

STANDARD BIDDING DOCUMENTS

October 2005

Preface

The Department of Public Works and Highways (DPWH) has adopted these Standard Bidding Documents (SBDs) for the procurement, through public bidding, of its locally-funded infrastructure projects (or Works). The SBDs are essentially based on the generic Philippine Bidding Documents (PBDs) as customized to the DPWH procurement environment for locally-funded projects.

For every infrastructure contract to be procured, the DPWH Procuring Entity concerned shall prepare the Bidding Documents (BDs) in accordance with the following guidelines:

- a. The BDs for the contract to be procured shall adopt the entire content of the SBDs unchanged.
- b. Information and data specific to the contract - such as Contract ID and Name, Approved Budget for the Contract, etc. - shall, however, be filled in or inserted in the appropriate portions of the SBDs, particularly in the following:
 - (1) Cover Sheet
 - (2) Invitation to Apply for Eligibility and to Bid (IAEB)
 - (3) Bid Data Sheet (BDS)
 - (4) Special Conditions of Contract (SCC)
 - (5) Specifications
 - (6) Drawings
 - (7) Bill of Quantities (BOQ)
 - (8) Forms
- c. The final BDs, therefore, shall not contain any blank spaces or options. Neither shall the BDs contain any footnotes.

The DPWH shall post the SBDs at its website www.dpwh.gov.ph for the general reference of the public. It shall also post at the website the complete BDs for a particular contract to be procured starting on the first day of advertisement of the IAEB. Any prospective bidder or other interested party may, thus, view or download the BDs from the website.

The DPWH Procuring Entity shall also make hard copies of the BDs available to eligible bidders upon payment of a non-refundable fee.

The following definitions are made to clarify the different terms used in this document and in the other parts of the DPWH Procurement Manual:

- a. “Standard Bidding Documents” or “SBDs” refer to these pro-forma bidding documents to be used by the DPWH in its locally-funded contracts, with the contract-specific information still to be inserted or filled in. Once this information for a particular contract is inserted, the SBDs become the BDs for that contract.

- b. “Bidding Documents” or “BDs” refer to the bidding documents for a particular infrastructure contract procured by the DPWH. The BDs follow the content of the SBDs, but with the contract-specific information already inserted therein.

- c. “Philippine Bidding Documents” or PBDs” refer to the generic bidding documents of the Government, prepared by the Government Procurement Policy Board (GPPB) in accordance with the provisions of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act (R.A.) No. 9184, for use by all agencies of the Government. The PBDs had been harmonized with the procurement guidelines of the Asian Development Bank (ADB), the Japan Bank for International Cooperation (JBIC), and the World Bank (WB), for use in Government infrastructure contracts, both locally-funded and foreign-assisted, procured through national competitive bidding. The PBDs have been customized to the DPWH for locally-funded infrastructure contracts to produce the SBDs.

Note: This is the Cover Sheet for the Bidding Documents.

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

PROCURING ENTITY: _____

BIDDING DOCUMENTS

FOR

CONTRACT ID: _____

CONTRACT NAME: _____

CONTRACT LOCATION: _____

Date of Opening of Bids: _____

Start Date for Issuance
of Bidding Documents: _____

TABLE OF CONTENTS

PART I

Section I: Invitation to Apply for Eligibility and to Bid	6
Section II: Eligibility Requirements	9

PART II

Section I: Instructions to Bidders	18
Section II: Bid Data Sheet	39
Section III: General Conditions of Contract	42
Section IV: Special Conditions of Contract	74
Section V: Specifications	77
Section VI: Drawings	78
Section VII: Bill of Quantities	79
Section VIII: Forms	80

Part I - Section I: Invitation to Apply for Eligibility and to Bid

Notes on the Invitation to Apply for Eligibility and to Bid

The IAEB provides information that enables interested Bidders to decide whether to participate in the procurement of the particular contract at hand. The Invitation to Apply for Eligibility and to Bid (IAEB) shall be:

- a. advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days between publications, 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, subject to Section 21 of the IRR-A of R.A. 9184;
- b. posted continuously in the website of the DPWH and the Government Electronic Procurement System (G-EPS) during the maximum period of fourteen (14) calendar days stated above; and
- c. posted at any conspicuous place reserved for this purpose in the premises of the PROCURING ENTITY concerned, as certified by the head of the Bids and Awards Committee (BAC) Secretariat of the PROCURING ENTITY during the maximum period of fourteen (14) calendar days stated above;

The IAEB shall include the following:

- a. Contract ID, name, location, brief description, Approved Budget for the Contract (ABC), and contract duration.
- b. Statement that the public bidding will be conducted in accordance with the provisions of RA 9184 and its IRR-A
- c. Major eligibility criteria, viz., registration with DPWH, Filipino citizen or 75% Filipino-owned partnership/corporation with PCAB license applicable to the Contract, completion of a similar contract costing at least 50% of ABC, credit line commitment/cash deposit certificate covering at least 10% of the ABC or Net Financial Contracting Capacity (NFCC) equal to ABC.
- d. Requirement for unregistered contractors to register first with the DPWH Registry of Contractors for Civil Works.
- e. Schedule of procurement activities, including times or deadlines for receipt of LOIs, issuance of Bidding Documents, Pre-Bid Conference, and receipt and opening of bids.
- f. Statement that prospective bidders may download the LOI Form and Bidding Documents from the DPWH website.

- g. Statement that the PROCURING ENTITY reserves the right to reject any or all bids or annul the bidding.

The IAEB should be incorporated into the Bidding Documents (BDs). The information contained in the IAEB must conform to the other parts of the BDs, including the information in the Bid Data Sheet (BDS).

INVITATION TO APPLY FOR ELIGIBILITY AND TO BID

The Name of Procuring Entity, through its Bids and Awards Committee (BAC), invites contractors to apply for eligibility and, if found eligible, to bid for the following contract:

Contract ID: _____
 Contract Name: _____
 Contract Location: _____
 Brief Description: _____
 Approved Budget for the Contract (ABC): Php _____
 Contract Duration: _____calendar days

The BAC will conduct this public bidding in accordance with R.A. 9184 and its Implementing Rules and Regulations Part A.

To be eligible to bid for this contract, a contractor must submit a Letter of Intent (LOI) and meet the following major criteria: (a) registration with the DPWH, (b) Filipino citizen or 75% Filipino-owned partnership/corporation with PCAB license applicable to the type and cost of this contract, (c) completion of similar contract costing at least 50% of ABC, and (d) Net Financial Contracting Capacity at least equal to ABC, or credit line commitment/cash deposit certificate at least equal to 10% of ABC. The BAC will use non-discretionary pass/fail criteria in the Eligibility Check, Preliminary Examination of Bids, Evaluation of Bids, Postqualification, and Award.

An unregistered contractor may submit its LOI simultaneously with its application for registration to the Name of the Procuring Entity before the deadline set below for the receipt of LOIs. The DPWH Central BAC-Technical Working Group/Secretariat will first process the contractor's application for registration and issue its Contractor's Registration Certificate (CRC) before processing its LOI.

The times and deadlines set for the major procurement activities are shown below:

1. Receipt of LOIs from Prospective Bidders	Deadline: <u>Time and Date</u>
2. Issuance of Results of Eligibility Check	From <u>Date to Date</u>
3. Issuance of Bidding Documents	From <u>Date to Date</u>
4. Pre-Bid Conference	<u>Time and Date</u>
5. Receipt of Bids	Deadline: <u>Time and Date</u>
6. Opening of Bids	<u>Time and Date</u>

Prospective bidders may download the Registration and LOI Forms from the DPWH website www.dpwh.gov.ph. The BAC will also issue hard copies of LOI Forms at Address, upon payment of a non-refundable fee of Fee for LOI Form. Prospective bidders that will download the LOI forms shall pay the said fee upon the submission of their LOIs. Prospective bidders shall submit their accomplished LOIs and obtain the results of the eligibility check at the same address.

Prospective bidders may likewise download the Bidding Documents (BDs) or available portions thereof from the DPWH website. The BAC will also issue hard copies of the BDs at the same address to eligible bidders upon payment of a non-refundable fee of Fee for BDs. Eligible bidders that will download the BDs shall pay the said fee upon the submission of their bids.

The Name of Procuring Entity reserves the right to accept or reject any bid and to annul the bidding process anytime before Contract award, without incurring any liability to the affected bidders.

Approved by:

Dates of Publication: _____
 Newspaper: _____

Name and Signature
 BAC Chairman

Part I - Section II: Eligibility Requirements

Notes on the Eligibility Requirements

This Section provides the information necessary for prospective bidders to prepare responsive applications for eligibility to bid for the Contract in accordance with the requirements of the PROCURING ENTITY.

The provisions contained in this Section are to be used unchanged.

1. Letter of Intent for Eligibility

- 1.1 In response to the Invitation to Apply for Eligibility and to Bid (IAEB) for the subject contract, a contractor (prospective bidder) that desires to participate in the bidding may download the Form of the Letter of Intent (LOI) for Eligibility (**Form DPWH-INFR-15**, together with the supporting **Forms DPWH-INFR-16 to 20**) from the DPWH website, or obtain, upon payment of the prescribed fee, a hard copy of the LOI Form from the BAC Secretariat. The prospective bidder shall prepare its Letter of Intent (LOI) for Eligibility, using the said **Forms DPWH-INFR-15 to 20**.
- 1.2 Upon presentation of its original Contractor's Registration Certificate (CRC) issued by the DPWH, the prospective bidder shall have the LOI received by the BAC of the PROCURING ENTITY not later than three (3) calendar days after the last day of the period for advertising and posting of the IAEB (IRR-A Section 21.3.1). In case the PROCURING ENTITY is the District Office and if the prospective bidder finds it difficult or inconvenient to submit its LOI for processing to the District BAC, the prospective bidder may submit its LOI to either the BAC of the Region where the contract is located or the Central Office BAC. Prospective bidders that will submit LOIs using Forms downloaded from the DPWH website shall pay the fee for the LOI Form upon submission of their LOIs.
- 1.3 If the prospective bidder does not yet possess a CRC, meaning it is still unregistered with the DPWH, it must first be registered with the DPWH Registry of Contractors for Civil Works in accordance with the requirements and procedure prescribed in Clause 3, Section II, Part I of these BDs, before its LOI can be processed. An unregistered contractor may submit its LOI simultaneously with its application for registration to the BAC concerned before the deadline set for the receipt of LOIs. The Central BAC-Technical Working Group (TWG)/Secretariat will first process its application for registration and issue its CRC before it processes its LOI.
- 1.4 The LOI of the prospective bidder shall indicate (a) its intention to apply for eligibility for the contract to be bid and (b) if found eligible, its commitment to submit a bid and purchase the Bidding Documents (BDs) for the contract. The LOI shall also state that:
- a. the prospective bidder has the key personnel available for the contract if awarded to it,
 - b. it has the construction equipment available for the contract if awarded to it,
 - c. it is not included in the government blacklist of contractors,
 - d. it does not fall within the degree of relationships with DPWH personnel prohibited by R.A. 9184,
 - e. if its Net Financial Contracting Capacity is less than the Approved Budget for the Contract (ABC), it is submitting a credit line commitment or

certificate of cash deposit from a licensed bank equal to at least ten percent (10%) of the ABC,

- f. it has updated its Contractor's Information (CI) in the DPWH Registry of Contractors, including its on-going projects,
- g. if deemed necessary, it is nominating its subcontractors for the contract, indicating the portions and costs of the contract works to be done by each subcontractor, and
- h. in the case a Joint Venture (JV), it is submitting its JV Agreement and Special JV License from the Philippine Contractors Accreditation Board (PCAB).

