form of a Change Order or Extra Work Order.
- **43.2** A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original Work items in the contract.
- 43.3 An Extra Work Order may be issued by the implementing official to cover the introduction of new work necessary for the completion, improvement or protection of the project which were not included as items of Work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work or character provided for in the contract.
- 43.4 Any cumulative Variation Order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the Head of the Procuring Entity may authorize a positive Variation Order go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB: *Provided, however,* That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).
- 43.5 In claiming for any Variation Order, the Contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within twenty-eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Variation Orders are as follows:
 - a. If the Procuring Entity's representative/Project Engineer believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the Contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the Head of the Procuring Entity for approval.
 - **b.** The Head of the Procuring Entity or his duly authorized representative, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff of the Procuring

Entity's to conduct an on-the-spot investigation to verify the need for the Work to be prosecuted. A report of such verification shall be submitted directly to the Head of the Procuring Entity or his duly authorized representative.

- c. The, Head of the Procuring Entity or his duly authorized representative, after being satisfied that such Change Order or Extra Work Order is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the Head of Procuring Entity for consideration.
- d. If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office of the procuring entity empowered to review and evaluate Change Orders or Extra Work Orders recommends approval thereof, Head of the Procuring Entity or his duly authorized representative, believing the Change Order or Extra Work Order to be in order, shall approve the same.
- e. The timeframe for the processing of Variation Orders from the preparation up to the approval by the Head of the Procuring Entity concerned shall not exceed thirty (30) calendar days.

44. Contract Completion

Once the project reaches an accomplishment of ninety five (95%) of the total contract amount, the Procuring Entity may create an inspectorate team to make preliminary inspection and submit a punch-list to the Contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining Works, Work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the claim of the Procuring Entity for liquidated damages.

45. Suspension of Work

- 45.1 The Procuring Entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the Contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the Procuring Entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The Contractor shall immediately comply with such order to suspend the work wholly or partly.
- 45.2 The Contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the Contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:
 - a. There exist right-of-way problems which prohibit the Contractor from performing work in accordance with the approved construction schedule.
 - **b.** Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
 - c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
 - d. There is failure on the part of the Procuring Entity to deliver government-furnished materials and equipment as stipulated in the contract.

- e. Delay in the payment of Contractor's claim for progress billing beyond forty-five (45) calendar days from the time the Contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the Contractor.
- 45.3 In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the Contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the Contractor by adjusting the contract time accordingly.

46. Payment on Termination

- 46.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Procuring Entity's Representative shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.
- 46.2 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Procuring Entity's Representative shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- **46.3** The net balance due shall be paid or repaid within twenty eight (28) days from the notice of termination.
- 46.4 If the Contractor has terminated the Contract under **GCC** Clauses 17 or 18, the Procuring Entity shall promptly return the Performance Security to the Contractor.

47. Extension of Contract Time

- 47.1 Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the Procuring Entity shall determine the amount of such extension; provided that the Procuring Entity is not bound to take into account any claim for an extension of time unless the Contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the Procuring Entity notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the Contractor of any claim. Upon receipt of full and detailed particulars, the Procuring Entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the Procuring Entity's opinion, the findings of facts justify an extension.
- 47.2 No extension of contract time shall be granted the Contractor due to (a) ordinary unfavorable weather conditions and (b) inexcusable failure or negligence of Contractor to provide the required equipment, supplies or materials.
- **47.3** Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
- 47.4 No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.

47.5 Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days pre-determined by the Procuring Entity in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection, and/or for equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the Procuring Entity, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralysis of construction activities, and other meritorious causes as determined by the Procuring Entity's Representative and approved by the Head of the Procuring Entity. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the Contractor may be considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DTI, DOLE, DILG, and DND, among others. The written consent of bondsmen must be attached to any request of the Contractor for extension of contract time and submitted to the Procuring Entity for consideration and the validity of the Performance Security shall be correspondingly extended.

48. Price Adjustment

Except for extraordinary circumstances as determined by NEDA and approved by the GPPB, no price adjustment shall be allowed unless otherwise specified in the SCC.

49. Completion

The Contractor shall request the Procuring Entity's Representative to issue a certificate of Completion of the Works, and the Procuring Entity's Representative will do so upon deciding that the work is completed.

50. Taking Over

The Procuring Entity shall take over the Site and the Works within seven (7) days from the date the Procuring Entity's Representative issues a certificate of Completion.

51. Operating and Maintenance Manuals

- 51.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the <u>SCC</u>.
- 51.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the <u>SCC</u>, or they do not receive the Procuring Entity's Representative's approval, the Procuring Entity's Representative shall withhold the amount stated in the <u>SCC</u> from payments due to the Contractor.

J. SPECIAL CONDITIONS OF THE CONTRACT

GCC	
Clause 1.16	The Intended Completion Date is Three Hundred (300) calendar days upon receipt of the Notice
1.10	to Proceed.
1.21	The Procuring Entity is Department of Health, San Lazaro Compound, Rizal Avenue, Sta. Cruz, Manila
1.22	The Procuring Entity's Representative are:
	Ms. A Director IV Office A Department of Health San Lazaro, Compound, Rizal Avenue, Sta. Cruz, Manila
	Mr. B Director III Office B Department of Health San Lazaro, Compound, Rizal Avenue, Sta. Cruz, Manila
1.23	The Site is located in Compound A, Quezon City
1.27	The Start Date is Seven (7) calendar days upon receipt of Notice to Proceed
1.30	The Works consists of Concrete & Masonry, Structural & Architectural Metals, Thermal & Moisture, Site Clearing, Demolition Works, Finishes, Concrete Works, Roofing Works, Plumbing Works, Masonry Works and Others
2.2	There is no sectional completion. The project will be completed within Three Hundred (300) calendar days.
2.3(h)	None.
5.1	The Procuring Entity shall give possession of all parts of the Site to the Contractor on the actual start date.
6.5	The Contractor shall employ the following Key Personnel: Project Manager, Project Architect, Project Engineers, Materials Engineers, and Foremen
7.1	At the Contractor's option the performance security is to be in any of the following form: a. Cash, cashier's/manager's check, bank draft/guarantee confirmed by a Universal or Commercial bank in the amount of Two Million Three Hundred Ninety-nine Thousand Five Hundred Forty-five Pesos Only (P 198,665.05).
	b. Irrevocable letter of credit issued by a Universal or Commercial bank: provided, however, it shall be confirmed or authenticated by a Universal or Commercial bank, if issued by a foreign bank Five Million Nine Hundred Ninety-eight Thousand Five Eight Hundred Sixty-two Pesos (P 496,662.63)
	c. Any combination of the foregoing proportionate to share of form with respect to total amount of security.
	The Performance Security shall be valid until a date one hundred twenty (120) days from the date of issue of the Certificate of Completion.
7.4(c)	No further instructions.

8.1	No further instructions
9.1	The applicable liquidated damages is at least one tenth (1/10) of one percent of the cost of the unperformed portion for every day of delay.
	The maximum deduction shall be ten percent (10%) of the amount of the contract, the Procuring Entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.
10	The site investigation reports are: None
12.5	Fifteen (15) years.
13	All partners to the joint venture shall be jointly and severally liable to the Procuring Entity.
21.2	The Arbiter is: A Makati City, Philippines
21.3	No further instructions.
26.1	No further instructions.
29.1	Dayworks are applicable at the rate shown in the Contractor's original Bid.
31.1	The Contractor shall submit the Program of Work to the Procuring Entity's Representative within seven (7) calendar days of delivery of the Letter of Acceptance.
31.3	The period between Program of Work updates is fifteen days.
	The amount to be withheld for late submission of an updated Program of Work is ten percent (10%) of the Progress Billing.
34.3	The Funding Source is the Government of the Philippines.
37.1	No further instructions.
39.1	The amount of the advance payment is not to exceed fifteen percent (15%) of the total contract price to be made in lump sum or at the most two (2) installments to be paid by the respective hospitals.
40.1	No further instructions.
40.30	No further instructions.
42.2	No further instructions.
48	No further instructions.
51.1	The date by which operating and maintenance manuals are required is five (5) days upon completion.
	The date by which "as built" drawings are required is five (5) days upon completion.
51.2	The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required is two percent (2%) of contract price.

K. TECHNICAL SPECIFICATIONS/TERMS OF REFERENCE

Project Title: Construction of DOH (MMD) Warehouse Extension and

Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse,

DOH Compound, Manila

Project Components:

Site and Space planning were governed by the standards, rules and regulations on the design of buildings as prescribed by the Department of Health and other concerned agencies. Building design shall conform to the provisions of the National Building Code of the Philippines (PD 1096), Accessibility Law (BP 344), National Building Code of the Philippines, Electrical Engineering Law (RA 184), Mechanical Engineering Law (RA 5336), Plumbing Code (RA 1378, 1993-1994 Revisions), Fire Code (PD 1185) and other laws and regulations covering environmental concerns and local ordinances and regulations.

A. Pre-Detailed Design

- 1. Engineering Surveys and Investigations
 - 1.1 Surveys and investigations of the site includes boundaries of the property, elevations and contours (at 0.5m interval), soil tests, location, dimension, floor elevations and other pertinent data on existing buildings and improvements (roads, marking areas) and existing utility lines (e.g. water, power, telephone).
- 2. Design Development Drawings
 - 2.2 Preparation of the following drawings for design development based on the schematic plans prepared by the DOH.
 - 2.2.1 Perspective View
 - 2.2.2 Floor plans, two (2) sections (scale 1:100m minimum) and four (4) elevations (scale 1:100m minimum), including complete space allocation.