2. Eligibility Criteria

A prospective bidder, aside from being registered with the DPWH Registry of Contractors for Civil Works Projects, must meet the following requirements or criteria to be declared eligible for a particular contract to be bid (IRR-A Section 23.11.2.1):

2.1 Legal Requirements

a. Citizenship

The prospective bidder must be either of the following:

- (1) A Filipino citizen/sole proprietorship.
- (2) A partnership 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.
- (3) A corporation 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.
- (4) A person/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 that, in accordance with Letter of Instructions No. 630, Filipino ownership or interest in the joint venture concerned shall be at least seventy-five percent (75%).
- (5) A cooperative duly registered with Cooperative Development Authority.

b. PCAB License

The prospective bidder must have a license issued by the Philippine Contractors Accreditation Board (PCAB), in accordance with the provisions of R.A. 4566. (**IRR-A Section 23.11.2.2**) for the Allowable Range of Contract Cost (ARCC) applicable to the type and cost of the

contract to be bid. According to PCAB Board Resolution No. 001, series of 2004, and Government Procurement Policy Board (GPPB) Resolution No. 012-2004, the ARCC is as follows:

Registration Particulars				
Category	Allowable Range of Contract Cost (in Million Pesos)			
	Prior to and up to 2003-2004 (For projects advertised for bidding prior and up to June 30, 2004)	2004-2005 & 2005-2006 (For projects advertised for bidding from July 1, 2004 to June 30, 2006)	2006-2007 & 2007-2008 (For projects advertised for bidding from July 1, 2006 to June 30, 2008)	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 50	Less than or above 150	Less than or above 300	Less than or above 500

c. Business Permit

The prospective bidder must have a valid Business Permit from the City or Municipality, using **Form DPWH-INFR-11**.

d. BIR Tax Clearance

The prospective bidder must have a BIR Tax Clearance, using **Form DPWH-INFR-12**, showing that it has no tax liability.

e. Non-Inclusion in Blacklist

The prospective bidder must not be “blacklisted” or barred from bidding by the government, as shown by its Affidavit using **Form DPWH-INFR-18**.

f. Restrictions on Relations with DPWH Personnel Concerned

In accordance with **Section 47 of the IRR-A**, the prospective bidder should not be related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree or any of the officers or employees of the Procuring Entity having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the TWG, the BAC Secretariat, the members of the Implementing Unit (IU), and the designers of the project. This prohibition shall apply to the following persons:

- (1) If the bidder is an individual or a sole proprietorship, to the bidder himself.
- (2) If the bidder is a partnership, to all its officers and members.
- (3) If the bidder is a corporation, to all its officers, directors and controlling stockholders.
- (5) If the bidder is a joint venture, to each of the members of the joint venture for the applicable items (1) through (3) above.

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 Disclosure Affidavit of the Bidder to that effect, using **Form DPWH-INFR-19 (IRR-A Section 47 and Section 25.3.B.14)**.

The information/data pertaining to the requirements under items a-1 to a-3 above should already be available in the Contractor's Information (CI) stored in the computerized Registry of Contractors and, thus, do not have to be resubmitted by the prospective bidder in its LOI. The documents for the requirements under items a-4 and a-5 above shall be submitted to the BAC by the prospective bidder as part of its LOI.

2.2 Technical Requirements

Work Experience

The prospective bidder must have satisfactorily completed a single contract similar to that to be bid, and whose value, adjusted to current prices using the consumer price indices of the National Statistics Office available at the G-EPS website, is at least fifty percent (50%) of the ABC to be bid. **(IRR-A Section 23.11.2.3)**. Small A and Small B contractors without similar experience on the contract to be bid, however, may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the range of contract cost allowed for them in their PCAB license.

The required work experience can be obtained by computer processing of the CI already stored in the DPWH Registry of Contractors and, thus, does not have to be resubmitted by the prospective bidder in its LOI.

2.3 Financial Requirements

The prospective bidder must meet the requirement for Net Financial Contracting Capacity (NFCC) in item a below. If its NFCC is not sufficient to meet the requirement, it must meet the requirement for either the credit line commitment in item b or the cash deposit certificate in item c below.

a. Net Financial Contracting Capacity (NFCC)

The prospective bidder must have an NFCC at least equal to the ABC, calculated as follows **(IRR-A Section 23.11.2.5)**:

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.

b. Credit Line Commitment

The prospective bidder must have a certificate of commitment from a licensed bank to extend to it a credit line which shall be used exclusively to finance the contract, if awarded to the bidder, and which shall be at least equal to ten percent (10%) of the ABC, as indicated in its accomplished **Form DPWH-INFR-16**.

c. Certificate of Cash Deposit

The prospective bidder must have a certificate of cash deposit, issued by a licensed bank, which shall be used exclusively to finance the contract, if awarded to the bidder, and which shall be at least equal to ten percent (10%) of the ABC, as indicated in its accomplished **Form DPWH-INFR-17**.

The data needed under item C-1 above to derive the NFCC should already be available in the CI filed in the computerized DPWH Registry of Contractors and, therefore, do not have to be resubmitted by the prospective bidder in its LOI. If the NFCC is insufficient, however, the document needed under item C-2 or C-3 shall be submitted by the prospective bidder as part of its LOI.

- 2.4** Each subcontractor nominated by a prospective bidder in its LOI must also meet the foregoing eligibility criteria under Clause 2.1 to 2.3 above for the portion of the contract works to be done by that subcontractor. Notwithstanding the nomination of the subcontractor, the prospective bidder must meet all eligibility criteria for the entire contract works as if it were to undertake the contract by itself alone, without any subcontractors.

3. DPWH Registry of Contractors

To be registered with the DPWH Registry of Contractors for Civil Works Projects, as a pre-requisite to LOI processing, a contractor/prospective bidder must submit to the Central BAC-TWG/Secretariat the Contractor's Confidential Application Statement for Registration or CCASR (**Form DPWH-INFR-08**) which includes the Class "A" Documents required under **IRR-A, Section 23.6**, as follows:

3.1 Legal Documents

- a. Valid PCAB license and registration for the type and cost of contract to be bid (**Form DPWH-INFR-09**). In the case of a joint venture, the

license and registration must be those of the joint venture, not of any of its members.

- b. DTI business name registration in the case of a Single Proprietorship (**Form DPWH-INFR-10**); or SEC registration certificate, in the case of a Partnership or Corporation.
- c. Valid and current City/Municipal Business permit to operate (**Form DPWH-INFR-11**). In the case of a joint venture, the business permit or municipal license must be of the joint venture, not any of its members.
- d. BIR Tax Clearance per E.O. 298, series of 298, which also contains the Taxpayer's Identification Number (**Form DPWH-INFR-12**, which is BIR Form No. 17.14B).

3.2 Technical Documents

- a. Record of the prospective bidder's completed contracts, both government and private, including the following information for each contract:
 - (1) Contract ID, name and location.
 - (2) Contract start and actual completion dates.
 - (3) Owner's name and address.
 - (4) Nature of work and size/dimensions.
 - (5) Contractor's role (whether sole contractor, sub-contractor, or partner in a joint venture) and participation percentage.
 - (6) Total as-built cost at completion.
- b. Record of the prospective bidder's on-going contracts, including those awarded but not yet started, both in the government and the private sector, indicating the following for each contract:
 - (1) Contract ID, name and location.
 - (2) Contract start and completion date.
 - (3) Owner's name and address.
 - (4) Nature of work and size/dimension.
 - (5) Contractor's role and participation percentage.
 - (6) Percentage work accomplished.
 - (7) Percentage time elapsed.

3.3 Financial Document

The prospective bidder's audited financial statement, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective bidder's total and current assets and liabilities.

3.4 Prospective bidders may download the CCASR form from the DPWH website.

3.5 The Central BAC-Secretariat will only process CCASRs with complete registration requirements. It will enter the data from the CCASR into the computer and run the computer program to generate the Contractor's Registration Certificate or CRC (**Form DPWH-INFR-13**) and the accompanying Contractor's Information or CI (**Form DPWH-INFR-14**). The CRC will state that the contractor is recognized to undertake specific types of civil works projects with their respective cost ranges. The CI will present part of the eligibility data required in Clause 2, Section II, Part I of these BDs (Eligibility Requirements), particularly the contractor's capability in terms of its legal (PCAB license, classification and validity, business permit, etc.), financial (total and current assets and liabilities, net worth, and annual turnover), and technical (completed and ongoing projects with nature, costs, and status) aspects.

3.6 At any time, a contractor/prospective bidder may update its CI by submitting the appropriate CCASR documents to the BAC concerned which will transmit them to the Central BAC-TWG/Secretariat for processing and issuance of the updated CI.

4. Eligibility Check or Screening

4.1 The BAC that receives the prospective bidder's LOI shall immediately transmit it to the Regional BAC through its Secretariat for processing if the ABC is ₱30 million or less, or to Central BAC through its Secretariat for processing if the ABC is more than the ₱30 million. The BAC of the Procuring Entity shall also submit to the Regional BAC-Secretariat or Central BAC-Secretariat (as the case may be) the Contract Profile (CP), using **Form DPWH-INFR-21**. The CP will give the basic contract data, including the ABC, works similar to those of the contract to be bid, and contract duration.

4.2 The Regional BAC-Secretariat or Central BAC-Secretariat shall enter the data from the LOI and CP into the computer and run the computer program which will combine these data with the CI already stored in the computerized DPWH Registry of Contractors. By matching the prospective bidder's capability data in its LOI and CI against the eligibility requirements from the CP, the computer program will automatically determine whether or not the prospective bidder meets the eligibility requirements and, therefore, will generate the Notice of Eligibility or Notice of Ineligibility; the latter Notice will also indicate the reasons for the ineligibility. The BAC concerned will transmit these Notices to the prospective bidders.

- 4.3** During the postqualification of the bidder with the lowest calculated bid, the BAC shall also complete the eligibility screening of the subcontractors nominated by that bidder in its LOI, following the same criteria and procedure described above for the eligibility screening and postqualification of the said bidder. The subcontractors must be found eligible and postqualified for the portions of the contract works that they will do, as a pre-requisite to the award of the contract to the bidder. Should any subcontractor be declared ineligible or postdisqualified, the said bidder must directly undertake the portion of the works intended to be done by the subcontractor.
- 4.4** A prospective bidder that is found ineligible has seven (7) calendar days, from its receipt of the Notice of Ineligibility, within which to file with the BAC a written request for reconsideration. The BAC will resolve the request within seven (7) calendar days after receiving it. It may ask the bidder to clarify its eligibility documents. If the request is denied, the ineligible bidder may file a protest in writing to the Head of the Procuring Entity within seven (7) calendar days from its receipt of the BAC decision. The protest shall be in the form of a verified position paper accompanied by a non-refundable protest fee equivalent to one percent (1%) of the ABC. The protest shall be resolved strictly based on the records of the BAC. The Head of the Procuring Entity shall resolve the protest within seven (7) calendar days from his receipt thereof. The decision of the Head of the Procuring Entity on the protest shall be final up to the limits of his contract approving authority pursuant to the provisions of existing laws.

Part II - Section I: Instructions to Bidders

Notes on the Instructions to Bidders (ITB)

This Section of the Bidding Documents (BDs) provides the information necessary for Bidders to prepare responsive Bids in accordance with the requirements of the PROCURING ENTITY. It also provides information on the Bid submission, opening, and evaluation, postqualification, and award of contract.

The provisions of this Section are to be used unchanged. Part II - Section II: Bid Data Sheet (BDS) consists of provisions that supplement, amend, or specify in detail information or requirements included in this Section, and that are specific to each particular contract to be procured.

Matters governing the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not normally included in this Section, but rather under Part II - Section III: General Conditions of Contract (GCC), and/or Part II - Section IV: Special Conditions of Contract (SCC).

TABLE OF CONTENTS

1.	Scope of Bid	20
2.	Corrupt, Fraudulent, Collusive and Coercive Practices	20
3.	Conflict of Interest	21
4.	One Bid Per Bidder	22
5.	Pre-Bid Conference	23
6.	Content of the Bidding Documents	23
7.	Clarification and Amendment of Bidding Documents	23
8.	Cost of Bidding	24
9.	Language of Bid	24
10.	Documents Comprising the Bid	24
11.	Bid Prices	26
12.	Currencies of Bid and Payment	26
13.	Bid Validity	27
14.	Bid Security	28
15.	Alternative Proposals by Bidders	29
16.	Format and Signing of Bid	29
17.	Sealing and Marking of Bids	29
18.	Place and Deadline for Receipt of Bids	30
19.	Late Bids	30
20.	Modification and Withdrawal of Bids	30
21.	Opening and Preliminary Examination of Bids	31
22.	Process to be Confidential	33
23.	Detailed Evaluation and Comparison of Bids	33
24.	Preference for Provincial Bidders	34
25.	Postqualification of the Lowest Calculated Bid	34
26.	Right of the PROCURING ENTITY to Reject Bids	35
27.	Award Criterion	35
28.	Notice of Award	36
29.	Performance Security	36
30.	Documents Comprising the Contract	36
31.	Signing and Approval of the Contract	37
32.	Notice to Proceed	38
33.	Advance Payment	38

1. Scope of Bid

- 1.1. The PROCURING ENTITY as defined in the **BDS**, invites Bids for the construction of the Works under the proposed Contract, as described in the **BDS**. The name and ID of the Contract are stated in the **BDS**.
- 1.2. The winning Bidder will be expected to complete the Works by the intended completion date specified in the **SCC** Clause 1.17.
- 1.3. The Approved Budget for the Contract (ABC) and the Funding Source are indicated in the **BDS**.

2. Corrupt, Fraudulent, Collusive and Coercive Practices

- 2.1. The DPWH requires that the Bidders and Contractors, as well as officials and personnel of the PROCURING ENTITY, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the DPWH:
 - a. defines, for purposes of this provision, the terms set forth below as follows:
 - (1) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and others, or induce others to do so, by misusing the positions 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 Government, 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;
 - (2) "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 – before 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;
 - (3) "collusive practice" 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, non-competitive levels; and

- (4) “coercive practice” 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, fraudulent, collusive or coercive 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 a Contract if it at any time determines that the firm has engaged in corrupt, fraudulent, collusive or coercive practices in competing or, or in executing, a Contract.
- 2.2 The DPWH will also seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and organizations deemed to be involved in corrupt, fraudulent, collusive or coercive practices.
- 2.3 Furthermore, the DPWH reserves the right to inspect and audit records and accounts of a contractor in the bidding for and performance of a particular contract, through DPWH official or independent auditors as provided in GCC Clause 35.

3. Conflict of Interest

- 3.1 All Bidders found to have a conflict of interest shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A Bidder may be considered to have a conflict of interest with another Bidder in any of the events described in items a through c below, and a general conflict of interest in any of the circumstances set out in items d through g below:
- a. A Bidder has controlling shareholders in common with another Bidder.
 - b. A Bidder has received any direct or indirect subsidy from any other Bidder.
 - c. A Bidder has the same legal representative as that of another Bidder for purposes of this Bid.
 - d. A Bidder has a relationship, directly or through third parties, that puts it 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 this bidding process.

- e. A Bidder submitted more than one Bid in this bidding process. However, this does not limit the participation of subcontractors in more than one Bid.
 - f. A Bidder participated as a consultant in the preparation of the design or technical specifications of the works, goods and related services that are the subject of the Bid.
 - g. A Bidder lent, or temporary seconded, its personnel to firms or organizations which are engaged in consulting services for the preparation related to the procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.
- 3.3 In accordance with Section 47 of the IRR-A of R.A. 9184, the Bidder must have included in its Letter of Intent (LOI) for Eligibility a sworn affidavit (**Form DPWH-INFR-19**) that it is not related to the Head of the PROCURING ENTITY by consanguinity or affinity up to the third civil degree or any of the PROCURING ENTITY's officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the Technical Working Group (TWG), the BAC Secretariat, the members of the Implementing Unit, and the designers of the project. This Clause 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.
 - d. If the Bidder is a joint venture (JV), to each member of the JV for the applicable items a, b, and c of this Clause.

Relationship of the nature described above or failure to comply with this Clause will result in the automatic disqualification of a Bidder.

4. One Bid Per Bidder

Each Bidder shall submit only one Bid, either individually or as a partner in a Joint Venture (JV). A Bidder that submits or participates in more than one Bid, other than as a subcontractor, will cause all the Bids with the Bidder's participation to be disqualified. This shall be without prejudice to any applicable criminal, civil and administrative penalties that may be imposed upon the persons and entities concerned.

5. Pre-Bid Conference

- 5.1 The Bidder or his official is invited by the PROCURING ENTITY to a Pre-Bid Conference, the venue, time and date of which are indicated in the **BDS**. Non-attendance at the Pre-Bid Conference shall not be a ground for disqualification of a Bidder.
- 5.2 The Pre-Bid Conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of Bids. However, attendance of the Bidders shall not be mandatory.
- 5.3 The Pre-Bid Conference shall discuss, among other things, the technical and financial components of the contract to be bid. The minutes of the Pre-Bid Conference shall be recorded and made available to all participants not later than three (3) calendar days after the Pre-Bid Conference.
- 5.4 The PROCURING ENTITY may organize a visit to the project site concurrently with the Pre-Bid Conference.

6. Content of the Bidding Documents

- 6.1 The set of Bidding Documents (BDs) for the contract consists of the documents listed below and addenda issued in accordance with **ITB** Clause 7:

Part I

Section I: Invitation to Apply for Eligibility and to Bid (IAEB)

Section II: Eligibility Requirements

Part II

Section I: Instructions to Bidders (ITB)

Part II - Section II: Bid Data Sheet (BDS)

Part II - Section III: General Conditions of Contract (GCC)

Part II - Section IV: Special Conditions of Contract (SCC)

Part II - Section V: Specifications

Part II - Section V: Drawings

Part II - Section VII: Bill of Quantities (BOQ)

Section VIII: Forms

- 6.2 Bidders should note that the PROCURING ENTITY will only accept Bids from Bidders that have purchased the BDs from the office indicated in the IAEB, or have downloaded the BDs from the DPWH website subject to the payment of the fee for the BDs upon submission of their bids.

7. Clarification and Amendment of Bidding Documents

- 7.1 Bidders may request clarification(s) on any part of the BDs. Such a request must be in writing and submitted to the PROCURING ENTITY

at the address indicated in the **BDS** at least ten (10) calendar days before the deadline set for the submission and receipt of Bids. The PROCURING ENTITY shall respond to the said request by issuing a Bid Bulletin or Addendum, to be made available to all bidders that have properly secured the BDs from the PROCURING ENTITY, and to be posted in the DPWH website and the G-EPS, at least seven (7) calendar days before the deadline for the submission and receipt of Bids. It shall be the responsibility of all those who have properly secured the BDs, including those that downloaded the BDs from the DPWH website, to inquire for and secure Bid Bulletins that may be issued by the PROCURING ENTITY.

7.2 The PROCURING ENTITY may also issue Bid Bulletins (Addenda) upon its initiative to clarify or modify any provision of the BDs not later than seven (7) calendar days before the deadline for the receipt of Bids. It shall notify, in writing and through posting in the DPWH website and the G-EPS, all those that have properly secured the BDs about these Bulletins. It shall identify any modification to the BDs as an “amendment” in the Bid Bulletin. The PROCURING ENTITY shall inform Bidders that have submitted Bids before the issuance of the Bid Bulletins about these Bulletins and allow them to modify or withdraw their Bids.

8. Cost of Bidding

The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the PROCURING ENTITY will in no case be responsible or liable for those costs.

9. Language of Bid

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 of the relevant passages in English, in which case, for purposes of interpretation of the Bid, the English translation shall govern.

10. Documents Comprising the Bid

10.1 The Bidder shall present its Bid using **Form DPWH-INFR-30**. The Bid shall consist of the Technical Proposal and the Financial Proposal.

a. Technical Proposal – This shall include all of the following documents:

(1) Bid Security in/with the required form, amount, and validity period (**Forms DPWH-INFR-31 or 32**).

- (2) Authority of signing official (**Form DPWH-INFR-33 or 34**).
- (3) Construction schedule and S-curve (**Form DPWH-INFR-35**).
- (4) Construction methods (**Form DPWH-INFR-36**).
- (5) Organizational chart for the contract to be bid (**Form DPWH-INFR-37**).
- (6). Contractor's certification on key personnel for the contract (**Form DPWH-INFR-38**), enclosing the key personnel's affidavits of commitment to work on the contract (**Form DPWH-INFR-39**). The key personnel must meet the minimum experience requirements set in the BDS.
- (7) Manpower utilization schedule (**Form DPWH-INFR-40**).
- (8) List of contractor's equipment units pledged to the contract, which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the lessor/vendor for the contract (**Form DPWH-INFR-41**). This list must meet the minimum equipment requirements for the contract set in the **BDS**.
- (9) Equipment utilization schedule (**Form DPWH-INFR-42**).
- (10) Affidavit of site inspection (**Form DPWH-INFR-43**).
- (11) Written commitment from the contractor's bank to extend to it a credit line, or a cash deposit certificate, to be used exclusively for the contract if awarded to the contractor, in an amount at least equal to ten percent (10%) of the ABC (**Form DPWH-INFR-16 or 17**). If the bidder previously submitted the original of this document as part of its LOI for the contract, it shall submit a certified copy thereof as part of its Technical Proposal.
- (12) Contractor's construction safety and health program, specific to the contract to be bid, in accordance with Department of Labor and Employment (DOLE) Order No. 13, using **Form DPWH-INFR-44**.
- (13) Affidavit of compliance with existing labor laws and standards (**Form DPWH-INFR-45**)

- (14) Affidavit of compliance with the responsibilities under IRR-A Section 17.7.1, particularly that the Bidder has examined the BDs, acknowledged all conditions affecting contract implementation, made an estimate of the facilities needed for the contract, and inquired for and secured all Bid Bulletins **Form DPWH-INFR-46)**
 - b. Financial Proposal – This shall include all of the following documents:
 - (1) Bid prices in the Bill of Quantities in the prescribed Forms (**Forms DPWH-INFR-47 and 48**).
 - (2) 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.
 - (3) Cash flow by quarter and payment schedule (**Form DPWH-INFR-49**).
- 10.2 All Financial Proposals that exceed the Approved Budget for the Contract (ABC) indicated in **BDS** 1.3 shall be rejected.

11. Bid Prices

- 11.1 The Contract shall be for the whole Works, as described in **ITB** Clause 1.1, based on the priced Bill of Quantities (**Form DPWH-INFR-47**) submitted by the Bidder.
- 11.1 The Bidder shall fill in its unit and total Bid prices for all items of the Works described in the Bill of Quantities. Bids not addressing or providing all of the required items in the Bill of Quantities, shall be considered non-responsive and, thus, 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.
- 11.2 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, prior to the deadline for submission of Bids, shall be included in the Bid prices submitted by the Bidder.
- 11.3 For the given scope of work in the Contract as awarded, all Bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances as specified in **GCC** Clause 48.

12. Currencies of Bid and Payment

- 12.1 All Bid prices shall be quoted in Philippine Pesos.

12.2 All contracts shall be denominated and payable in Philippine Pesos.

13. Bid Validity

13.1 Bids shall remain valid for the period specified in the **BDS**, which shall not exceed one hundred twenty (120) days from the date of the opening of Bids.

13.2 In exceptional circumstances, the PROCURING ENTITY may request that the Bidders extend the period of validity of their Bids for a specified additional period. The request and the Bidders' responses shall be made in writing. A Bidder may refuse the request without forfeiting the Bid Security. A Bidder agreeing to the request will not be required or permitted to otherwise modify the Bid, but will be required to extend the validity of the Bid Security for the period of the extension, and in compliance with **ITB** Clause 14 in all respects.

14. Bid Security

14.1 The Bidder shall submit to the PROCURING ENTITY, as part of its Bid, a Bid Security in Philippine Pesos currency in any of the following forms and corresponding amounts:

	<u>Form</u>	<u>Minimum amount in % of ABC</u>
a.	Cash, -----	One percent (1%)
b.	Cashier's check or certified check or manager's check or bank draft issued by a reputable bank -----	One percent (1%)
c.	Irrevocable letter of credit issued by a reputable bank -----	One percent (1%)
d.	Bank guarantee issued by a reputable Bank -----	One and a half percent (1 ½%)
e.	Any combination of the foregoing forms -----	One and a half percent (1- 1/2 %)

Form DPWH-INFR-31 shall be used for if the Bid Security is an Irrevocable Letter of Credit, and **Form DPWH-INFR-32** if it is a Bank Guarantee.

14.2 The Bid Security should be valid for the period specified in the **BDS**.

14.3 Any Bid not accompanied by an acceptable Bid Security shall be rejected by the PROCURING ENTITY. The Bid Security of a Joint Venture (JV), if in the form of a Bank Guarantee, must define as

“Bidder” all JV partners and list them in the following manner: a JV consisting of “ _____,” “ _____,” and “ _____”.