B. Detailed Design

- 1. Preparation of the following Detailed Design Drawings (enumerated below) based on the Design Development Drawings including any revisions and refinements as approved and required by the DOH:
 - 1.1 Architectural Drawings (as applicable):
 - 1.1.1 Perspective, Site Development Plan, Vicinity Map/Location Plan (2.00kms Radius) Table of Contents
 - 1.1.2 Floor Plans (scale 1:100m minimum) including furniture lay-out (when necessary)
 - 1.1.3 Roof Plan/s showing downspouts (scale 1:100m minimum) including detail of gutter, downspout, etc.
 - 1.1.4 Reflected ceiling plan/s (scale 1:100m minimum) including details
 - 1.1.5 Details of Stairs, fire escapes/exits, accessible ramps, etc. (scale 1:50m) including details of railings, treads, risers, etc. in the form of plans, elevation/section
 - 1.1.6 Details of Toilets (1:50m) including accessible toilets in the form of plans, elevation/section
 - 1.1.7 Details of specialized design features (scale 1:50m) such as partitions, cabinets, etc. and accessible design features
 - 1.1.8 Detail of typical bay section from ground to roof (scale 1:50m)

- 1.1.9 Details of special rooms (1:50m) in the form of plans, elevations/section
- 1.1.10 Schedule of doors, gates, emergency exits, etc. (scale 1:50m) including specifications for materials and hardware
- 1.1.11 Schedule of windows (scale 1:50m) including specifications for materials and hardware
- 1.1.12 Schedule of finishes for interior and exterior floors, walls and ceilings
- 1.2 Structural Drawings (as applicable):
 - 1.2.1 Foundation Plan/s (scale 1:100m minimum), Floor Framing (scale 1:100m minimum) and Roof Framing Plans (scale 1:100m minimum)
 - 1.2.2 Schedule and Details of Footings and Columns
 - 1.2.3 Schedule and Details of Beams and Floor Slabs
 - 1.2.4 Detail of Trusses, Purlins and Rafters
 - 1.2.5 Details of stairs, Ramps, Fire Exits
 - 1.2.6 Other Spot Details
- 1.3 Electrical Drawings (as applicable):
 - 1.3.1 Location and Site Plan
 - 1.3.2 Lighting Lay-out (scale 1:100m minimum) including details
 - 1.3.3 Power Lay-out (scale 1:100m minimum) including details
 - 1.3.4 Auxiliary System Lay-out (scale 1:100m minimum) including details
 - 1.3.5 Schedule and Detail of Loads
 - 1.3.6 Other Details
- 1.4 Plumbing/Sanitary Drawings (as applicable):
 - 1.4.1 Location and Site Plan
 - 1.4.2 Storm Drainage Lay-out (scale 1:100m minimum) including actual length of tapping line to Main Drainage Line
 - 1.4.3 Waterline Lay-out (scale 1:100m minimum) including actual length of tapping line from main water source when applicable
 - 1.4.4 Sewerline Lay-out (scale 1:100m minimum) including actual length of tapping line to septic tank or existing sewerline
 - 1.4.5 Isometric Lay-out, showing waterline, sewerline and drainage line
 - 1.4.6 Detail of connections, catch basins, downspouts, etc.
 - 1.4.7 Detail of Septic Tank
- 1.5 Mechanical Drawings (as applicable):
 - 1.5.1 Floor plans/Isometric drawings of Air-Conditioning Systems
 - 1.5.2 Details of Machinery/equipments, etc. (if applicable)
- 2. Preparation of other Documents
 - 2.1 Structural Computations, including Soil Boring Test Results and Seismic Analysis & Electrical Design Computations.
 - 2.2 General Notes & Technical Specifications describing type and quality of materials and equipment to be used, manner of construction and the general conditions under which the project is to be constructed.
 - 2.3 Detailed Bill of Quantities, Cost Estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals.
 - 2.4 Summary of Works

As a rule, contract implementation guidelines for procurement of infrastructure projects shall comply with Annex "E" of IRR-A, RA 9184. The following provisions shall supplement these procedures:

- 1. No works shall commence unless the contractor has submitted the prescribed documentary requirements and the DOH has given written approval. Work execution shall be in accordance with reviewed and approved documents.
- 2. The contractor shall be responsible for obtaining all necessary information as to risks, contingencies and other circumstances on which may affect the works and shall prepare and submit all necessary documents specified by the concerned Building Officials to meet all regulatory approvals as specified in the contract documents.
- 3. The contractor shall submit a detailed program of works within fourteen (14) calendar days after the issuance of the Notice to Commence for approval by the procuring entity that shall include, among others:

The order in which it intends to carry out the work including anticipated timing for each stage of design/detailed engineering and construction;

- 3.1 Periods for review of specific outputs and any other submissions & approvals;
- 3.2 Sequence of timing for inspection and tests;
- 3.3 General description of the design and construction methods to be adopted;
- 3.4 Number and names of personnel to be assigned for each stage of work;
- 3.5 List of equipment required on site for each stage of work; and
- 3.6 Description of the quality control system to be utilized for the project.
- 4. Any errors, omissions, inconsistencies, inadequacies, or failure submitted by the contractor that will not comply with the requirements with the requirements shall be rectified, resubmitted and reviewed at the contractor's cost. The contractor shall notify the DOH within a reasonable period of time if it wishes to modify/change the design and document that has been previously submitted, reviewed and approved. The contractor shall shoulder the cost of such changes.
- 5. As a rule, changes in design and construction requirements shall be limited only to those that have not been anticipated in the contract documents prior to contract signing and approval. The following guidelines shall govern approval for change or variation orders:

Change Orders resulting from design errors, omissions, or non-conformance with the performance specifications and parameters and the contract documents by the contractor, the said Orders shall be implemented by the contractor at no additional cost to the DOH.

Provided that the contractor suffers delay and/or incurs costs due to changes or errors in the DOH performance specifications and parameters, the contractor shall be entitled to either one of the following:

An extension of time for any such delays under Section 10 of Annex "E" of IRR-A (RA 9184); or Payment for such costs as specified in the contract documents provided that the cumulative amount of the variation order does not exceed ten percent (10%) of the original project cost.

The contract documents shall include the manner and schedule of payment specifying the estimated contract amount and installments in which the contract will be paid.

The contractor shall be entitled to advance payment subject to the provisions of Section 4 of Annex "E", IRR-A (RA 9184).

The DOH shall define the quality control procedures for the design and construction in accordance with the DOH guidelines and shall issue the proper certificates of acceptance for sections or whole of the works as provided for in the contract documents.

The contractor shall provide all necessary equipment, personnel, instruments, documents and others to carry out specified tests.

This design and build projects shall have minimum Defects Liability Period of one (1) year after contract completion or as provided for in the contract documents. This is without prejudice to the liabilities imposed upon the engineer/architect who drew up the plans and specifications for building sanctioned under Section 1723 of the New Civil Code of the Philippines.

The contractor shall be held liable for design and structural defects and/or failure of the completed project within the warranty period of 15 years for permanent structures/buildings as specified in Section 62.2.2 of the IRR-A (RA 9184).

Implementation Arrangement:

- 1. Reporting Protocol
 - 1.1 Contact Person at DOH Central Office

Overall Contact Person:

MS. ABC

Director III, Administrative Service

G/F Bldg. No. 25, DOH, San Lazaro Compound, Sta. Cruz, Manila

1.2 Contact Person for Technical Concerns

Ms. STU

Chief, General Services Division

1.3 Contact Persons at General Services Division

Engr. XYZ

Chief, Materials Management Division

G/F Bldg. No. 25, DOH, San Lazaro Compound, Sta. Cruz, Manila

Eligibility Requirements:

1. For the Detailed Design and Detailed Design portion of the contract, the Bidder is required to hire the minimum number of people as shown below. However, should the Bidder opine that the required number would be insufficient to complete the works/services within the specified time frame; the bidder can hire additional staff which method deserves to be detailed or explained in the Bidder's Technical Proposal.

Likewise, the Bidder shall remunerate this additional staff all within the Bidder's financial Proposal.

1.1 Project Coordinator(s)

1.2 Licensed Architect or Engineer

- 1.2.1 At least 10 years experience in construction
- 1.2.2 Excellent in communication skills, oral or written, also in administrative abilities

1.3 Civil/Structural Engineer

- 1.3.1 Licensed Civil Engineer
- 1.3.2 (Preferably) with at least 5 yrs. experience in building construction
- 1.3.3 Proficient on AutoCad software

1.4 Electrical Engineer

- 1.4.1 Licensed Electrical Engineer, preferably a Professional electrical Engineer
- 1.4.2 (Preferably) with at least 5 years experience in building projects
- 1.4.3 Proficient in AutoCad software

1.5 Mechanical Engineer

- 1.5.1 Licensed Mechanical Engineer, preferably Professional Mechanical Engineer
- 1.5.2 (Preferably) with at least 5 years experience in building projects
- 1.5.3 Proficient in AutoCad software

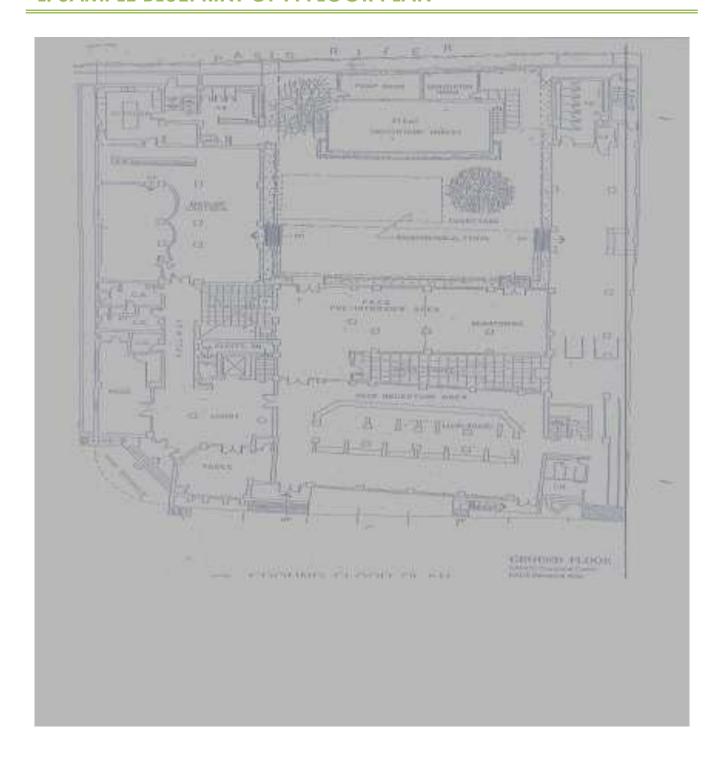
1.6 Sanitary Engineer

- 1.6.1 Licensed Sanitary Engineer
- 1.6.2 (Preferably) with at least 5 years experience in building projects.
- 1.6.3 Proficient in AutoCad software

1.7 CADD Operator

- 1.7.1 At least Bachelor's Degree in Architecture or Engineering
- 1.7.2 Proficient in AutoCad software

L. SAMPLE BLUEPRINT OF A FLOOR PLAN



M. MINUTES OF THE PRE-BID CONFERENCE



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

MINUTES OF THE MEETING PRE-BIDDING CONFERENCE

Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila
03 NOVEMBER 2009

- 1. BAC Vice-Chairperson
- 2. BAC Member
- 3. BAC Member
- 4. BAC Secretariat
- 5. Infrastructure Representative
- 6. End-User Representative
- 7. Infrastructure Representative
- 8. Infrastructure Representative
- 9. Infrastructure Representative
- 10. BAC Secretariat
- 11. BAC Secretariat

CONTRACTOR

2. 3. 4.	Company A Company B Company C Company D Company E	13. 14. 15.	Company L Company M Company N Company O Company P
	Company E Company F		Company Q
	Company G		Company R
8.	Company H	19.	Company S
9.	Company I	20.	Company T
10.	Company J	21.	Company U
11.	Company K	22.	Company V

Pre- Bidding Conference:

- 1) The Pre-Bidding Conference was presided over by BAC Vice-Chairperson.
- 2) The bidding document was checked by the BAC in the presence of the Infrastructure Division, Office A Representatives, End-user Representative and contractors and the following discrepancies were rectified:

SECTION III. BID DATA SHEET (BDS)

ITB	
Clause	
12.1	The Bidder shall submit the following Eligibility and Technical Documents arranged, numbered and tabbed as enumerated below: A) Eligibility Documents Class "A" Documents: 1. Registration certificate from the Securities and Exchange Commission (SEC) including Articles of Incorporation, Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration.
	Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.
	3. Statement of all its ongoing and completed government and private contracts within the ten (10) years from submission of bids, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following:
	 a. name of the contract; b. date of the contract; c. contract duration; d. owner's name and address; e. nature of work; f. contractor's role whether sole contractor, subcontractor, or partner in a JV and percentage of participation; g. total contract value at award; h. date of completion or estimated completion time; i. total contract value at completion, if applicable; j. percentages of planned and actual accomplishments, if applicable; k. value of outstanding works, if applicable;
	 the statement shall be supported by the notices of award and/or notices to proceed issued by the owners; and the statement shall be supported by the Constructors Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance, if applicable;
	 A Valid Philippine Contractors Accreditation Board (PCAB) license and registration for Size Range – Medium B, License Category – A, General Building;
	5. Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission;
	6. NFCC computation or CLC in accordance with ITB Clause 5.5;

Class "B" Document:

7. If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful:

B) Technical Documents

8. The bid security in the following forms:

Form of Bid Security	Amount of Bid Security (Equal to Percentage of the ABC)	
Cash or cashier's/manager's check issued by a Universal or Commercial Bank.		
b. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Two percent (2%)	
c. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)	
d. Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security	

- 9. DULY SIGNED Project Requirements, which shall include the following:
 - (a) Organizational chart for the contract to be bid;
 - (b) List of contractor's personnel (viz., Project Manager, Architect, Engineers, Materials Engineers, and Foremen) to be assigned to the contract to be Bid, with their complete qualification and experience data, shown in matrix with CV including copy of updated licenses or proof of renewal of their licenses, if expired. The list must contain the name, educational attainment, training, professional license and work experience of personnel;
 - (c) List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, with a Certification of availability of equipment from the equipment lessor/vendor for the duration of the project;
 - (d) Construction schedule and S-Curve;
 - (e) Manpower Schedule;

- (f) Construction Method in narrative form;
- (g) Equipment Utilization Schedule;
- (h) Construction Safety and Health Program;
- (i) PERT/CPM;
- (i) Affidavit of Site Inspection;
- (k) Plans (Blueprint);
- (I) Summary of Works;
- 10. Sworn statement by the Bidder or its duly authorized representative in accordance with Section 25.2(b) (iv) of the revised IRR of RA 9184 and using the form in Section IX. Bidding Form as to the following:

It is not "blacklisted" or "barred" from bidding by the GOP or any of its agencies, offices, corporations or LGUs, including foreign government/foreign international financing institution whose blacklisting rules have been recognized by the GPPB;

- (a) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- (b) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- (c) It is authorizing the HOPE or his duly authorized representative/s to verify all the documents submitted;
- (d) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership, cooperative or joint venture:
- (e) It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of RA3019;
- (f) It complies with the responsibilities of a prospective or eligible bidder;
- (g) It complies with the existing labor laws and standards, in the case of procurement of services;
- (h) Attesting compliance to the responsibilities of a Prospective or Eligible Bidder;

	 i. Having taken steps to carefully examine all of the bidding documents; ii. Having acknowledge all conditions, local or otherwise, affecting the implementation of the contract; iii. Having made an estimate of the facilities available and needed for the contract to be bid, if any; and iv. Having complied with his responsibility as provided for under Section 22.5.1; Failure to observe any of the above responsibilities shall be at the risk of the prospective bidder or eligible bidder concerned. For this purpose, a bidder shall execute a sworn statement attesting to the foregoing responsibilities, to be submitted by the bidder as an annex to its technical proposal. 11. Authority of the signatory based on 10.d above.
13.1	From "No additional Requirements" to "The Bidder shall submit the Financial Proposal documents arranged, numbered and tabbed as enumerated below": (1) Financial Bid Form in accordance with the form prescribed in Section IX, Bidding
	Form; (2) Bid prices in Bill of Quantities in the prescribed Bid Form; Bid Prices should be supported by signed detailed estimates with corresponding prices (3) Detailed estimates of project including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals or other cost items
	computed in coming up with the Bid; (4) Cash Flow by quarter and payments schedule;
28.2	Within a non-extendible period of three (3) calendar days from receipt by the Bidder of the notice from the BAC that it submitted the LCB, the Bidder shall submit the following documentary requirements:
	 a. Tax clearance certificate issued by BIR main office Collection Enforcement Division (per Executive Order 398, Series of 2005); b. Latest Annual Tax Return filed thru Electronic Filing and Payment System (EFPS) and must be duly validated with the tax payments made thereon for the preceding Tax Year be it on a calendar or fiscal year income (per Revenue Regulations 3-2005); c. Latest Business Tax Return filed thru Electronic Filing and Payment System (EFPS) duly validated with the tax payments made thereon also refers to the Value Added Tax (VAT) or Percentage Tax Returns covering the previous six (6) months (per Revenue Regulations 3-2005); d. Valid and current Certificate of PhilGEPS Registration;
21	Submission of Bids shall be on November 23, 2010; 10:00am

- 1. Soft copy of documents to be emailed to prospective contractors. If no e-mail, prospective bidder shall provide a CD to the BAC Secretariat:
 - a. Bill of Quantities (Annex A)
 - i. Structural
 - ii. Architectural
 - Power House
 - Pump House
 - Garbage House
 - Maintenance Building
 - Main Building
 - iii. Electrical
 - iv. Mechanical
 - v. Sanitary
 - b. Summary of Works (Annex B)
- 2. Site Visit will be on 06 November 2010, 9:00 am.
- 3. Payment for Safety Officer shall be put in the overhead.
- 4. Tax to be imposed shall be seven percent (7%).
- 5. It was agreed that the Summary of Work/plan shall prevail if there are conflicts among Bill of Quantities, Summary of works and Plan.
- 6. Special Condition of the Contract

GCC	
Clause	
1.30	To include the word " or as indicated in the SUMMARY OF WORKS"
6.1	The Contractor shall carry out the Works properly in accordance with
	the Summary of Works and with this Contract.
8.1	Contractor shall include the name of the company who will supply and
	install equipments of the elevator.

7. Having no other matters to be discussed, the aforesaid Pre-Procurement Conference was adjourned at 11:00 A.M.

Prepared:

(SIGNATURE OVER PRINTED NAME

BAC Secretariat

Approved:

(SIGNATURE OVER PRINTED NAME)

BAC Member

M. SUPPLEMENTAL BID BULLETINS



Republic of the Philippines
Department of Health

BIDS AND AWARDS COMMITTEE

BID BULLETIN NO. 1 03 November 2010

Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila

This Bid Bulletin is being issued to supplement and/or rectify discrepancies in the Bill and Quantities (BOQ) and plan for the Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila. Indicated below are the additional information and amendments that shall form as integral part of the Bidding Document:

- 1. Reference Number of the Project shall be "IB 2010-12-01 (X)"
- 2. No missing pages of blueprints. Number of pages was minimized since DOH is using sub pages.
- 3. Contractors shall submit a computation of its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial bank to extend a credit line in its favor, pursuant to Section 23.5.1.4 of IRR of RA 9184.
- 4. Construction shall be completed in three hundred (300) calendar days.
- 5. Technical Queries:

	Issues/ comments	Response
1.	Specific colors/type of tiles	It shall be premium color.
2.	Bill of Quantities (BOQ) of Pump House (structural works) was not included in the soft copy of BOQ sent	Revised BOQ was given to all contractors.
3.	Materials for trusses of the power, garbage collection & pump houses, Engineering and maintenance structures	Refer to Plan and BOQ.
4.	Door and windows designation for PBC main building, room walk in blood bank refrigerator	Door and window pass-through are integrated systemfor a walk-in refrigerator, therefore, suppliers specification driven.
5.	Schedule of doors hardware	Indicated in the schedule of doors, else locksets are cylindrical type, mid-priced.
6.	Electrical Works-Primary/ secondary metering-If the proposed 3-333 KVA transformer bank including associated pole hardware such as lighting arresters, suspension insulators, air break switches, fuse cut-outs, primary metering transformer, metering, concrete poles, cross arms, guys, secondary cables from the transformers up to the concrete pedestal shall be contractor's scope of work.	The proposed 3-333 KVA transformer bank including associated pole hardware (such as lighting arresters, suspension insulators, air break switches, fuse cut outs, primary metering instrument transformers, metering, concrete poles, cross arms, guys, secondary cables from the transformers up to the concrete pedestals and other necessary equipment to complete and utilize the electrical system of Building X including the four (4) support structures are included in the contractor's scope of work as indicated in the submitted electrical plans, summary of works and bill of quantities.