- 14.4 No Bid Securities shall be returned to Bidders after the opening of Bids and before contract signing, except to those that failed to comply with any of the requirements to be submitted in the Technical Proposal and Financial Proposal of the Bid, as provided in the IRR-A of R.A. 9184. Without prejudice to the forfeiture of Bid Securities, Bid Securities shall be returned only after the Bidder with the Lowest Calculated Responsive Bid has signed the Contract and furnished the Performance Security, but in no case later than the expiration of the Bid Security validity period indicated in the **BDS**.
- 14.5 The Bid Security may be forfeited:
- (a) if the Bidder withdraws its Bid after Bid opening during the period of Bid validity; or
 - (b) if the Bidder does not accept the correction by the Bids and Awards Committee of arithmetical and computational errors in its Bid prices, pursuant to **ITB** Clause 23; or
 - (c) in the case of the winning Bidder, if the Bidder fails, within ten (10) days from its receipt of the Notice of Award, to:
 - (1) submit to the PROCURING ENTITY its (i) written “conforme” to the Notice of Award, (ii) Performance Security, (iii) Credit Line or Cash Deposit Certificate, and (iv) PERT/CPM, in accordance with the Bidding Documents; or
 - (2) sign the Contract Agreement; or
 - (d) if the Bidder submits eligibility requirements that contain false information or falsified documents, or conceals such information, in order to influence the outcome of the eligibility screening or any other stage of the bidding; or
 - (e) if the Bidder submits Bids that contain false information or falsified documents, or conceals such information in the Bids, in order to influence the outcome of the bidding; or
 - (f) if the Bidder allows the use of its name by another contractor, or uses the name of another contractor, for purposes of public bidding; or
 - (g) if the Bidder refuses to clarify or validate in writing its Bid during postqualification within a period of seven (7) calendar days from receipt of the request for clarification; or
 - (h) if the Bidder makes any documented unsolicited attempt to unduly influence the outcome of the bidding in its favor; or

- (i) if the Bidder commits any other act that tends to defeat the purpose of the competitive bidding, such as an eligible bidder not buying the Bidding Documents, or habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within twelve (12) months, except for valid reasons.

15. Alternative Proposals by Bidders

Bidders shall submit Bids that comply with the requirements of the Bidding Documents, including the basic technical design as indicated in the Drawings and Specifications. Unless there is a provision for a value engineering change proposal (VECP) stated in the **BDS**, the PROCURING ENTITY shall not accept alternative bids.

16. Format and Signing of Bid

- 16.1 The Bidder shall submit one original of the Technical Proposal and one original of the Financial Proposal as described in **ITB** Clause 17 and clearly mark each as “ORIGINAL - TECHNICAL PROPOSAL” and “ORIGINAL – FINANCIAL PROPOSAL”. In addition, the Bidder shall submit two (2) copies of the Technical Proposal and the Financial Proposal, and clearly mark them “COPY NO... - TECHNICAL PROPOSAL” and “COPY NO.... – FINANCIAL PROPOSAL”. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 16.2 The original and the two (2) copies of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.
- 16.3 Any interlineations, erasures, alterations or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.
- 16.4 Commissions or gratuities are not allowed.

17. Sealing and Marking of Bids

- 17.1 The Bidder shall enclose the original of the Technical Proposal in one sealed envelope marked as “ORIGINAL - TECHNICAL PROPOSAL”; whereas, the original of the Financial Proposal shall be enclosed in another sealed envelope marked as “ORIGINAL - FINANCIAL PROPOSAL”. Both envelopes shall then be placed in another single envelope marked as “ORIGINAL BID.”
- 17.2 Each copy of the Technical Proposal and Financial Proposal, shall be similarly sealed duly marked as “COPY NO... - TECHNICAL PROPOSAL” and “COPY NO... – FINANCIAL PROPOSAL”

respectively and the outer envelope as “COPY NO”. These envelopes containing the original and the copies shall then be enclosed in one single envelope that shall:

- (a) indicate the name of the Contract to be bid;
- (b) bear the name and address of the Bidder;
- (c) be addressed to the PROCURING ENTITY in accordance with **ITB** Clause 7;
- (b) bear the specific identification of this bidding process indicated in the **BDS**; and
- (c) bear a warning “DO NOT OPEN BEFORE...” the time and date for the opening of Bids , in accordance with **ITB** Clause 21.

17.3 If all envelopes are not sealed and marked as required, the PROCURING ENTITY will assume no responsibility for the misplacement or premature opening of the Bid.

18. Place and Deadline for Receipt of Bids

Bids must be received by the BAC of the PROCURING ENTITY at the address and on or before the deadline indicated in the **BDS**.

19. Late Bids

Any Bid submitted after the deadline for the receipt of Bids prescribed by the PROCURING ENTITY, pursuant to **ITB** Clause 18, shall be declared “Late” and shall not be accepted by the PROCURING ENTITY.

20. Modification and Withdrawal of Bids

20.1 The Bidder may modify its Bid after it has been submitted provided that the modification is received by the PROCURING ENTITY prior to the deadline prescribed for the receipt of Bids by the BAC. The Bidder shall not be allowed to retrieve its original Bid, but shall be allowed to submit another Bid equally sealed, properly identified, linked to its original bid marked as “TECHNICAL MODIFICATION” or “FINANCIAL MODIFICATION” and stamped “received” by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

20.2 A Bidder may, through a Letter of Withdrawal, withdraw its Bid after it has been submitted, for valid and justifiable reasons; provided that the Letter of Withdrawal is received by the PROCURING ENTITY not later than the deadline prescribed for the receipt of Bids.

- 20.3 Bids requested to be withdrawn in accordance with **ITB** Clause 20.2 shall be returned unopened to the Bidders. A Bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped by the BAC before the deadline for submission and receipt of Bids. A Bidder that withdraws its Bid shall not be permitted to submit another Bid, directly or indirectly, for the same contract.
- 20.4 No Bid may be modified after the deadline for the receipt of Bids. No Bid may be withdrawn in the interval between the deadline for the receipt of Bids and the expiration of the period of Bid validity specified by the Bidder in accordance with **ITB** Clause 13.1. Withdrawal of a Bid during this interval may result in the forfeiture of the Bidder's Bid Security, pursuant to the **ITB** Clause 14.5, and the imposition of administrative, civil and criminal sanctions as prescribed by R.A. 9184 and its IRR-A.

21. Opening and Preliminary Examination of Bids

- 21.1 The BAC of the PROCURING ENTITY shall open the Bid envelopes in the presence of Bidders' representatives who choose to attend, at the time, on the date, and at the place specified in the **BDS**. Bidders' representatives who are present shall sign a register evidencing their attendance.
- 21.2 Letters of withdrawal shall be read out and recorded, and the envelope containing the corresponding withdrawn Bid shall be returned to the Bidder unopened. If the withdrawing Bidder's representative is in attendance, the original Bid and all copies thereof shall be returned to that 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 before the deadline for submission and receipt of Bids, provided that its letter of withdrawal contains a valid justification requesting such withdrawal, subject to appropriate administrative sanctions.
- 21.3 The PROCURING ENTITY shall not accept Bids of ineligible Bidders. The PROCURING ENTITY shall open the Bids of eligible Bidders only, in accordance with the following Clauses.
- 21.4 Outer envelopes marked "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" shall be identified but not opened. The PROCURING ENTITY shall announce the presence and type of modification from the information contained on the outer envelope.
- 21.5 The PROCURING ENTITY shall conduct the opening and Preliminary Examination of the Bids, by first opening the envelopes containing the Technical Proposals and modifications, if any, one at a time, and reading out and recording the following:

- a) Name of the Bidder.
- b) Whether there is a technical modification or substitution.
- c) Presence, amount and validity of the Bid Security.
- d) Presence or absence of each document comprising the Technical Proposal vis-à-vis a checklist of the required documents.

21.6 The BAC of the PROCURING ENTITY shall determine each Bidder's compliance with the documents required to be submitted for the Technical Proposal of the Bid, as prescribed in **ITB** Clause 10. For this purpose, the BAC of the PROCURING ENTITY shall check the submitted documents of each Bidder against a checklist of required documents to ascertain if they are all present in the first Technical Proposal (first envelope), using non-discretionary "pass/fail" criteria, as stated in the IAEB and **ITB** Clause 10. If a Bidder submits a required document, it shall be rated as "passed" for that particular requirement. On the other hand, if a Bidder fails to submit a requirement, or makes an incomplete or patently insufficient submission, its Bid shall be considered as "failed" for that particular requirement. In case one or more of the above required documents in the Technical Proposal (first envelope) of a particular Bid is missing, incomplete, or patently insufficient, the BAC of the PROCURING ENTITY shall rate the Bid concerned as "non-complying" ("failed") and immediately return to the Bidder concerned its second envelope (Financial Proposal) unopened. If all of the required documents in the Technical Proposal (first envelope) are rated as "passed," the Technical Proposal is rated as "complying".

21.7 Immediately after determining compliance with the requirements in the Technical Proposal (first envelope), the BAC shall open the second envelope (Financial Proposal) of each remaining eligible bidder whose Technical Proposal (first envelope) was rated as "complying" ("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 Financial Proposal (second envelope) of a particular Bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the Bid concerned as "non-complying" ("failed"). Bids that are determined to contain all the requirements for the Financial Proposal (second envelope) shall be rated as "complying" ("passed") and shall immediately be considered for detailed evaluation of the Bids.

21.8 The PROCURING ENTITY shall prepare the minutes of the proceedings of the Bid opening that shall include, as a minimum: (a) the Abstract of Bids as Read including the name of each Bidder, its Bid prices, Bid Security, and findings of the Preliminary Examination of Bids; and (b) the attendance sheet. The BAC members shall sign the Abstract of Bids as Read and the BAC Observers may witness the same. A copy of the Abstract of Bids as Read shall be made available to all

interested Bidders. The minutes of the proceedings of the Bid opening shall be available to the public upon written request and payment of a specified fee to cover the cost of materials.

22. Process to be Confidential

Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of any of the bids until the issuance of the Notice of Award.

23. Detailed Evaluation and Comparison of Bids

23.1 The PROCURING ENTITY shall evaluate and compare, in detail, only the Bids that are rated as “complying” (“passed”) for both Technical and Financial Proposals.

23.2 In evaluating the Bids to get the Lowest Calculated Bid, the PROCURING ENTITY shall undertake the following:

- a. The detailed evaluation of the Financial Proposals of the Bids, to establish the correct calculated prices of the Bids.
- b. The ranking of the total bid prices as so calculated from the lowest to highest.

The Bid with the lowest price in the ranking shall be identified as the Lowest Calculated Bid.

23.3 To determine the Lowest Calculated Bid, the BAC shall use non-discretionary “pass/fail” criteria, as stated in the IAEB, which shall include a consideration of the following:

- a. The bid must be complete. Bids not addressing or providing all of the required items in the Bidding Documents, including the Bill of Quantities, shall be considered as non-responsive and, thus, 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; and
- b. Arithmetical corrections shall be made 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.

23.4 The BAC shall evaluate all bids 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 (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.

23.5 In case of discrepancies between:

- a. bid prices in figures and in words, or
- b. total bid prices per pay item and unit prices applied to the quantities per pay item, or
- c. stated total Bid price and the actual sum of prices of component items, or
- d. unit prices in the detailed estimate and unit bid prices in the Bill of Quantities,

the latter in each of the above cases shall prevail, and the total Bid amount shall be corrected accordingly.

23.6 Based on the detailed evaluation of the 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, in accordance with the provisions of this **ITB** Clause. This will identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall not be considered.

24. Preference for Provincial Bidders

If so indicated in the **BDS**, Bidders whose principal office is within the same province where the contract is to be implemented shall be given preference by allowing a right to match the Lowest Calculated Bid subject to applicable laws and following the mechanics shown in the **BDS**.

25. Postqualification of the Lowest Calculated Bid

The PROCURING ENTITY shall conduct a postqualification of the Bidder that is evaluated to have the Lowest Calculated Bid to determine definitely if it complies with and is responsive to all requirements and conditions for eligibility and of the Bidding for the contract. The determination shall use non-discretionary “pass/fail” criteria and be based upon examination, verification, and validation of the documentary evidence of the Bidder’s eligibility/qualifications submitted by the Bidder in the Contractor’s Confidential Application Statement for Registration (CCASR) and Letter of Intent (LOI) for Eligibility in accordance with Section II: Eligibility Requirements, and in the Technical and Financial Proposals in accordance with **ITB** Clause 10. If the

said Bidder passes the postqualification, its Bid shall be declared as the Lowest Calculated Responsive Bid (LCRB).

26. Right of the PROCURING ENTITY to Reject Bids

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

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

- a. If there is prima facie evidence of collusion among appropriate public officers or employees of the PROCURING ENTITY, or between the BAC and any of the bidders, 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.
- c. For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the contract works no longer economically, financially or technically feasible as determined by the Head of the PROCURING ENTITY; (ii) if the contract works are no longer necessary as determined by the Head of the PROCURING ENTITY; and (iii) if the funds for the contract have been cancelled, withheld or reduced through no fault of the PROCURING ENTITY.

27. Award Criterion

The PROCURING ENTITY shall award the contract to the winning Bidder whose Bid has been determined, after the evaluation of bids and postqualification, as the LCRB.