tapping point. and shall be coordinated with PLDT. The location of high tension lines tapping point shall be at the Agham Road near Quezon Avenue, Quezon City. 9. No rating of fusible/non-fusible Switch for ACU units There are no fusible/non-fusible switches for ACU units but there shall be breaker types with enclosure for individual split type ACU units. Please refer to the following Load Schedules (PP ACU1, PP ACU2, PP ACU3, PP ACU4, and PP ACU5) for ACU units regarding the rating of circuit breakers. 10. Is the main distribution Panel a part of the LV Switch gear or a separate Panel 11. The use of the two(2) generators There shall be only one (1) generator set to be installed but the contractor shall provide, install and complete the electrical feeder layout and other necessary controls and equipment for the two (2) generator sets. 12. Grounding Layout Follow the standard grounding system requirements for buildings and power house. 13. Fire alarm annunciator dimensional appearance The contractor shall submit for approval dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.	7.	Mounting scheme of transformer banks, H-frame or single pole.	The contractor shall use H-Frame scheme for the mounting of the 3-333 KVA Distribution Transformer.
units but there shall be breaker types with enclosure for individual split type ACU units. Please refer to the following Load Schedules (PP ACU1, PP ACU2, PP ACU3, PP ACU4, and PP ACU5) for ACU units regarding the rating of circuit breakers. 10. Is the main distribution Panel a part of the LV Switch gear or a separate Panel 11. The use of the two(2) generators There shall be only one (1) generator set to be installed but the contractor shall provide, install and complete the electrical feeder layout and other necessary controls and equipment for the two (2) generator sets. 12. Grounding Layout Follow the standard grounding system requirements for buildings and power house. The contractor shall submit for approval dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.	8.	<u> </u>	Location of PLDT shall be along Quezon Avenue and shall be coordinated with PLDT. The location of high tension lines tapping point shall be at the Agham Road near Quezon Avenue, Quezon City.
Switch gear or a separate Panel 11. The use of the two(2) generators There shall be only one (1) generator set to be installed but the contractor shall provide, install and complete the electrical feeder layout and other necessary controls and equipment for the two (2) generator sets. 12. Grounding Layout Follow the standard grounding system requirements for buildings and power house. The contractor shall submit for approval dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.	9.		Please refer to the following Load Schedules (PP ACU1, PP ACU2, PP ACU3, PP ACU4, and PP ACU5) for ACU units regarding the
There shall be only one (1) generator set to be installed but the contractor shall provide, install and complete the electrical feeder layout and other necessary controls and equipment for the two (2) generator sets. 12. Grounding Layout Follow the standard grounding system requirements for buildings and power house. The contractor shall submit for approval dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.	10.		
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requirements for buildings and power house. 13. Fire alarm annunciator dimensional appearance dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.	11.	The use of the two(2) generators	installed but the contractor shall provide, install and complete the electrical feeder layout and other necessary controls and equipment for the
appearance dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.	12.	Grounding Layout	
	13.		dimensional appearance of Fire Alarm Annunciators as proposed by the fire detection and alarm suppliers for approval by the implementing agency.
	14.	line on the riser diagram and LAN server in	Voice and Data Riser Diagram provide and install cat 6e UTP cables to individual works stations as indicated in the auxiliary layout plan.
15. Floor finish of Component Separation room at Ground Floor. The area is part of processing room; refer to the schedule of finishes.	15.	·	, ,
16. Floor finish and steps at Dollies wash area. Refer to Schedule of Finish.	16.	Floor finish and steps at Dollies wash area.	Refer to Schedule of Finish.
17. Floor finish at Media Room 3 rd floor Same as that of Microbiology Laboratory	17.	Floor finish at Media Room 3 rd floor	Same as that of Microbiology Laboratory

All other provisions of the bidding documents which are not affected shall remain in effect. For guidance and information of all concerned.

(SIGNATURE OVER PRINTED NAME) BAC CHAIRPERSON

N. CHECKLIST FOR ELIGIBILITY AND TECHNICAL DOCUMENTS

Project: Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila

COMPANY:

ITEM NO.	REQUIREMENTS	PASSED	FAILED
A	Eligibility and Technical Documents		
1	Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration.		
2	Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.		
3	Statement of all its ongoing and completed government and private contracts within ten (10) years from the submission of bids, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following: (a) name of the contract; (b) date of the contract; (c) contract duration; (d) owner's name and address; (e) nature of work; (f) contractor's role whether sole contractor, subcontractor, or partner in a JV and percentage of participation; (g) total contract value at award; (h) date of completion or estimated completion time; (i) total contract value at completion, if applicable; (j) percentages of planned and actual accomplishments, if applicable; (k) value of outstanding works, if applicable; • the statement shall be supported by the notices of award and/or notices to proceed issued by the owners; and • the statement shall be supported by the Constructors Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance, if applicable		

4	A Valid Philippine Contractors Accreditation Board (PCAB) license and registration for Size Range – Small B, License Category – C and D, General Building.	
5	Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission.	
6	NFCC computation or CLC of at least 10% of ABC.	
7	If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.	
8	The bid security Cash, casher's/manager's check, bank draft/guarantee, irrevocable letter of credit – 2% of ABC Form of Bid Security: Name of Bank: Amount of Bid Security: Validity Period:	
9	DULY SIGNED Project Requirements, which shall include the following: (a) Organizational chart for the contract to be bid; (b) List of contractor's personnel (viz., Project Manager, Architect, Engineers, Materials Engineers, and Foremen) to be assigned to the contract to be Bid, with their complete qualification and experience data, shown in matrix with CV including copy of updated licenses or proof of renewal of their licenses, if expired. The list must contain the name, educational attainment, training, professional license and work experience of personnel. (c) List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, with a Certification of availability of equipment from the equipment lessor/vendor for the duration of the project; (d) Construction schedule and S-Curve; (e) Manpower Schedule; (f) Construction Method in narrative form; (g) Equipment Utilization Schedule; (h) Construction Safety and Health Program; (i) PERT/CPM; (j) Affidavit of Site Inspection; (k) Plans (Blueprint); and, (l) Summary of Works.	

10	Swor	n statement by the Bidder or its duly authorized representative in accordance					
10	with						
	(a)	on IX. Bidding Form as to the following: It is not "blacklisted" or "barred" from bidding by the GOP or any of its					
	(ω)	agencies, offices, corporations or LGUs, including foreign					
		government/foreign international financing institution whose blacklisting					
		rules have been recognized by the GPPB;					
	(b)	Each of the documents submitted in satisfaction of the bidding requirements					
	(0)	is an authentic copy of the original, complete, and all statements and					
		information provided therein are true and correct;					
	(0)	It is authorizing the HOPE or his duly authorized representative/s to verify					
	(c)	all the documents submitted;					
	(4)	The signatory is the duly authorized representative of the prospective					
	(d)	bidder, and granted full power and authority to do, execute and perform					
		any and all acts necessary and/or to represent the prospective bidder in					
		the bidding, with the duly notarized Secretary's Certificate attesting to					
		such fact, if the prospective bidder is a corporation, partnership,					
	(-)	cooperative or joint venture;					
	(e)	It complies with the disclosure provision under Section 47 of RA 9184 in					
	(t)	relation to other provisions of RA3019;					
	(f)	It complies with the responsibilities of a prospective or eligible bidder;					
	(g)	It complies with the existing labor laws and standards, in the case of					
	/I- \	procurement of services;					
	(h)	Attesting compliance to the responsibilities of a Prospective or Eligible					
		Bidder;					
		i. Having taken steps to carefully examine all of the bidding documents;					
		ii. Having acknowledge all conditions, local or otherwise, affecting					
		the implementation of the contract;					
		iii. Having made an estimate of the facilities available and needed					
		for the contract to be bid, if any; and					
		iv. Having complied with his responsibility as provided for under					
		Section 22.5.1;					
11.	Au	thority of the signatory based on 10.d above.					
[] Eligible							
BAC/TWG Member [] Non-Eligible							

O. CHECKLIST FOR FINANCIAL DOCUMENTS

CHECKLIST FOR FINANCIAL PROPOSALS

(To be submitted by the bidders in the following orders and tabbed by numbers)

Project: Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila

IB No: 2010-12-01(X)

BIDDER NO.: _____

ITEM NO.	REQUIREMENTS	COMPLYING	NON- COMPLYING
1	Lump sum bid price, which shall include the detailed engineering cost, in the prescribed Bid Form		
2	Bid prices in Bill of Quantities in the prescribed Bid Form; (Bid Prices should be supported by signed detailed estimates with corresponding prices).		
3	Detailed estimates per project including summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid		
4	Cash flow by the quarter and payments schedule.		

CHECKED BY: BAC MEMBER
DATE:

REMARKS: () Complying () Non-Complying

P. ABSTRACT OF BIDS AS READ

ABSTRACT OF BIDS AS READ

ABSTRACT OF BIDS

Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD)

Warehouse, DOH Compound, Manila

IB No. 2010-12-01(X)

Approved Budget for the Contract (ABC): Php 9,933,252.67

Submission and Opening of Bid Proposals: March 23, 2010 @ 10:30 A.m., Venue:

Ground Floor, Bldg. 6, San Lazaro Compound, Sta. Cruz, Manila

SIGNATURE OF AUTHORIZED REPRESENTATIVE NAME OF	Company A	Company B	Company C
COMPANY	7,000,000,00	0.470.050.00	0.004.007.00
Total Amount of Bid	7,962,368.28	8,170,252.33	8,264,987.23
Form of Bid Security	MANAGER'S	BANK	BANK
	CHECK	GUARANTEE	GUARANTEE
Bank/Company	Bank A	Bank B	Bank C
Validity Period	120 DAYS	120 DAYS	120 DAYS
Bid Security	P 199,000.00	P 200,000.00	P 200,000.00
Required Bid Security	P 198,665.05	P 198,665.05	P 198,665.05
Sufficient/Insufficient	Sufficient	Sufficient	Sufficient

CENTRAL OFFICE BIDS AND AWARDS COMMITTEE

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

BAC Member (End-user Representative) BAC Member

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

BAC Member BAC Member

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

BAC Vice- Chairperson BAC Chairperson

Q. MINUTES OF BID OPENING



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

Minutes of Meeting SUBMISSION AND OPENING OF BIDS

Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila

IB 2010 -12-01 (X)

03 November 2009

DOH

- 1. COBAC Vice-Chairperson
- COBAC Member
- 3. COBAC Member
- 4. COBAC Secretariat
- Infrastructure Representative
- 6. End-User Representative
- 7. Infrastructure Representative
- 8. Infrastructure Representative
- 9. Infrastructure Representative
- 10. COBAC Secretariat
- 11. COBAC Secretariat

CONTRACTOR

- 1. Company A
- 2. Company B
- 3. Company C

ISSUES AND CONCERNS:

- The Pre-Bidding Conference was presided over by BAC Vice-Chairperson.
- The Submission and Opening of Bids took place as scheduled at the BAC Conference Room, Ground Floor, Building 6, Department of Health, San Lazaro Compound, Sta. Cruz, Manila;
- Out of the twenty four (24) prospective contractors who procured the bidding documents only three (3) prospective contractors submitted their respective proposals, namely:
 - a. Company A
 - b. Company B
 - c. Company C
- On the same date, letters were received from the remaining nineteen (19) prospective contractors stating that their estimated bid amount will exceed the Approved Budget for the Contract (ABC), thus, they refrained to submit bids.

- The first envelope containing the Eligibility and Technical Documents was opened and the presence, completeness and correctness of the required documents were checked and verified by the BAC in the presence of the prospective bidders' representative.
- Upon checking, the three (3) prospective contractors were found "ELIGIBLE" and were allowed to open the second envelope containing the "Financial Requirements."
- The second envelope containing the Financial Document was opened and the presence, completeness and correctness of all the documents were checked and verified by the BAC.
- Upon checking, the three (3) "ELIGIBLE" contractors were rated "PASSED" and subsequently their respective bid proposals were read publicly and posted in the Abstract of Bids, to wit;

SIGNATURE OF AUTHORIZED REPRESENTATIVE			
NAME OF COMPANY	Company A	Company B	Company C
Total Amount of Bid	P 7,962,368.28	P 8,170,252.33	P 8,264,987.23
Form of Bid Security	MANAGER'S CHECK	BANK GUARANTEE	BANK GUARANTEE
Bank/Company	Bank A	Bank B	Bank C
Validity Period	120 DAYS	120 DAYS	120 DAYS
Bid Security	P 199,000.00	P 200,000.00	P 200,000.00
Required Bid Security	P 198,665.05	P 198,665.05	P 198,665.05
Required Bid Security Sufficient/Insufficient	Sufficient	Sufficient	Sufficient

 Having no other matters to be discussed, the aforesaid Pre-Procurement Conference was adjourned at 11:00 am.

Prepared:

(SIGNATURE OVER PRINTED NAME)

BAC Secretariat

Approved:

(SIGNATURE OVER PRINTED NAME)

BAC Member

R. BID EVALUATION REPORT

BID EVALUATION REPORT

1.0 PROJECT IDENTIFICATION

Narrative description of project to be bid:

The Department of Health (Procuring Entity) invited bids for the Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila with an Approved Budget for the Contract of PhP 9,933,252.67 from the Government of the Philippines (GOP) through General Appropriations Act 2009. Bidding was conducted through open competitive bidding procedures using non-discretionary passed/failed criterion as specified in the Revised Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184), otherwise known as the "Government Procurement Reform Act". A modified set of requirements integrating eligibility documents and criteria for infrastructure projects and consulting services were adopted in accordance with Annex G. The project requirements include pre-detailed design, detailed design and construction.

Table 1. Identification

1.1 Procuring Entity (a) Name (b) Address	Department of Health Rizal Avenue, Sta. Cruz Manila, Philippines
1.2 Name of the Contract	Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse
1.3 Location of the Contract	Building No. 25 , Department of Health, San Lazaro Compound Sta. Cruz Manila
1.4 Approved Budget of Contract	Php 9,933,252.67
1.5 Method of Procurement	Public Bidding

2.0 INITIAL STEPS IN THE BIDDING PROCESS

Table 2. Initial Steps in the Bidding Process

2.1	Pre-Procurement Conference	August 24, 2010
	a) Date of Conference	
2.2	Invitation to Apply for Eligibility and to Bid	IB 2010-09-27(08)
	a) Date of first publication	September 04, 2010
	b) Name of Newspaper	The Philippine Star
	c) Date of final publication	N/A
	d) Name of newspaper	N/A
2.3	Letter of Intent (LOI)	
	 a) Deadline for the LOI submission 	October 05, 2010
	b) Number of LOIs received	Twelve (12)
2.4	Eligibility check	
	a) Date of eligibility check	N/A
	 b) Number of eligibility envelopes received 	N/A
	 c) Date of Notices sent to bidders 	N/A
	d) Motion for Reconsideration, if any	N/A
2.5	Issuance of Bidding Documents	
	 a) Period of availability of Bid Documents 	August 25, 2010 up to
		October 05, 2010
	b) Number of Bidding Documents issued	NINE(9)
2.6	Amendments to Bidding, if any	
	a) List all issue dates (Bid Bulletin)	September 24, 2010
		September 27, 2010
		September 30, 2010
2.7	Pre-bid Conference, if any	
	a) Date of Conference	September 13, 2010
	b) Date of Bid Bulletin issued	September 24, 2010
		September 27, 2010
		September 30, 2010

3.0 SUBMISSION AND OPENING OF BIDS AND PRELIMINARY EXAMINATION

Narrative description of bid receipt and bid opening

The submission and opening of bids was held on October 6, 2010, 10:30 a.m. at the BAC Conference Room, G/F Building 6, Department of Health, San Lazaro Compound, Sta. Cruz Manila. Four (4) bidders submitted their bid proposals, namely; 1. Company A, 2. Company B, 3. Company C and 4. Company D. Company D was declared ineligible due to submission of expired Philippine Contractors Accreditation Board (PCAB).

Table 3. Bid Submission and Opening

3.1	Bid Submission Deadline	
	(a) Original date, time	September 27, 2010; 11:00 A.M.
	(b) Extensions, if any	October 06, 2010; 10:30 P.M.
3.2	Bid Opening date, time	October 06, 2010; 10:30 P.M.
3.3	Minutes of Bid Opening, date sent to bidders	Available
3.4	Number of Bids Submitted	Four (4) prospective contractors
3.5	Bid validity period (days or weeks)	
	(a) Originally specified	One Hundred Twenty (120) calendar
		days
	(b) Extensions/Revisions, if any	NONE

Table 4. Bid Prices (as Read Out)

Name of Bidder Identification/Name	Bid as Read Amount (Php)
Company A	8,713,528.41
Company B	9,148,068.03
Company C	9,237,263.22
Company D	9,538,639.28

4.0 BID EVALUATION

Bids were carefully examined based on the submitted documents. There was no correction found on the bid offered.

Bidder: Company A

I. ELIBILITY AND TECHNICAL REQUIREMENTS

Α	Eligibility and Technical Documents	Findings/Comments	
1	Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration	To verify with SEC the amended certificate of incorporation for the new corporate name. Attached herewith is the letter dated November 26, 2009 addressed to SEC for reference.	
2	Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located		

3	Statement of all its ongoing and completed Government and private contracts within ten (10) years from the submission of bids, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following: a. date of the contract; b. contract duration; c. owner's name and address; d. nature of work; e. contractor's role whether sole contractor, subcontractor, or partner in a JV and percentage of participation; f. total contract value at award; g. date of completion or estimated completion time; h. total contract value at completion, if applicable; i. percentages of planned and actual accomplishments, if applicable; j. value of outstanding works, if applicable; • the statement shall be supported by the notices of award and/or notices to proceed issued by the owners; and the statement shall be supported by the Constructors Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance, if applicable	The contract agreement with other entities refers to the original corporate name of the prospective bidder.
4	A Valid Philippine Contractors Accreditation Board (PCAB) license and registration for Size Range – Medium B, License Category A, General Building	The PCAB license refers to the original Corporate name. License: General Engineering "AAA" valid up to June 2010.
5	Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from bid submission	Based on the submitted financial statements, the company has a good current ratio. Net worth is adequate. Net Income increased from P3,386,436.00 in 2007 to P67,701,052 in 2008 or 1899% increased. Breakdown of account receivable has a discrepancy of P 57,580,880.00 (P127,237,328.00 – 184,818,202.00). See attached evaluation of financial statements
6	NFCC computation or CLC of at least 10% of ABC	NFCC was evaluated based on the documents submitted (P1.1 Billion). See attached evaluation of financial statements
7	If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.	Not applicable

8	The bid security Cash, casher's/manager's check, bank draft/guarantee, irrevocable letter of credit – 2% of ABC	Validated and was verified and found in order. Form of Bid Security : Manager's Check
	Form of Bid Security: Name of Bank:	Name of Bank: Bank A, Ortigas Center
9	DULY SIGNED Project Requirements, which shall include the following: Organizational chart for the contract to be bid; a. List of contractor's personnel (viz. Project Manager, Architect, Engineers, Materials Engineers, and Foremen) to be assigned to the contract to be bid, with their complete qualification and experience data, shown in matrix with CV including copy of updated licenses or proof of renewal of their licenses, if expired. The list must contain the name, educational attainment, training, professional license and work experience of personnel. b. List of contractor's equipment units, which are owned, leased, and/or under purchase agreements, with a Certification of availability of equipment from the equipment lessor/vendor for the duration of the project; c. Construction schedule and S-Curve; d. Manpower Schedule; e. Construction Method in narrative form; f. Equipment Utilization Schedule; g. Construction Safety and Health Program; h. PERT/CPM; i. Affidavit of Site Inspection; j. Plans (Blueprint); k. Summary of Works	 Verified the LCB's competence and experience as well as the competence and experience of the key personnel. To request for the photocopy of PRC license of the Materials Engineer. As per submitted documents, contractor's equipment units are adequate for the project.
10	Sworn statement by the Bidder or its duly authorized representative in accordance with Section 25.2(b)(iv) of the revised IRR of RA 9184 and using the form in Section IX. Bidding Form as to the following: a. It is not "blacklisted" or "barred" from bidding by the GOP or any of its agencies, offices, corporations or LGUs, including foreign government/ foreign international financing institution whose blacklisting rules have been recognized by the GPPB; b. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;	LCB was not blacklisted as verified with CIAP and PCAB websites (see attached CIAP consolidated list of blacklisted constructors

	d.	It is authorizing the HOPE or his duly authorized representative/s to verify all the documents submitted; The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership, cooperative or joint venture;	
	e.	It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of RA3019;	
		It complies with the responsibilities of a prospective or eligible bidder;	
	g.	It complies with the existing labor laws and standards, in the case of procurement of services;	
		Attesting compliance to the responsibilities of a Prospective or Eligible Bidder;	
	i.	•	
	ii.	,	
	iii.	available and needed for the contract to be bid, if any; and	
	iv.	Having complied with his responsibility as provided for under Section 22.5.1	
11.	Authority	of the signatory based on 10.d above.	Duly notarized

II. FINANCIAL PROPOSAL

В	FINANCIAL REQUIREMENTS		
	Lump sum bid price, which shall include the detailed	No discrepancy between Bid Amount in	
1	engineering cost, in the prescribed Bid Form	words and figures. One Hundred Seven	
		Million Nine Hundred Sixty Two	
		Thousand Three Hundred Sixty Eight &	
		28/100 (Php 107,962,368.28)	

2	Bid prices in Bill of Quantities in the prescribed Bid Form; (Bid Prices should be supported by signed detailed estimates with corresponding prices).	The variance between the ABC and bidder's detailed bid price is fluctuating. The contractor's bid for most of the architectural works are way above the ABC while other trades like electrical, mechanical, sanitary	
3	Detailed estimates per project including summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid	One specific example is in the electrical works, there is one item in our plan that requires 162 units 14 watts pinlight with ABC of Php144,000.00 but the contractor bided for only 12 units with bid price of	
4	Cash flow by the quarter and payments schedule.		