28. Notice of Award

Prior to the expiration of the Bid validity period, the PROCURING ENTITY shall issue a written Notice of Award to the Bidder with the LCRB to be received by the Bidder personally, by registered mail, or electronically. This Notice of Award shall state the proposed contract price equivalent to the LCRB, together with the documentary requirements to be submitted by the Bidder to perfect the contract. In case the Notice of Award is not received personally by the Bidder, its receipt must be confirmed in writing by the Bidder and submitted personally, by registered mail or electronically to the PROCURING ENTITY.

29. Performance Security

29.1 Within a maximum period of ten (10) calendar days upon receipt of the notification of award from the PROCURING ENTITY, and in no case later than the signing of the contract by the winning Bidder and the PROCURING ENTITY, the winning Bidder shall furnish to the PROCURING ENTITY, the required Performance Security in the form and amount and with the conditions specified in GCC, Clause 7.

29.2 Failure of the winning Bidder to comply with the requirements of ITB Clause 29.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of its Bid Security. In this event, the PROCURING ENTITY shall initiate and complete the postqualification of the second Lowest Calculated Bid. The procedure shall be repeated until the Lowest Calculated and Responsive Bid is identified and selected for contract award. However, if no Bidder passed postqualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement.

30. Documents Comprising the Contract

30.1 The Contract shall consist of the following:

- a. Contract Agreement (Use **Form DPWH-INFR-65**)
- b. Documents forming part of the Contract Agreement
 - (1) Bidding Documents for the Contract (Annex "A")
 - (a) General Conditions of Contract (GCC)
 - (b) Special Conditions of Contract (SCC)
 - (c) Drawings
 - (d) Specifications
 - (e) Invitation to Apply for Eligibility and to Bid (IAEB)
 - (f) Instructions to Bidder (ITB)
 - (g) Bid Data Sheet (BDS)
 - (h) Bid Bulletins (Addenda)

- (2) Contractor's Calculated Bid in the Bid Form, including the Technical and Financial Proposals (Annex "B")
- (3) Contractor's Letter of Intent (LOI) for Eligibility and Contractor's Information from the DPWH Registry (Annex "C")
- (4) Notice of Award with the Contractor's "Conforme" (Annex "D")
- (5) Performance Security in accordance with **GCC** Clause 7 (Annex "E")
- (6) Credit Line (Use Form DPWH-INFR-70) or Cash Deposit Certificate in an amount at least equal to ten percent (10%) of the total Contract price (Annex "F")
- (7) PERT/CPM diagram and bar chart with S-curve (Annex "G")

30.2 The documents in **ITB** Clause 30.1 (a) and (b)-(1) to (b)-(3) shall be provided by the PROCURING ENTITY, while the documents in Clause 30.1 (b)-(4) to (b)-(7) shall be submitted by the winning bidder within ten (10) calendar days from the date of its receipt of the Notice of Award.

31. Signing and Approval of the Contract

- 31.1 Within five (5) days from the date of receipt from the winning Bidder of the documents mentioned in ITB Clause 30.1 (b)-(4) to (b)-(7), the successful Bidder and the authorized official of the PROCURING ENTITY shall sign the Contract Agreement.
- 31.2 Within the period stated below from the signing of the Contract Agreement by the authorized official of the PROCURING ENTITY, the Contract Agreement shall be approved by the Head of the PROCURING ENTITY:
 - a. Three (3) calendar days if the PROCURING ENTITY is the District Office
 - b. Five (5) calendar days if the PROCURING ENTITY is the Regional Office
 - c. Ten (10) calendar days if the PROCURING ENTITY is the Central Office
- 31.3 Upon approval of the Contract, the PROCURING ENTITY shall notify the other Bidders that their bids were unsuccessful.

32. Notice to Proceed

Within three (3) calendar days from the date of approval of the Contract by the appropriate official, the PROCURING ENTITY shall issue to the Contractor the Notice to Proceed (NTP) for the Contract. The NTP shall indicate the effectivity date of the Contract.

33. Advance Payment

The PROCURING ENTITY shall, upon written request of the Contractor, provide an Advance Payment on the Contract Price as stipulated in GCC Clause 39.

Part II - Section II: Bid Data Sheet

Notes on the Bid Data Sheet

The Bid Data Sheet (BDS) complements the Instructions to Bidders (ITB) and must be prepared for each particular contract to be procured. The BDS provides the information specific to the Contract.

Bid Data Sheet

ITB Clause																			
1.1	<p>The PROCURING ENTITY is <i>[Insert name of procuring organization]</i>.</p> <p>The scope of the Works under this Contract is <i>[Insert brief description of the Works]</i></p> <p>The Contract Name is <i>[Insert the name of the Contract]</i>.</p> <p>The Contract ID <i>[Insert ID of the Contract]</i>.</p>																		
1.3	<p>The Approved Budget for the Contract is <i>[Insert amount]</i>.</p> <p>The Funding Source is the Government of the Philippines through <i>[Insert GAA No. and year]</i> covered by ABM/SARO No. <i>[Insert no.]</i> dated <i>[Insert date]</i>.</p>																		
5.1	<p>The date and time of the Pre-Bid Conference are <i>[Insert date and time]</i></p> <p>The venue of the Pre-Bid Conference is <i>[Insert venue with full address]</i></p>																		
7.1	<p>The PROCURING ENTITY's address is:</p> <p><i>[Insert full address]</i> <i>[Insert name and designation of contact person]</i> <i>[Insert telephone and fax number of contact person]</i> <i>[Insert e-mail address of contact person]</i></p>																		
10.1a(7)	<p>The minimum work experience requirements for the key personnel are the following:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Key Personnel</u></th> <th style="text-align: center;"><u>Minimum Cost of Largest Project Handled</u></th> <th style="text-align: center;"><u>Minimum Years of Experience in Proposed Position</u></th> </tr> </thead> <tbody> <tr> <td>Project Manager</td> <td style="text-align: center;"><i>[Insert amount=</i> <i>50% of ABC]</i></td> <td style="text-align: center;">5</td> </tr> <tr> <td>Project Engineer</td> <td style="text-align: center;"><i>[Insert same amount]</i></td> <td style="text-align: center;">3</td> </tr> <tr> <td>Materials Engineer</td> <td style="text-align: center;"><i>[Insert same amount]</i></td> <td style="text-align: center;">3</td> </tr> <tr> <td>Foreman</td> <td style="text-align: center;"><i>[Insert same amount]</i></td> <td style="text-align: center;">2</td> </tr> <tr> <td>Others <i>[Specify]</i></td> <td style="text-align: center;"><i>[Insert amount]</i></td> <td style="text-align: center;"><i>[Insert years]</i></td> </tr> </tbody> </table>	<u>Key Personnel</u>	<u>Minimum Cost of Largest Project Handled</u>	<u>Minimum Years of Experience in Proposed Position</u>	Project Manager	<i>[Insert amount=</i> <i>50% of ABC]</i>	5	Project Engineer	<i>[Insert same amount]</i>	3	Materials Engineer	<i>[Insert same amount]</i>	3	Foreman	<i>[Insert same amount]</i>	2	Others <i>[Specify]</i>	<i>[Insert amount]</i>	<i>[Insert years]</i>
<u>Key Personnel</u>	<u>Minimum Cost of Largest Project Handled</u>	<u>Minimum Years of Experience in Proposed Position</u>																	
Project Manager	<i>[Insert amount=</i> <i>50% of ABC]</i>	5																	
Project Engineer	<i>[Insert same amount]</i>	3																	
Materials Engineer	<i>[Insert same amount]</i>	3																	
Foreman	<i>[Insert same amount]</i>	2																	
Others <i>[Specify]</i>	<i>[Insert amount]</i>	<i>[Insert years]</i>																	
10.1a(9)	<p>The minimum equipment requirements are the following:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Equipment</u></th> <th style="text-align: center;"><u>Number of Units</u></th> <th style="text-align: center;"><u>Minimum Production Rate per Unit</u></th> </tr> </thead> <tbody> <tr> <td><i>[Insert Data]</i></td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </tbody> </table>	<u>Equipment</u>	<u>Number of Units</u>	<u>Minimum Production Rate per Unit</u>	<i>[Insert Data]</i>	_____	_____												
<u>Equipment</u>	<u>Number of Units</u>	<u>Minimum Production Rate per Unit</u>																	
<i>[Insert Data]</i>	_____	_____																	

13.1	Bids shall be valid until <i>[Insert date not later than one hundred twenty (120) days from the date set for bids opening]</i> .
15	<p><i>Select one, delete the other:</i></p> <p>There is no provision for a value engineering change proposal.</p> <p><i>Or</i></p> <p>The bidding allows a value engineering change proposal (VECP) in accordance with rules to be issued separately by the BAC.</p>
14.2 and 14.4	The Bid Security shall be valid until <i>[Insert date not later than one hundred twenty (120) days from the date set for Bid opening]</i>
17.2d	The specific identification of this bidding process is <i>[Insert Contract ID and Contract Name]</i> .
18	The address for receipt of Bids is <i>[Insert address]</i> . The deadline for receipt of Bids is <i>[Insert time and date]</i> .
21.1	<p>The place of opening of Bids is <i>[Insert address]</i>.</p> <p>The date and time of opening of Bids are <i>[Insert time and date]</i>.</p>
24	<p><i>Select one, delete the other:</i></p> <p>This Project is not a provincial project as defined in Section 44 of the IRR-A or R.A. 9184. Provincial bidders shall not be given the right to match the Lowest Calculated Bid.</p> <p><i>Or</i></p> <p>This Project is considered a provincial project as defined in Section 44 of the IRR-A or R.A. 9184. A Provincial Bidder refers to a Bidder whose principal office is within the province where this Contract is to be implemented.</p> <p>If the Lowest Calculated Bid (LCB) is made by a Bidder whose principal office is outside the said province, the Provincial Bidder that submits the lowest calculated bid (but higher than the LCB) among all the participating Provincial Bidders shall be given forty-eight (48) hours from receipt of written advice from the BAC to match in writing the LCB. Matching shall be made through appropriate adjustments in the unit bid prices without changing the Scope of Work and work items prescribed in the Bidding Documents for the Contract. If the Provincial Bidder is able to match the LCB within the specified period, it shall be awarded the Contract provided that it passes the postqualification. Otherwise, the Contract will be awarded to the Bidder with the LCB, subject to postqualification.</p>

***Part II - Section III: General Conditions of
Contract***

TABLE OF CONTENTS

1.	Definitions	45
2.	Interpretation	47
3.	Governing Language and Law	48
4.	Communications	49
5.	PROCURING ENTITY's Obligation to Deliver the Site, Materials, Equipment and Plans	49
6.	Contractor's Obligations	49
7.	Performance Security	50
8.	Subcontracting	51
9.	Liquidated Damages	52
10.	Site Investigation Reports	53
11.	Licenses and Permits	53
12.	Contractor's Risk and Warranty Security	53
13.	PROCURING ENTITY's Risk	55
14.	Insurance	56
15.	Termination for Default of Contractor	57
16.	Termination for Convenience	58
17.	Termination for Insolvency	58
18.	Termination for Unlawful Acts	58
19.	Termination by Contractor	59
20.	Termination for Other Causes	59
21.	Procedure for Termination of Contracts	60
22.	Force Majeure and Release from Performance	61
23.	Payment on Termination	62
24.	Resolution of Disputes	62
25.	PROCURING ENTITY's Representative's Decisions	63
26.	Approval of Drawings and Temporary Works by the PROCURING ENTITY's Representative	63
27.	Acceleration Ordered by the PROCURING ENTITY's Representative	63
28.	Extension of the Intended Completion Date	63
29.	Contractor's Right to Claim	64
30.	Dayworks	64
31.	Early Warning	64

32.	PERT/CPM Network Diagram	65
33.	Management Conferences	65
34.	Bill of Quantities	65
35.	Instructions, Inspections and Audits	66
36.	Identification of Defects	66
37.	Cost of Repairs	66
38.	Correction of Defects	66
39.	Uncorrected Defects	67
40.	Advance Payment	67
41.	Monthly Statements or Progress Billings	68
42.	Monthly Certificates and Progress Payments	68
43.	Retention	69
44.	Variation Orders	69
45.	Contract Completion	71
46.	Suspension of Work	71
47.	Extension of Contract Time	72
48.	Price Adjustment	74
49.	Acceptance	74
50.	Taking Over	74
51.	“As-Built” Drawings	74

1. Definitions

- 1.1. **Arbiter** is the person appointed jointly by the PROCURING ENTITY and the Contractor to resolve disputes in the first instance.
- 1.2. **As-Built Drawings** refer to the engineering plans for the structure as actually constructed and completed under this Contract, considering all variations and modifications as approved and executed.
- 1.3. **Bill of Quantities** refers to a list of the specific pay items of the Works under this Contract, particularly their identification numbers, descriptions, units of measurement, and quantities, together with their corresponding unit and total bid prices.
- 1.4. **Certificate of Acceptance** is the document issued by the PROCURING ENTITY, certifying that the Works have been completed, including correction of all Defects, as of the end of the Defects Liability Period, in accordance with the provisions of this Contract, and that, therefore, the completed Works are accepted by the PROCURING ENTITY.
- 1.5. **Contract** is the legal agreement between the PROCURING ENTITY and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Clause 2.3.
- 1.6. **Contract Price** is the price stated in the Notice of Award and thereafter to be paid by the PROCURING ENTITY to the Contractor for the execution of the Works in accordance with this Contract.
- 1.7. **Contract Time** is the allowable period or duration within which the Contract Works must be completed, i.e., from the Start Date to the Intended completion Date as specified in the SCC.
- 1.8. **Contractor** is the juridical entity whose bid has been accepted by the PROCURING ENTITY and to whom this Contract to execute the Work was awarded, entered into, and approved.
- 1.9. **Contractor's Bid** is the signed offer or proposal submitted by the Contractor to the PROCURING ENTITY in response to the Bidding Documents.
- 1.10. **Days** are calendar days.
- 1.11. **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.
- 1.12. **Defect** is any part of the Works not constructed in accordance with this Contract.
- 1.13. **Defects Liability Certificate** is the certificate issued by PROCURING ENTITY's Representative upon correction of defects by the Contractor.