5.0 FINDINGS

Upon post-qualification examination, validation and verification of the eligibility, technical and financial requirements, submitted by the lowest bidder (Company A) failed to comply re: completed similar project as required under ITB Clause 5.4 of Bid Data Sheet (BDS). The submitted similar project is on-going and not yet completed.

The bid proposal of the second lowest bidder (Company B) was opened and found to be complying. Therefore, the Technical Working Group (TWG) recommended awarding the said project to Company B in the amount of Php9,148,068.03

Prepared by:

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

TWG – Member TWG – Member

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

TWG – Member TWG – Member

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

TWG – Vice Chairperson TWG – Chairperson

S. MINUTES OF TWG BID EVALUATION



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

Minutes of the TWG Bid Evaluation

Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD)

Warehouse, DOH Compound, Manila

Kimberly Hotel, Tagaytay City November 24 – 27, 2010

Attendees:

- 1. TWG Chairperson
- 2. TWG Vice-Chairperson
- 3. TWG Member
- 4. TWG Member
- 5. TWG Member
- 6. TWG Member
- 7. NCHFD Representative
- 8. NCHFD Representative
- 9. BAC Secretariat
- 10. BAC Secretariat
- 11. BAC Secretariat

Evaluation:

This evaluation was called to order at 1:00 P.M., 24, November 2009. Using non-discretionary criteria as stated in the Bidding Documents, the TWG for the Construction of DOH (MMD) Warehouse Extension and Repair/Renovation/Elevation of Existing DOH (MMD) Warehouse, DOH Compound, Manila verified, validated and ascertained all statements made and documents submitted by the bidder with the Lowest Calculated Bid (LCB), Company A. These criteria were considered, but were not limited to, the following:

1. LEGAL REQUIREMENTS

- **a.** Licenses, permits, certificates submitted by the LCB were verified and validated.
- b. LCB was not blacklisted as verified with CIAP and PCAB websites (see attached CIAP consolidated list of blacklisted constructors as of October 31, 2009).
- **c.** Verified submitted SEC and subject for further verification with Security and Exchange Commission (SEC) the amended certificate of incorporation for the new corporate name which is "Company A". Attached herewith is the letter dated November 26, 2009 addressed to SEC for reference.
- **d.** The submitted mayor's permit verified and referred to the original corporate name which is "China State (Phils) Construction Engineering Corporation."
- **e.** The PCAB license verified and referred to the original corporate name. License: General Engineering "AAA" valid up to June 2011.

2. TECHNICAL REQUIREMENTS

- a. Verified and validated LCB's competence and experience, as well as the competence and experience of the key personnel. To request further for the photocopy of PRC license of the Materials Engineer.
- b. Availability and commitment verified.
- c. Checked the performance of LCB:
 - Its on-going government and private contracts found negative slippage of at least 15%
 - Substandard quality of work as per contract plan and specification. None.
 - Unsatisfactory performance as per contract terms and conditions. None.
- **d.** Verified and ascertained the sufficiency of the bid security as to type, amount, form and wording and validity period.

Form of Bid Security: Manager's Check
Name of Bank: Bank A, Ortigas Center

Amount of Bid Security: P 2,399,545.09 Bid Validity: 120 days

- e. The contract agreement with other entities referred to the original corporate name of the bidder.
- **f.** As per submitted documents, contractor's equipment units are adequate for the project subject for actual verification and inspection.
- **g.** Submitted documents were duly notarized.

3. FINANCIAL REQUIREMENTS

- **a.** Verified, validated and ascertained the bid price proposal of the LCB.
- b. Based on the submitted financial statements, the company has a good current ratio. Net worth is adequate. Net Income increased from P3,386,436 in 2007 to P67,701,052 in 2008 or 1899% increased. Breakdown of account receivable has a discrepancy of P 57,580,880.00 (P127,237,328.00 184,818,202.00).
- **c.** NFCC was evaluated based on the documents submitted (P 1.1 Billion). See attached evaluation of financial statements.
- **d.** The required Certification of Letter of Credit (CLC) with the specified amount of the bidder can sustain the operating cash flow of the transaction.
- **e.** No discrepancy between Bid Amount in words and figures. One Hundred Seven Million Nine Hundred Sixty Two Thousand Three Hundred Sixty Eight & 28/100 (Php 107,962,368.28).
- f. The variance between the ABC and bidder's detailed bid price is fluctuating. The contractor's bids for most of the architectural works are way above the estimated amount while other trades like electrical, mechanical, sanitary and structural are way below the estimated amount.

4. The following additional requirements were found complying:

- **a.** Tax clearance certificate issued by BIR main office Collection Enforcement Division (per Executive Order 398, Series of 2005);
- b. Latest Annual Tax Return filed thru Electronic Filing and Payment Systems (EFPS) and must be duly validated with the tax payments made thereon for the preceding Tax Year be it on a calendar or fiscal year income (per Revenue Regulations 3-2005);
- **c.** Latest Business Tax Return filed thru Electronic Filing and Payment System (EFPS) duly validated with the tax payments made thereon also refers to the Value Added Tax (VAT) or Percentage Tax Returns covering the previous six (6) months (per Revenue Regulations 3-2005);
- **d.** Valid and current Certificate of PhilGEPS Registration;

6. CONCLUSION:

The LBC's offer is found to be acceptable since the bid conforms to the required technical specifications.

7. RECOMMENDATION:

In view of the above, the TWG recommends the following:

- a. To conduct ocular inspections to verify further some submitted legal and technical requirements.
- b. To inform the Company A Corporation regarding the correction of bids as stated above and if amenable, subsequently, determined to be responsive and post- qualified and recommended for the award of contract.

Submitted By:

(SIGNATURE OVER PRINTED NAME)

(SIGNATURE OVER PRINTED NAME)

TWG Member

TWG Member

(SIGNATURE OVER PRINTED NAME)

(SIGNATURE OVER PRINTED NAME)
TWG Member

TWG Member

(SIGNATURE OVER PRINTED NAME)

(SIGNATURE OVER PRINTED NAME)

TWG Vice-Chairperson TWG Chairperson

T. POST-QUALIFICATION EVALUATION REPORT

POST-QUALIFICATION EVALUATION REPORT

DESIGN AND BUILD FOR THE CONSTRUCTION OF MATERIAL MANAGEMENT DIVISION (MMD) WAREHOUSE EXTENSION AND REPAIR/RENOVATION/ELEVATION OF MMD WAREHOUSE DOH, MANILA IB No: 2010-09-27(08)

Name of Bidder: Company B
 Rank in the List of Bids: 2
 Bid Price: Php 9,148,068.03
 Period of Post-Qualification:

5. Results of Post-Qualification: RESPONSIVE

5. Results of Post-Qualification: RESPONSIVE			
	Requirements:	Parties Consulted	Findings
Eligibility & Technical Documents			
1.	Registration certificate from the Securities and Exchange Commission (SEC) including Articles of Incorporation, Department of Trade and Industry (DTI) for sole proprietorship or Cooperative Development Authority (CDA), or any proof of such registration as stated in the Bid Data Sheet (BDS)	SEC Certificate Company Reg. No. CS200513109	Complied
2.	Mayor's permit issued by the city or municipality where the principal place of business is located.	Mayor's Permit No: 2010-39176 dated 03/16/2010, Manila	Complied
3.	Statement of all its on-going and completed government and private contracts within the period of ten (10) years including contract awarded but not yet started, if any. The statement shall include, for each contract, the following: a) name of the contract; b) date of the contract; c) contract duration; d) owner's name and address; e) nature of work; f) contractor's role (whether sole contractor, subcontractor, or partner in a JV) and percentage of participation; g) total contract of value at award; h) date of completion or estimated completion time; i) total contract value at completion, if applicable; j) percentages of planned and actual accomplishments, if applicable; value of outstanding works, if applicable; • the statement shall be supported by the notices of award and/ or notices to proceed issued by the owners; and • the statement shall be supported by the Constructors Performance Evaluation System (CPES) rating sheets, and /or certificates of completion and owner's acceptance, if applicable;	Submitted List of all On-going projects. 1. Repair/Renovation of Valenzuela Medical Center, 98% completed (Php3,838,186.77) 2. Retrofitting Works at Main and OPD Building, Jose Reyes Memorial Medical Center, 100% completed (Php8,109,484.86) Submitted List of all completed similar projects. 1. Construction of 2 – Storey School Building, OB Montessori Center, Inc., 100% completed (PhP 39,008,954.04)	Complied More than 50% of the ABC
4.	A Valid Philippine Contractors Accreditation Board (PCAB) license and registration for Size Range-Small B, License Category C & D, General Building	General Building – D Validity Period: July 01, 2010 to June 30, 2011	Complied

5. Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from submission	2009/2008 Audited Financial Statement	Complied
NFCC computation of CLC of at least 10% of ABC In lieu of 1,2 and 5, the Bidder may submit a certified true copy of valid and current SSRS Certificate issued by DOH.	NFCC: Php45,202,764.34	Complied
7. If. Applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful;	Submitted documents reviewed by the TWG	• N/A
8. The Bid Security Cash, cashier's /manager's check, bank draft/guarantee. Irrevocable letter of credit -2% of ABC Form of Bid Security – MANAGER'S CHECK Name of Bank - Bank A Amount of Bid Security – Php 198,670.00 Validity Period - SEPTEMBER 23, 2010	Submitted documents reviewed by the TWG	Complied
DULY SIGNED Project Requirements, which shall include the following:	Submitted documents reviewed by the TWG	
a) Organizational Chart for the contract to be bid b) List of contractors and joint venture contractor's personnel (viz., Project Manager. Architect. Engineers, Material Engineers, and Foremen) to be assigned to the contract to be Bid, with their complete qualification and experience data, shown in a matrix. The List must contain the name, educational attainment, training, professional license and work experience of personnel The following documents must also be submitted with the matrix for , with: • Curriculum vitae; and • Copy of updated licenses or proof of renewal of their licenses, if expired if applicable for the position. c) Certification of availability of equipment from the equipment project; d) Construction schedule and S-Curve; e) Manpower Schedule; f) Construction Method in Narrative form; g) Equipment Utilization Project; h) Construction Safety and Health Program; i) PERT/CPM; j) Affidavit of Site Inspection; k) Plans (Signed Blue Prints); l) Summary of Works	Ms. A Project Engineer PRC ID of Civil Engineer Ms. B Architect/Designer PRC ID of Architect Mr. C Project Engineer PRC ID of Electrical Engineer	 Complied

10. Omnibus Sworn statement by the Bidder and joint venture Contractor or their duly authorized representative in accordance with Section 25.2 (b) (iv) of the revised IRR of RA 9184 and using the form in Section IX. Bidding Form as to the	Submitted documents reviewed by the TWG	Sworn Statement submitted
following; a) It is not "blacklisted" or "barred" by the GOP or any of its agencies, offices, corporations or LGUs, including foreign government/foreign international financing institution whose blacklisting rules have been recognized by the GPPB;		Complied
b) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;		
c) It is authorizing the HOPE or his duly authorized representative/s to verify all the	Ms. D – Corporate Secretary	Complied
documents submitted; d) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the prospective bidder is a corporation, partnership, cooperative or joint venture; e) It complies with the disclosure provisions under Section 47 of the Act in relation to other provisions of RA 3019; f) It complies with the responsibilities of a prospective or eligible bidder; g) It complies with the existing labor laws and standards, in the case of procurement of services; h) Attesting compliance to the responsibilities of a Prospective or Eligible Bidder; i. Having taken steps to carefully examine all of the bidding documents; ii. Having taken steps to carefully examine all of the contract; iii. Having made an estimate of the facilities available and needed for the contract to be bid, if any, and; vi. Having complied with his responsibility as provided for under Section 22.5.1;		
11. Duly notarized authority of the signatory based on the 10. above		Complied
a) Tax clearance certificate issued by BIR main office Collection Enforcement Division (per Executive Order 398 Series of 2005);	Submitted documents reviewed by the TWG	Complied
b) Latest Annual Tax Return filed thru Electronic Filing and Payment System (EFPS) and must be duly validated with the tax payment made thereon for the preceding Tax Year be it on a calendar or		Complied

fiscal year income (per Revenue Regulations 3-2005);		
c) Latest Business Tax Return filed thru Electronic		 Complied
Filing and Payment System (EFPS) duly validated		
with the tax payments made thereon also refers to		
the Value Added Tax (VAT) or Percentage Tax		
Returns covering the previous six (6) months (per		
Revenue Regulations 3-2005);		
d) Valid Current Certificate of PhilGEPs		 Complied
Registration;		
Financial Requirements	Parties Consulted	
Financial Envelope	Submitted documents	
	reviewed by the TWG	
a) Financial Bid Form in accordance with form		Complied
prescribed in Section IX, Bidding Form;.		
b) Bid Prices in Bill of Quantities in the prescribed		Complied
Bid Form; Bid Prices should be supported by		
signed detailed estimates with corresponding		
prices.		
 c) Detailed Estimates of project including a 		Complied
summary sheet indicating the unit prices of		
construction materials, labor rates and		
equipment rentals or other cost items computed		
in coming up with the Bid;		
d) Cash Flow by quarter and payments schedule		Complied

6. Findings: (✓) Responsive (() Non-Responsive
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Submitted By:

(SIGNATURE OVER PRINTED NAME)
TWG Member

(SIGNATURE OVER PRINTED NAME) TWG Member

(SIGNATURE OVER PRINTED NAME)

(SIGNATURE OVER PRINTED NAME)
TWG Member

TWG Member

(SIGNATURE OVER PRINTED NAME)
TWG Vice-Chairperson

(SIGNATURE OVER PRINTED NAME)
TWG Chairperson

U. RESOLUTION DECLARING LOWEST CALCULATED RESPONSIVE BID (LCRB) AND AWARD OF CONTRACT



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

BAC RESOLUTION NO. 2010 -	
13 November 2010	

APPROVING THE AWARD OF CONTRACT FOR THE DESIGN AND BUILD FOR THE CONSTRUCTION OF MATERIAL MANAGEMENT DIVISION WAREHOUSE EXTENSION AND REPAIR/RENOVATION/ELEVATION OF MMD WAREHOUSE, DOH COMPOUND, MANILA

IB NO. 2010-09-27 (08)

WHEREAS, the Department of Health (DOH) intends to engage the services of a qualified contractor to undertake the project Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse with an Approved Budget for the Contract (ABC) of Nine Million Nine Hundred Thirty Three Thousand Two Hundred Fifty Two Philippine Pesos and Sixty Seven Centavos (PhP9,933,252.67);

WHEREAS, Open Competitive Bidding for the above-cited package was conducted in accordance with the Republic Act 9184 (RA 9184) and its Revised Implementing Rules and Regulations;

WHEREAS, on 24 August 2010, Pre-Procurement was conducted as scheduled at the BAC Conference Room, Ground Floor, Bldg. 6, San Lazaro Compound, Sta. Cruz, Manila;

WHEREAS, on 04 September 2010, the Invitation to Bid (IB) was advertised in one (1) national newspaper of general circulation, The Philippine Star, in its issue dated September 04, 2010 and was posted in the PhilGEPS and DOH Websites;

WHEREAS, thirteen (13) contractors attended the Pre-bidding Conference conducted on 13 September 2010, 2:00 p.m. at the BAC Conference Room, Ground Floor, Building 6, DOH, San Lazaro Compound, Sta. Cruz, Manila;

WHEREAS, Bid Bulletin No.1 dated 24 September 2010, was issued to announce the postponement of the Submission and Opening of Bid Proposals for the Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse from September 27, 2010, 11:00 a.m. at the BAC Conference Room, Ground Floor, Bldg. 6, DOH, San Lazaro Compound, Sta. Cruz, Manila to October 04, 2010, 11:30 a.m at the same venue;

WHEREAS, Bid Bulletin No.2 dated September 27, 2010 was issued to clarify the issues and questions raised during the Prebid Conference held last September 13, 2010;

WHEREAS; Bid Bulletin No. 3 dated September 30, 2010 was issued to announce the postponement of the Submission and Opening of Bid Proposals from October 04, 2010, 11:30 am. at the BAC Conference Room, Ground Floor, Bldg. 6, DOH, San Lazaro Compound, Sta. Cruz, Manila to October 06, 2010,10:30 a.m. at the same venue;

WHEREAS, on 06 October 2010, the Submission and Opening of Bids took place as re-scheduled;

WHEREAS, Nine (9) contractors procured the bidding documents, namely:

- 1. Company A
- 2. Company B

- 3. Company C
- 4. Company D
- 5. Company E
- 6. Company F
- 7. Company G
- 8. Company H
- 9. Company I

WHEREAS, out of nine (9) contractors who secured bidding documents only four (4) submitted their bid proposals, namely:

- 1. Company A
- 2. Company B
- 3. Company C
- 4. Company D

WHEREAS, the first envelope containing the Eligibility and Technical Documents was opened individually in the presence of bidder's representative. The presence, completeness and correctness of the required documents were checked and verified by the BAC using a non-discretionary passed/failed criterion;

WHEREAS, Company D was declared "INELIGIBLE" due to submission of expired Philippine Contractors Accreditation Board (PCAB):

WHEREAS, the following bidders were declared "ELIGIBLE", namely:

- 1. Company A
- 2. Company B
- 3. Company C

WHEREAS, the second envelope containing the Financial Proposal (Lump Sum Bid Price, Bill of Quantities, Detailed Estimates and Cash Flow and Payment Schedules) was opened and the presence completeness of the document was verified by BAC;

WHEREAS, upon checking, the three (3) "ELIGIBLE" bidders were rated "PASSED" and subsequently their respective proposals were read publicly and posted in the Abstract of Bids, to wit;

NAME OF COMPANY	Company A	Company B	Company C
Bid Security	198,665.06	198,700.00	198,670.00
Form of Bid Security	Cashier's Check	Manager's Check	Manager's Check
Bank/Company	Bank A Bank B Bank C		Bank C
Total Amount of Bid	8,713,528.41	9,237,263.22	9,148.068.03

WHEREAS, BAC announced that the "INELIGIBLE" can file a motion for reconsideration within three (3) days from the opening of bids. The representative of the Company D signified his intention to file a motion for reconsideration, hence, the BAC instructed the Secretariat to reseal the documents. The representative of Company D affixed his signature on the top flap of the documents;

WHEREAS, on 08 October 2010, Company D filed a motion for reconsideration with attached renewed

WHEREAS, on 08 October 2010 a notification was issued to the Lowest Calculated Bidder (LCB), Company A, to submit the additional documentary requirements, to wit:

- a) Tax clearance certificate issued by BIR main office Collection Enforcement Division (per Executive Order 398, Series of 2005);
- b) Latest Annual Tax Return filed thru Electronic Filing and Payment System (EFPS) and must be duly validated with the tax payments made thereon on for the preceding Tax Year be it on a calendar or fiscal year income (per Revenue Regulations 3-2005);
- c) Latest Business Tax Return filed thru Electronic Filing and Payment System (EFPS) duly validated with the tax payments made thereon also refers to the Value Added Tax (VAT) or Percentage Tax Returns covering the previous six (6) months (per Revenue Regulations 3-2005;
- d) A valid and current Certificate of PhilGEPS Registration;

WHEREAS, on the same date Company A submitted the cited documents;

WHEREAS, on 11 October 200, Company D filed its motion for reconsideration with attached Temporary License Renewal from PCAB:

WHEREAS, upon verification with Ms. A of PCAB, it was confirmed that the Board has not convened yet so a temporary license was issued to the abovementioned contractor:

WHEREAS, on 13 October 2010, a letter was sent to Company D informing that their request for reconsideration was granted and they are invited to witness the opening their bid on the same date;

WHEREAS, on the same date, the proposal of Company D was opened, witnessed by Company A and Company D who objected the opening but the BAC advised them to put their objection in to writing;

WHEREAS, upon checking, Company D's bid was read publicly and was incorporated in the abstract of bids of previous "ELIGIBLE" bidders:

				,
NAME OF COMPANY	Company A	Company B	Company C	Company D
Bid Security	198,665.06	198,700.00	198,670.00	200,000.00
Form of Bid Security	Cashier's Check	Manager's Check	Manager's Check	Manager's Check
Bank/Company	Bank A	Bank B	Bank C	Bank D
Total Amount of Bid	8,713,528.41	9,237,263.22	9,148.068.03	9,538,639.28

WHEREAS, on 18 October 2010, the TWG convened to evaluate the eligibility, technical and financial documents of Company A·

WHEREAS, on 19 October 2010, the TWG submitted the Bid Evaluation and Post-qualification reports indicating therein the results of the technical evaluation and specific findings on the submitted documents, and their recommendations, to wit:

- 1. The similar project submitted is not a complete project as required under ITB Clause 5,4 of the Bid Data Sheet but an ongoing project as entered into the statement of ongoing projects matrix.
- Expired Philippine Contractors Accreditation Board (PCAB) as of 09 August 2010 and no attached proof of renewal.
- 3. The Organization Chard does not include the minimum required technical personnel for pre-design and design work as listed on page 34 of the BDS.