- 1.16 Defects Liability Period** is the one-year period between the completion and the final acceptance of the Works during which the Contractor assumes the responsibility to undertake the repair of any defect in or damage to the Works at his own expense.
- 1.17 Drawings** are graphical presentations of the Works. They include all engineering plans, supplementary details, shop drawings, calculations, and other information provided or approved for the execution of this Contract.
- 1.18 Equipment** refers to all machines, tools, facilities, supplies, appliances, and related items required for the execution and completion of the Works provided by the Contractor and which shall not form or are not intended to form part of the Permanent Works.
- 1.19 Intended Completion Date** refers to the date specified in the SCC 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 Contract Time or an acceleration order.
- 1.20 Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- 1.21 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 Works not later than the date specified in this Notice.
- 1.21 Permanent Works** refer to 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.
- 1.22 PERT/CPM** is the acronym for Program Evaluation Review Technique/ Critical Path Method and is a technique for planning, scheduling, and controlling a project, involving a network of interrelated activities with their start and finish times. The critical path is the longest time path through the network of activities.
- 1.23 Plant** refers to the machinery, apparatus, and the like intended to form an integral part of the Permanent Works.
- 1.24 PROCURING ENTITY** is the party that engages the Contractor to carry out the Works stated in the SCC.
- 1.25 PROCURING ENTITY's Representative** refers to the Head of the PROCURING ENTITY or his duly authorized representative, identified

in the SCC, who shall be responsible for supervising the execution of the Works and administering this Contract.

- 1.26** **Site** is the right-of-way or place provided by the PROCURING ENTITY where the Works shall be executed and any other place or places which may be designated in the SCC, or notified to the Contractor by the PROCURING ENTITY's Representative, as forming part of the Site.
- 1.27** **Site Investigation Reports** are factual and interpretative reports about the surface and subsurface conditions at the Site, which are provided by the PROCURING ENTITY in the Bidding Documents.
- 1.28** **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 Works by the Contractor as established from the work schedule. This is actually described as a percentage of the whole Works.
- 1.29** **Specifications** mean the description of the Works to be done, qualities of materials to be used, equipment to be installed, construction methods, workmanship, and finished product required under this Contract.
- 1.30** **Start Date**, as specified in the SCC, is the date when the Contractor is obliged to commence execution of the Works. It is the same as the effectivity date of the Contract as stated in the Notice to Proceed. It does not necessarily coincide with any of the Site Possession Dates.
- 1.31** **Subcontractor** is any person or organization to whom a part of the Works has been subcontracted by the Contractor for execution, as allowed by the PROCURING ENTITY, but not any assignee of such person.
- 1.32** **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for the construction or installation of the Permanent Works.
- 1.33** **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 queries about the Conditions of Contract.

- 2.2. If sectional completion is specified in the **SCC**, the Contractor shall complete each section of the Works on the dates stated in the SCC.
- 2.3. The documents forming this Contract shall be interpreted in the following order of priority:
 1. Contract Agreement
 2. Contractor's Bid in the Form of Bid, including its Technical and Financial Proposals
 3. Bid Data Sheet (BDS)
 4. Instructions to Bidders (ITB)
 5. Bid Bulletin (Addenda) to the Bidding Documents
 6. Specifications
 7. Drawings
 8. Special Conditions of Contract (SCC)
 9. General Conditions of Contract (GCC)
 10. Invitation to Apply for Eligibility and to Bid (IAEB)
 11. Contractor's Letter of Intent (LOI) for Eligibility and Contractor's Information (CI) from the DPWH Registry
 12. Notice of Award (NOA) with the Contractor's Conforme
 13. Performance Security
 14. Credit Line or Cash Deposit Certificate
 15. PERT/CPM Diagram and Bar Chart with S-Curve

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 these Conditions of Contract shall be effective only when in writing. A notice shall be effective only when it is received by the concerned party.

5. PROCURING ENTITY'S Obligation to Deliver the Site, Materials, Equipment, and Plans

- 5.1** Not later than the date specified in the SCC, the PROCURING ENTITY shall deliver the Site, clear of any obstructions or occupants, to the Contractor to enable it to proceed with the execution of the Works.
- 5.2** If specified in the SCC, the PROCURING ENTITY shall also deliver to the Contractor any government-furnished materials, equipment, and plans to be used in the Works not later than the dates indicated in the SCC.
- 5.3** If the Contractor suffers a delay or incurs a cost from failure on the part of the PROCURING ENTITY to deliver the Site, government-furnished materials, equipment or plans, 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.
- 5.4** 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 its own cost any additional facilities outside the Site required by it for purposes of the Works.
- 5.5** 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. 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 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 approved PERT/CPM network diagram submitted by the Contractor, as updated with the approval of the PROCURING ENTITY's Representative, and shall complete the Works 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 in the **SCC**, 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.
- 6.7** During Contract implementation, the Contractor and its 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 during 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** The Contractor shall submit its Performance Security to the PROCURING ENTITY not later than the date specified in the Notice of Award and shall be issued in any of the following forms and corresponding amounts at the option of the Contractor:

Form of Warranty	Minimum Amount in Percentage (%) of Total Contract Price
a. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit issued by a reputable bank	Five Percent (5%)
b. Bank guarantee issued by a reputable bank	Ten Percent (10%)
c. Any combination of the foregoing forms	Ten Percent (10%)

The amount of the Performance Security shall be increased to cover the amount of the Advance Payment made in accordance with **GCC** Clause 40.

The Performance Security shall be discharged by the PROCURING ENTITY and returned to the Contractor upon the issuance of the PROCURING ENTITY of the Certificate of Acceptance of the Contract Works at the end of the Defects Liability Period, provided that it is replaced by a Warranty Security against structural defects and/or failure as provided in **GCC** Clause 12.

The Performance Security shall be denominated in Philippine Pesos.

- 7.2** The Contractor, by entering into the Contract with the PROCURING ENTITY, acknowledges the right of the PROCURING ENTITY to institute action on the Performance Security pursuant to Act 3688 of any 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** The Contractor may subcontract not more than fifty percent (50%) of the value of the Works to subcontractors nominated in the Contractor's Letter of Intent (LOI) for Eligibility and found eligible and postqualified to undertake the specified portions of the Works. Subcontracting of any portion of the Works shall not relieve the Contractor of any liability or obligation under this Contract. The Contractor shall 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.
- 8.2** All subcontracting arrangements as disclosed and identified in the Contractor's LOI and approved by the PROCURING ENTITY shall not be changed during the implementation of this Contract.

9. Liquidated Damages

9.1 If the Contract is delayed beyond the Intended Completion Date, the Contractor shall pay liquidated damages to the PROCURING ENTITY an amount to be determined in accordance with the following formula until the Works are completed and accepted or taken over by the PROCURING ENTITY:

$$TLD = VUUP \times [(1 + OCC)^n - 1] \times K$$

$$VUUP = TCP - VCUP$$

where:

TLD = Total Liquidated Damages, in Pesos,

VUUP = value of the uncompleted and unusable portions of the Contract Works, as of the expiry date of the Contract, in Pesos,

TCP = Total Contract Price, in Pesos,

VCUP = value of the completed and usable portion of the Contract Works, as of the expiry date of the Contract, in Pesos,

OCC = prevailing opportunity cost of capital for government projects set by the National Economic and Development Authority (NEDA), which is currently pegged at fifteen percent (15%) per annum,

n = total number of years that the Contract Works are delayed after the expiry date of the Contract, and

K = adjustment factor to cover additional losses

$$= 1 + C + (i \times n)$$

where:

C = cost of construction supervision as a percentage, not exceeding 10%, of construction cost, and

i = annual inflation rate as defined by the NEDA

The Head of the PROCURING ENTITY may also impose additional liquidated damages on the Contractor provided that such is prescribed in the Instructions to Bidders.

The Contract Works or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned PROCURING ENTITY.

To be entitled to such liquidated damages, the PROCURING ENTITY does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the Contractor under the Contract and/or collect such liquidated damages from the retention money or other securities posted by the Contractor whichever is convenient to the PROCURING ENTITY.

In case the delay in the completion of the Works exceeds a time duration equivalent to ten percent (10%) of the specified Contract Time plus any time extension duly granted to the Contractor, the PROCURING ENTITY may rescind the Contract, forfeit the Contractor's Performance Security and take over the prosecution of the Works or award the same to a qualified contractor.

In no case, however, shall the total sum of liquidated damages exceed ten percent (10%) of the total Contract Price, in which event the Contract shall automatically be taken over by the PROCURING ENTITY concerned or award the same to a qualified contractor through negotiation and the erring Contractor's Performance Security shall be forfeited. The amount of the forfeited Performance Security shall be aside from the amount of the liquidated damages that the Contractor shall pay the government under the provisions of this Clause and shall be in addition to other appropriate sanctions that may be imposed in accordance with the provisions of law.

- 9.2 If the Intended Completion Date is extended after liquidated damages have been paid, the PROCURING ENTITY's Representative shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

10. Site Investigation Reports

The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the SCC supplemented by any information obtained by the Contractor.

11. Licenses and Permits

The PROCURING ENTITY shall, if requested by the Contractor, assist it 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 date of Contract effectivity as indicated in the Notice to Proceed up to the date of issuance by the PROCURING ENTITY the Certificate of Acceptance of the completed Works after the end of the Defects Liability Period. It 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.

- 12.2** The Defects Liability Period for infrastructure projects shall be one year from the completion of the Works by the Contractor up to the final acceptance of the Works by the PROCURING ENTITY. During this period, the Contractor shall undertake the repair works, at his own expense, on any defect or damage to the Works on account of the use of materials of inferior quality or substandard work 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 by the Contractor of expenses incurred therein upon demand.

In case the Contractor fails to comply with the preceding paragraph, it shall suffer perpetual disqualification from participating in any public bidding and its property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of the PROCURING ENTITY in the Contractor’s favor shall be offset to recover the costs.

- 12.3** After the issuance by the PROCURING ENTITY of the Certificate of Acceptance of the completed Works, the Contractor shall be held responsible for structural defects and/or failure of the completed facility within the warranty periods provided in **SCC** from the date of issuance of the said Certificate of Acceptance, except those occasioned by *force majeure* and those caused by other parties.

- 12.4** 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 for the first year of the warranty period:

Form of Warranty	Minimum Amount in Percentage (%) of Total Contract Price
1. Cash deposit, cash bond or letter of credit issued by a reputable bank	Five Percent (5%)
2. Bank guarantee issued by a reputable bank	Ten Percent (10%)
3. Surety bond issued by a surety or insurance company accredited by the Insurance Commissioner	Thirty Percent (30%)

The Warranty Security shall be reduced for each succeeding year of the warranty period by $1/n$, where n is the warranty period in number of years until the end of the last year when it becomes nil.

12.5 The Warranty Security shall be stated in Philippine Pesos and shall remain effective during the applicable warranty period provided in **SCC** Clause 12.3.

12.6 In case of structural defects/failure occurring during the applicable warranty period provided in **SCC** Clause 12.3, 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, 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 the Warranty Security posted in favor of the PROCURING ENTITY.

For purposes of this clause, the term “structural defects” means major faults/flaws/deficiencies in one or more key structural elements of the Works which may lead to structural failure of the completed elements or structure. The term “structural failure” 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 thereby endangering the safety of the users or the general public.

13. PROCURING ENTITY’s Risk

From the Start Date until the Certificate of Acceptance is 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:
 - (1) any type of use or occupation of the Site authorized by the PROCURING ENTITY after the official acceptance of the works; or
 - (2) 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 Philippines.

14. Insurance

- 14.1** The Contractor shall, under his name and at his own expense, obtain and maintain, for the duration of this Contract, a Contractor's All Risk Insurance (CARI). The insurance policy for this purpose shall be obtained from any reputable insurance company accredited by the Office of the Insurance Commissioner and approved by the PROCURING ENTITY's Representative.
- 14.2** The CARI shall cover the value of the completed portions of the Works. It shall not, however, cover any damage to the Works whose value is not more than ten percent (10%) of the Total Contract Cost, as this is to be absorbed by the Contractor. The CARI shall, therefore, start with nil at the beginning of Contract execution. It shall then be increased over time as the Works progresses so that at any time it covers the value of the portions of the Works actually completed.
- 14.3** The Contractor shall provide evidence to the PROCURING ENTITY's Representative that the insurance required under this Contract has been effected and shall, within a reasonable time, provide a copy of the insurance policy to the PROCURING ENTITY's Representative.
- 14.4** The Contractor shall notify the insurer of changes in the nature, extent, or program for the execution of the Works and ensure the adequacy of the insurance at all times in accordance with the terms of this Contract and shall produce to the PROCURING ENTITY's Representative the insurance policy in force including the receipts for payment of the current premiums.
- 14.5** If the Contractor fails to obtain and keep in force the insurance which it is required to obtain under the terms of this Contract, the PROCURING ENTITY may obtain and keep in force any such insurance 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.
- 14.6** 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.
- 14.7** 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:

- a. The issuer of the insurance policy to be replaced has:
 - (1) become bankrupt;
 - (2) been placed under receivership or under a management committee;
 - (3) been sued for suspension of payment; or
 - (4) been suspended by the Insurance Commission and its license to engage in business or its authority to issue insurance policies cancelled; or
- b. Reasonable grounds exist that the insurer may not be able, fully and promptly, to fulfill its obligation under the insurance policy.

15. Termination for Default of Contractor

15.1 The PROCURING ENTITY shall terminate this Contract for default when any of the following conditions attend its implementation:

- a. Due to the Contractor's fault and while the Works are on-going, it has incurred a negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870; or
- 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 Works; or
- c. The Contractor:
 - (1) 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;
 - (2) does not actually have on the Site the minimum essential equipment listed in the Bid necessary to prosecute the Works in accordance with the approved PERT/CPM network diagram and equipment utilization schedule as required under the Contract;
 - (3) does not execute the Works in accordance with this Contract or persistently or flagrantly neglects to carry out its obligations under this Contract;

- (4) neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
- (5) subcontracts any part of this Contract without approval by the PROCURING ENTITY.

15.2 All materials on the Site, Plant, Equipment, and Works shall be deemed to be the property of the PROCURING ENTITY if this Contract is terminated because of the Contractor's default.

16. Termination for Convenience

The PROCURING ENTITY may terminate this Contract, in whole or in part, at any time for the convenience of the Government if it has determined the existence of conditions that make contract 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.

17. Termination for Insolvency

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 shall be without compensation to the Contractor, provided that such termination shall 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 of Termination is to be used until the completion of the Works;

18. Termination for Unlawful Acts

18.1 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, such as, but not limited to, the following:

- a. corrupt, fraudulent, collusive and coercive practices as defined in **ITB** Clause 2;
- 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.

- 18.2** The PROCURING ENTITY 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 in corrupt, fraudulent, collusive or coercive practices.

19. Termination by Contractor

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 the Contractor, due to any of the following reasons:

- a. The PROCURING ENTITY fails to deliver the Site, government-furnished materials, equipment, or plans on the dates stated in GCC Clause 5.
- b. The prosecution of the Works is disrupted by an adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

20. Termination for Other Causes

20.1 The PROCURING ENTITY or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.

20.2 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 in the approved PERT/CPM network diagram, 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. 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.
- d. 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 the defect within a reasonable period of time determined by the PROCURING ENTITY's Representative.

- e. 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 0.

20.3 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 20.2, the PROCURING ENTITY's Representative shall decide whether the breach is fundamental or not.

20.4 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.

21. Procedure for Termination of Contracts

21.1 Verification. Upon receipt of a written report of acts or causes which may constitute grounds for termination as aforementioned, or upon its own initiative, the PROCURING ENTITY's Representative 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.

21.2 Notice of Termination. Upon recommendation by the PROCURING ENTITY's Representative, the Head of the PROCURING ENTITY shall terminate this Contract only by a written Notice of Termination to the Contractor. The Notice shall state:

- a. that this Contract is being terminated for any of the grounds aforementioned, and a statement of the acts that constitute the ground(s).
- b. the extent of termination, whether in whole or in part;
- c. an instruction to the Contractor to show cause as to why this Contract should not be terminated; and
- d. special instructions of the PROCURING ENTITY, if any.

The Notice of Termination shall be accompanied by a copy of the Verified Report.

21.3 Show Cause. 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 showing cause as to why the Contract should not be terminated. If the Contractor fails to do so, the Head of the PROCURING ENTITY shall issue a written Notice of Decision confirming the Notice of Termination of the Contract.

- 21.4** Withdrawal of Notice of Termination. The PROCURING ENTITY may, at anytime before receipt of the Contractor's verified position paper, withdraw the Notice of Termination 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.
- 21.5** Notice of Decision. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the PROCURING ENTITY shall serve the Contractor his written Notice of Decision to confirm or withdraw the Notice of Termination. If the Notice of Decision is to confirm the Notice of Termination, then this Contract is deemed terminated from receipt by the Contractor of the said Notice of Decision. The termination shall be based only on the grounds stated in the Notice of Termination
- 21.6** Review Committee. 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 his approval.
- 21.7** Notice by Contractor. The Contractor must serve a written Notice to the PROCURING ENTITY of its intention to terminate the Contract at least thirty (30) days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) days after the receipt of such Notice by the PROCURING ENTITY.

22. Force Majeure and Release From Performance

- 22.1** 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.
- 22.2** 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 portions of the Works carried out before receiving it and for any part of the Works carried out afterwards to which a commitment was made.
- 22.3** If the event continues for a period of eighty four (84) days, either party may give the other a Notice of Termination, which shall take effect twenty eight (28) days after the receipt of the Notice.

22.4 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 29.
- b. The cost of his suspension and demobilization.
- c. Any sum to which the PROCURING ENTITY is entitled.

22.5 The net balance due shall be paid or repaid within a reasonable time period from the date of the Notice of Termination.

23. Payment on Termination

23.1 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 value of the work not completed. 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.

23.2 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 Contractor's equipment, and the Contractor's costs of protecting and securing the Works, less advance payments received up to the date of the certificate.

23.3 The net balance due shall be paid or repaid within twenty eight (28) days from the notice of termination.

23.4 If the Contractor has terminated the Contract under **GCC** Clauses 16 or 19, the PROCURING ENTITY shall promptly return the Performance Security to the Contractor.

24. Resolution of Disputes

Any and all disputes arising from the implementation of this Contract covered by the R.A. 9184 and its IRR-A shall be submitted to arbitration in the Philippines according to the provisions of R.A. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". Disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall, however, be referred thereto. By mutual agreement, the parties to this Contract may agree in writing to other alternative modes of dispute resolution.

25. PROCURING ENTITY's Representative's Decisions

25.1 Except where otherwise specifically stated, the PROCURING ENTITY's Representative shall decide contractual matters between the PROCURING ENTITY and the Contractor in the role representing the PROCURING ENTITY.

25.2 The PROCURING ENTITY's Representative may delegate any of his duties and responsibilities to other people, except to the Arbitrator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.

26. Approval of Drawings and Temporary Works by the PROCURING ENTITY's Representative

26.1 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 their use.

26.2 The Contractor shall be responsible for the design of Temporary Works.

26.3 The PROCURING ENTITY's Representative's approval shall not alter the Contractor's responsibility for the design of the Temporary Works.

26.4 The Contractor shall obtain approval by third parties of the design of the Temporary Works, when required by the PROCURING ENTITY.

27. Acceleration Ordered by the PROCURING ENTITY's Representative

27.1 When the PROCURING ENTITY wants the Contractor to finish the Works before the Intended Completion Date, the PROCURING ENTITY's Representative shall obtain a financial proposal from the Contractor to achieve the necessary acceleration of the Works.

27.2 If the Contractor's financial proposal for acceleration of the Works is accepted by the PROCURING ENTITY, it shall be incorporated in the Contract Price and treated as a Variation Order. The Intended Completion Date shall be adjusted accordingly and confirmed by both the PROCURING ENTITY and the Contractor.

28. Extension of the Intended Completion Date

28.1 The PROCURING ENTITY's Representative shall extend the Intended Completion Date if a Variation Order 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.

28.2 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 an 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.

29. Contractor's Right to Claim

If the Contractor incurs a 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 Order.

30. Dayworks

30.1 Subject to GCC Clause 44 on Variation Orders, and if applicable as indicated in the SCC, 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.

30.2 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.

30.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

31. Early Warning

31.1 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.

31.2 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.

32. PERT/CPM Network Diagram

- 32.1** The Contractor shall undertake the Works in accordance with the PERT/CPM network diagram which is part of the approved Contract.
- 32.2** The Contractor shall submit to the PROCURING ENTITY's Representative a report, on the dates stated in the SCC, showing the actual progress achieved on each activity in the approved PERT/CPM network diagram, and the effect of the progress achieved on the timing of the remaining work, including any recommended changes in the sequence of the activities.
- 32.3** The Contractor shall submit to the PROCURING ENTITY's Representative, for approval, an updated PERT/CPM network diagram within two (20 days after a Variation Order or Contract Time extension is approved.

33. Management Conferences

- 33.1** 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.
- 33.2** The PROCURING ENTITY's Representative shall prepare the minutes of Management Conferences and provide copies of the minutes to those attending the Conference. 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.

34. Bill of Quantities

- 34.1** The Bill of Quantities, shown in Part II – Section VII of these Bidding Documents, contains the items of work for the construction, installation, testing, and commissioning of the Works to be done by the Contractor.
- 34.2** The Bill of Quantities is used to calculate the Contract Price. The Contractor shall be paid for the actual quantity of each pay item, certified by the PROCURING ENTITY's Representative as accomplished, at the unit price in the Bill of Quantities for that item.
- 34.3** If the final quantity of any pay item accomplished differs from the original quantity in the Bill of Quantities for that item and is not more than twenty five percent (25%) of that original quantity, provided the aggregate changes for all work 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.

34.4 If requested by the PROCURING ENTITY's Representative, the Contractor shall provide the PROCURING ENTITY's Representative with a detailed cost breakdown of any unit price or rate in the Bill of Quantities.

35. Instructions, Inspections and Audits

35.1 The PROCURING ENTITY's personnel shall at all reasonable times during construction of the Works be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the construction.

35.2 If the PROCURING ENTITY's Representative instructs the Contractor to carry out a test not specified in the Specifications to check whether any work has a defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no defect, the test shall be a Compensation Event.

35.3 The Contractor shall permit the PROCURING ENTITY to inspect the accounts and records of the Contractor relating to its performance and to have them audited by auditors approved by the PROCURING ENTITY.

36. Identification of 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 uncover Defects and test any work that the PROCURING ENTITY's Representative considers below standard and defective.

37. 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 Period shall be remedied by the Contractor at the Contractor's expense if the loss or damage arises from the Contractor's acts or omissions.

38. Correction of Defects

38.1 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 the date of issuance of the Certificate of Acceptance by the PROCURING ENTITY. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

38.2 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.

38.3 The Contractor shall correct the Defects which it notices itself before the end of the Defects Liability Period.

38.4 The PROCURING ENTITY's Representative shall certify that all Defects have been corrected. If the PROCURING ENTITY's Representative 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's Representative accepts the quotation, the corresponding change shall be covered by a Variation Order.

39. Uncorrected Defects

39.1 The PROCURING ENTITY shall give the Contractor at least fourteen (14) days notice of its intention to use a third party to correct a Defect. If the Contractor itself does not correct the Defect within that 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.

39.2 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.