- No complete qualifications, curriculum vitae, updated licenses of stated key positions to be assigned for the project to be bid (Architect, Professional Electrical Engineer, Professional Mechanical Engineer, Material Engineer, CADD Operator)
- 5. List of equipment for pre-design and design works were not identified.
- Manpower schedule does not include the minimum required technical personnel for pre-design and design work listed on page 34 of the BDS.
- 7. Pert/CPM does not show design and pre-design activities.
- 8. Bid prices on Bill of Quantities have no costing for pre-design and design works.
- 9. Detailed estimates have no costing for pre-design and design works.

WHEREAS, on 27 October 2010, the BAC sent a letter to Company A requesting it to submit the abovementioned documents

WHEREAS, on 29 October 2010, Company A submitted the documentary requirements;

WHEREAS, 09 November 2010, the TWG re-convened to further evaluate the documentary requirements submitted by Company A;

WHEREAS, on 10 November 2010, the TWG submitted the evaluation report upholding its previous decision to disqualify Company A for failure to comply to submit a completed similar project as required under ITB Clause 5.4 of the BDS. The submitted similar project is ongoing and not completed yet;

WHEREAS, on 15 November 2010, the BAC sent a letter to Company A informing the latter that its bid was post-disqualified based on the reason cited above;

WHEREAS, on 17 November 2010, a notification was issued to the 2nd LCB to submit the additional documentary requirements, to wit:

- a) Tax clearance certificate issued by BIR main office Collection Enforcement Division (per Executive Order 398, Series of 2005);
- Latest Annual Tax Return filed thru Electronic Filing and Payment System (EFPS) and must be duly validated with the tax payments made thereon on for the preceding Tax Year be it on a calendar or fiscal year income (per Revenue Regulations 3-2005);
- c) Latest Business Tax Return filed thru Electronic Filing and Payment System (EFPS) duly validated with the tax payments made thereon also refers to the Value Added Tax (VAT) or Percentage Tax Returns covering the previous six (6) months (per Revenue Regulations 3-2005;
- d) A valid and current Certificate of PhilGEPS Registration;

WHEREAS, on the same date, Company B submitted the abovementioned additional documentary requirements;

WHEREAS, on the same date, the TWG convened to evaluate the eligibility, technical and financial proposals of Company B;

WHEREAS, on 23 November 2010, the TWG re-convened to further evaluate the abovementioned documents of Company B;

WHEREAS, on the same date, the BAC received the technical evaluation report from the TWG with the following observations and recommended the submission of the following documents, to wit:

- 1. Identification of all projects under the Design and Build Scheme;
- 2. Certificate of Acceptance and Turn-over of all concerned projects;

3. Completed similar contract of Design and Build project of at least 50% of the Approved Budget for the Contract (ABC).

WHEREAS, on 24 November 2010, a notification was sent to Company B requesting to submit the additional documents:

WHEREAS, on 26 November 2010, Company B submitted the requested documents;

WHEREAS, on 02 December 2010, the TWG re-convened to evaluate the additional documents;

WHEREAS, on 09 December 2010, the TWG submitted the evaluation report for Company B stating that that the firm complied to the requirements, hence, was recommended for the award of contract;

WHEREAS, upon deliberation, the BAC concurred with the recommendation of the TWG to award the contract to Company B;

NOW THEREFORE, on the basis of the above, the herein members of the BAC HEREBY RESOLOVE to award the contract to Company B as determined to be the LCRB for the Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD Warehouse with a total contract price of Nine Million One Hundred Forty-eight Thousand Sixty-eight Philippine Pesos and 03/100 (PhP9,148,068.03).

Ciamand Hain	day of	2010 at the Department of Health Conference Commenced Cts Comme Manile
Sianed this	dav of	2010 at the Department of Health, San Lazaro Compound, Sta. Cruz, Manila

CENTRAL OFFICE BIDS AND AWARDS COMMITTEE

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME) **BAC Member (End-user Representative) BAC Member**

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

BAC Member BAC Member

(SIGNATURE OVER PRINTED NAME) (SIGNATURE OVER PRINTED NAME)

BAC Chairperson BAC Vice- Chairperson

APPROVED BY:

(SIGNATURE OVER PRINTED NAME) HEAD OF PROCURING ENTITY/AUTHORIZED REPRESENTATIVE

V. NOTICE OF AWARD



Republic of the Philippines

Department of Health

BIDS AND AWARDS COMMITTEE

NOTICE OF AWARD 22 December 2010

ABC

General Manager Company B Address

Dear Mr. ABC,

This is to inform you that as a result of the Open Competitive Bidding for the Construction of Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD under IB No. 20100-09-27 (08), as per BAC Resolution 2010-265, your proposal was found to be the Lowest Calculated Responsive Bid with the total Contract Price of Nine Million One Hundred Forty-eight Thousand Sixty-eight Pesos and 03/100 (PhP9,148,068.03).

You are hereby requested to post your Performance Security equivalent to the percentage of the total Contract Price of the acceptable forms as listed below within *ten (10) calendar days* from receipt of the Notice of Award (NOA) and further to confer with the Director of the Procurement Service, for instructions regarding the execution of this award:

	Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract price)
1.	Cash, Cashier's Check, Manager's Check, Bank Draft/ Guarantee confirmed by Universal or Commercial Bank duly licensed in the Philippines	r or our age of the rotal contains princy
2.	Irrevocable Letter of Credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank duly licensed in the Philippines if used by a foreign bank	Ten Percent (10%)
3.	Surety Bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty Percent (30)
4.	Any combination of the foregoing	Proportionate to share of form with respect to total amount of security

The original NOA with signature on "CONFORME" shall be returned within two (2) working days upon receipt of the approved NOA.

Please bear in mind that failure to provide the performance security shall constitute sufficient ground for recession of the award.

(SIGNATURE OVER PRINTED NAME)	
Head of Procuring Entity/Authorized I	Representative

Conforme:	
Printed Name and Signature of Representative Name of Bidder:	
Date:	

W. SAMPLE CONTRACT

CONTRACT AGREEMENT

This CONTRACT AGREEMENT made on the 5th day of January 2011 between:

The <u>DEPARTMENT OF HEALTH</u> with postal address at San Lazaro Compound, Rizal Avenue, Sta. Cruz, Manila, Philippines, duly represented by the Administrative Office, Secretary of Health, hereinafter referred to as the **PROCURING ENTITY**

And

COMPANY B, a company incorporated under the laws of the Philippines, with postal address at 18 San Miguel Street, Barrio Magsinag, Pasay City, duly represented by **MR. ABC**, General Manager, hereinafter called **The Contractor**.

WHEREAS, the Procuring Entity is desirous that the Contractor executes the Construction of Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD under IB No. 2010-09-27 (08), conducted on 06 October 2010, as per BAC Resolution No. 2010-265, hereinafter called <u>The Works</u> and the Procuring Entity has accepted the price proposal amounting to Nine Million One Hundred Forty-eight Thousand Sixty-eight Pesos and 03/100 (PhP9,148,068.03) by the Contractor for the execution and completion of such Works and the remedying of any defect therein.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

- 1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
- 2. The following documents shall be attached, deemed to form and be read and construed as part of this agreement, to wit:
 - a. General and Specific Conditions of the Contract;
 - b. Drawings/Plans;
 - c. Specifications;
 - d. Invitation to Bid;
 - e. Bid Form (Duly signed bid prices in the Bill of Quantities, Detailed Estimates, and Cash Flow by Quarter and Payment);
 - f. Eligibility Requirements, Documents, and/or Statements;
 - g. Performance Security;
 - **h.** Cash Deposit Certification issued by a licensed bank;
 - i. Notice of Award of Contract and winning bidder's "Conforme" thereto.
- 3. In consideration of the payments to be made by the Procuring Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity with the provisions of the Contract all respects.
- 4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein, the Contract Price or such other sum as may become payable under the provisions of this contract at the time and in the manner prescribed in the contract.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed the day and year first before written:

Signed, sealed and delivered by (Representative of the Procuring Entity).

Signed, sealed and delivered by Mr. A, General Manager, Company A (for the Contractor).

SIGNATURE OVER PRINTED NAME Assistant Secretary of Health DOH End-user SIGNATURE OVER PRINTED NAME General Manager Company A

(SIGNATURE OVER PRINTED NAME)

WITNESSES

SIGNATURE OVER PRINTED NAME DOH Representative Witness 1

SIGNATURE OVER PRINTED NAME Representative, Company A Witness 2

ACKNOWLEDGMENT

Republic of the Philippines) City of Manila) s.s

At the place abovementioned this 5th day of January 2011 personally appeared before me.

DOH End-user (1st Party) Comm. Tax Cert. Issued at:		Company A Representative (2nd Party)
		Comm. Tax Cert.
		Issued at:
On:		On:
	Known to me to be the same person v is their free act and deed and that of the	who executed the foregoing instrument and who acknowledged to me that the same ne office they respectively represent.
		of two (2) pages including this page on which this acknowledgement is written, are nental witnesses on the left hand margin of each and every page thereof.
	WITNESS MY HAND AND SEAL, on t	the date and place first above-written.
	Doc. No	
	Page No.	
	Book No.	
	Series of	

X. NOTICE TO PROCEED



Republic of the Philippines Department of Health

BIDS AND AWARDS COMMITTEE

NOTICE TO PROCEED

Date

General Manager Company Name Company Address

Dear Sir/Madame,

The attached Contract Agreement No.2010-010 having been approved, notice is hereby given to Company A that work may commence on the Construction of Design and Build for the Construction of Material Management Division Warehouse Extension and Repair/Renovation/Elevation of MMD under IB No. 20100-09-27 (08) effective within Two Hundred Forty (240) calendar days upon receipt of Notice to Proceed.

Upon receipt of this notice, you are responsible for performing the services under the terms and conditions of the Agreement and in accordance with the Implementation Schedule.

Please acknowledge receipt and acceptance of this notice by signing both copies on the space below. Keep the original copy and return the other copy to the Procurement Service, Department of Health, San Lazaro Compound, Rizal Avenue, Sta. Cruz, Manila within two (2) working days upon receipt.

(<u>SIGNATURE OVER PRINTED NAME)</u> HOPE/AUTHORIZED REPRESENTATIVE

I acknowledge receipt of this Notice on _	
Name of Representative of the Bidder: _	
Authorized Signature:	