40. Advance Payment

40.1 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 to exceed fifteen percent (15%) of the total Contract Price, to be made in lump sum or, at most, two installments according to the following schedule:

- a. Upon issuance of the Notice to Proceed - one half of the advance payment
- b. Upon mobilization of the Contractor's equipment and materials - remaining half of the advance payment

40.2 The Advance Payment shall be made only upon the submission by the Contractor to and acceptance by the PROCURING ENTITY of an increment to the Performance Security, submitted pursuant to GCC Clause 7, to cover the amount of the Advance Payment.

40.3 The Advance Payment shall be repaid by the Contractor by deducting, from periodic progress payments to be made to the Contractor, a percentage equal to the percentage of the total Contract Price used for the Advance Payment.

40.4 The Contractor may reduce its Performance Security by the amounts for the Advance Payment refunded by the Monthly Certificates.

41. Monthly Statements or Progress Billings

The Contractor shall submit to the PROCURING ENTITY's Representative, after the **end** of each month, a Statement of Work Accomplished (SWA) or Progress Billing, showing the amounts which the Contractor consider itself to be entitled up to the end of the month, to cover:

- a. the cumulative value of the Works it executed to date, based on the items in the Bill of Quantities; and
- b. adjustments made for approved Variation Orders executed.

42. Monthly Certificates and Progress Payments

42.1 The PROCURING ENTITY's Representative shall check the Contractor's monthly SWA and certify the amount to be paid to the Contractor.

42.2 The PROCURING ENTITY's Representative shall deduct the following from the certified gross amounts to be paid, resulting in the net amount payable 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 under the present certificate.
- c. Retention money in accordance with **GCC** Clause 43.
- d. Amount to cover approved third party liabilities.
- e. Amount to cover uncorrected Defects in the Works.
- f. Value of any work item presently certified but already paid for under an earlier certification.

42.3 The PROCURING ENTITY shall pay the Contractor the said net amounts certified by the PROCURING ENTITY's Representative within twenty one (21) days from the date each certificate was issued.

42.4 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.

42.5 The PROCURING ENTITY shall pay the Contractor a cumulative gross amount not exceeding ninety percent (90%) of the total Contract price, since the remainder shall serve as the ten percent (10%) retention money, as provided in **GCC** Clause 43.

43. Retention

- 43.1** The PROCURING ENTITY shall retain from each progress payment ten percent (10%) of such payment, referred to as the “retention money.” Such retention money 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 the Works, as determined by the PROCURING ENTITY, is completed. If, after fifty percent (50%) completion, the Works are 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.
- 43.2** 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 an irrevocable standby letter of credit from a commercial bank, bank guarantee and/or surety bond callable on demand, of amounts equivalent to the retention money substituted for and in a form acceptable to the PROCURING ENTITY. The PROCURING ENTITY shall allow such substitution provided that the Contract is on schedule and is satisfactorily undertaken. The said irrevocable standby letter of credit, bank guarantee and/or surety bond, to be posted in favor of the PROCURING ENTITY, shall be valid for a duration to be determined by the PROCURING ENTITY and shall answer for the purpose for which the retention is intended, i.e., to cover uncorrected discovered Defects and third party liabilities.
- 43.3** 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.

44. Variation Orders

- 44.1** Variation Orders may be issued by the PROCURING ENTITY to cover any increase or decrease in quantities, including the introduction of new work items not included in the original Contract or reclassification of work items 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. The cumulative amount of the positive or additive Variation Orders, however, shall not exceed plus ten percent (10%) of the original Contract cost. Likewise, the cumulative amount of the negative or deductive Variation Orders shall not exceed minus ten percent (10%) of the original Contract cost. The addition or deletion of works shall be within the general scope of the Contract as bid and awarded. The scope of the Works shall not be reduced so as to accommodate a positive Variation Order. A Variation

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

- 44.2** A Variation Order in the form of a Change Order may be issued by the PROCURING ENTITY to cover any increase or decrease in quantities of original Work items in the Contract.
- 44.3** A Variation Order in the form an Extra Work Order may be issued by the PROCURING ENTITY 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 Works under in the Contract.
- 44.4** Any cumulative positive Variation Order beyond ten percent (10%) shall be the 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 under the Contract, the Head of the PROCURING ENTITY may authorize a positive Variation Order that will make the cumulative amount of the positive Variation Orders go beyond ten percent (10%) but not more than twenty percent (20%), 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 cumulative positive Variation Order beyond ten percent (10%).
- 44.5** The Contractor may propose a Variation Order by delivering to the PROCURING ENTITY's Representative - within seven (7) calendar days after the work necessitating the Order has been commenced or after the circumstances necessitating the Order with an extra cost - a written Notice, giving detailed particulars of the proposed Order, together with any extra cost required, in order that it may be immediately investigated. Failure to provide such Notice in the time stipulated shall constitute a waiver by the Contractor for any claim for variation.
- 44.6** The preparation and submission of Variation Orders shall be as follows:
- a. If the PROCURING ENTITY's Representative finds that a Variation Order is necessary, he shall prepare the proposed Order, accompanied with the Notice submitted by the Contractor, the plans therefor, his computations on the quantities of the additional, reduced or modified works involved per item, and detailed estimates of the costs of such work items, together with his justifications for the Variation Order, and shall submit the same to the Head of PROCURING ENTITY for approval.

- b. If the Head of the PROCURING ENTITY finds the proposed Variation Order to be in order, he shall approve the same.
- c. The timeframe for the processing of Variation Orders from the preparation by the PROCURING ENTITY's Representative up to the approval by the Head of the PROCURING ENTITY concerned shall not exceed fifteen (15) calendar days.

44.7 Work under Variation Orders shall be valued and paid as follows:

- a. At the unit prices for the same items in this Contract.
- b. In the absence of unit prices for the same items rates in this Contract, at prices or rates obtained from those of similar or related items in this Contract.
- c. Failing the above, at appropriate new unit prices or rates equal to or lower than current market rates and to be agreed upon by both parties and approved by the Head of the PROCURING ENTITY.

45. Contract Completion

Once the Contract reaches an accomplishment of ninety five percent (95%) of the total Contract Works, the PROCURING ENTITY may create an inspectorate team to make a preliminary inspection and submit a punch-list to the Contractor in preparation for the total completion of the Works. The punch-list shall contain, among other things, the remaining unfinished portions of the Works, deficiencies in the Works for necessary corrections, and the specific time to fully complete the whole Works considering the approved remaining Contract time. This, however, shall not preclude any claim of the PROCURING ENTITY for liquidated damages.

46. Suspension of Work

46.1 On any of the following grounds, the PROCURING ENTITY shall have the authority to suspend the Works, wholly or partly by written order for such period as may be deemed necessary:

- a. *Force majeure* or any fortuitous events have arisen.
- b. The Contractor has failed 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.
- c. The plans have to be adjusted to suit field conditions as found necessary during construction.

The Contractor shall immediately comply with such order to suspend the Works wholly or partly.

46.2 On any of the following grounds, the Contractor or its duly authorized representative shall have the right to suspend work on any activities along the critical path of the approved PERT/CPM diagram of the Works after fifteen (15) calendar days from the date of receipt of a written notice from the Contractor to the PROCURING ENTITY's Representative:

- a. There exist right-of-way problems which prevent the Contractor from performing work in accordance with the approved construction schedule.
- b. The PROCURING ENTITY has failed to deliver the Site and/or government-furnished materials, equipment or plans as stipulated in GCC Clause 5.
- c. The peace and order condition makes it extremely dangerous, if not impossible, to work. 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 a 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 by the PROCURING ENTITY's Representative, unless there are justifiable reasons thereof which shall be communicated in writing to the Contractor.

46.3 In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the Contractor, the PROCURING ENTITY shall adjust the contract time for the elapsed time between the effective order of suspending operation and the order to resume work.

47. Extension of Contract Time

47.1 Should the amount of additional work under an approved Variation Order 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 seven (7) 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 to complete 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 on the following grounds:

- a. Where the Contractor fails to provide the equipment, supplies or materials required to execute the Works.
- b. Where the reason given by the Contractor to support its request for time extension is bad weather, particularly rainy/unworkable days whose actual number as verified by the PROCURING ENTITY's Representative does not exceed the expected average number of such days for the particular month in the vicinity of the Site as stated in the **SCC**; the said expected number of days is based on the records of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), and was already considered by the DPWH in determining the Contract Time during the detailed engineering and the preparation of the Bidding Documents (BDs) for the project.
- c. Where the reason given is adverse peace and order situation, but the cases cited are verified to be isolated/minor and can be handled by normal police or military action.

47.3 Extension of Contract Time may be granted only under any of the following conditions:

- a. Where the affected activities fall within the critical path of the approved PERT/CPM network, and any of items b to d below.
- a. Where the additional work under an Approved Variation Order requires extra time.
- b. Where the PROCURING ENTITY fails to provide the Site or deliver government-furnished materials, equipment and plans on the dates specified in **GCC** Clause 5.
- c. Where the actual verified rainy or unworkable days are in excess of the expected average number of such days for the month as stated in **GCC** Clause 47.2-c above.
- d. Where there occur exceptionally destructive typhoons, floods and earthquakes, epidemics, general shortage of construction materials, general labor strikes, or widespread peace and order problems that severely disrupt construction operations through no fault of the Contractor, provided that they are publicly felt and certified by appropriate government agencies such as PAGASA, Department of Trade and Industry, Department of Labor and

Employment, Department of Interior and Local Government, and Department of National Defense, among others.

- 47.4 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 the NEDA and approved by the Government Procurement Policy Board, no Contract Price adjustment shall be allowed.

49. Acceptance

The Contractor shall request the PROCURING ENTITY's Representative to issue a Certificate of Acceptance of the Works at the end of the Defects Liability Period, and the PROCURING ENTITY's Representative will do so upon deciding that the Works are satisfactorily completed according to the requirements of the Contract, especially the Specifications and Drawings, including the corrections to be done during the Defects Liability Period.

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 Acceptance.

51. As-Built Drawings

- 51.1 If As-Built Drawings are required, the Contractor shall supply them by the date stated in the SCC.
- 51.2 If the Contractor does not supply the said Drawings by the date stated in the SCC, or if they do not receive the approval of the PROCURING ENTITY's Representative, the PROCURING ENTITY's Representative shall withhold the amount stated in the SCC from payments due to the Contractor.

Part II - Section IV: Special Conditions of Contract

Notes on the Special Conditions of Contract

Similar to Part II - Section II: Bid Data Sheet, the clauses in this Section on Special conditions of Contract (SCC) are intended to assist the PROCURING ENTITY in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract (GCC) under Part II-Section III.

The provisions of this Section complement the GCC, by specifying contractual requirements linked to the special circumstances of the PROCURING ENTITY and of the Works procured. In preparing this Section, the following aspects should be checked:

1. Information that complements provisions of the GCC must be incorporated.
2. Amendments and/or supplements to the provisions of the GCC, as necessitated by the circumstances of the specific contract, must also be incorporated.

No special condition which defeats or negates the general intent and purpose of the provisions of the GCC, however, should be incorporated herein.

Special Conditions of Contract

GCC Clause					
	The Intended Completion Date is <i>[Insert date]</i> .				
1.24	The PROCURING ENTITY is <i>[Insert full name and address of the PROCURING ENTITY]</i> .				
1.25	The PROCURING ENTITY's Representative is <i>[Name, address, and name of authorized representative]</i> .				
1.26	The Site is located at <i>[Insert location]</i> and is defined in Drawings No. <i>[Insert Number]</i> .				
1.30	The Start Date is <i>[Insert date]</i> .				
1.33	The Works consist of <i>[Insert a brief summary, including relationship to other contracts under this Project]</i> .				
2.2	<p><i>Select one, delete the other:</i></p> <p>The Contract specifies sectional completion, and the Contractor shall complete each defined section on the dates indicated <i>[Insert the sections and their completion dates]</i></p> <p><i>Or:</i></p> <p>The Contract does not specify sectional completion.</p>				
5.1	The PROCURING ENTITY shall give possession of the Site to the Contractor on <i>[Insert date]</i> .				
5.2	<p>The PROCURING ENTITY shall deliver to the Contractor the following government-furnished materials, equipment and plans not later than the dates indicated:</p> <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: center; border: none;"><u>Item</u></th> <th style="text-align: center; border: none;"><u>Date</u></th> </tr> </thead> <tbody> <tr> <td style="border: none;"> </td> <td style="border: none;"> </td> </tr> </tbody> </table>	<u>Item</u>	<u>Date</u>		
<u>Item</u>	<u>Date</u>				
6.5	<p>The Contractor shall employ the following Key Personnel:</p> <p><i>[List key personnel by name and designation]</i></p>				
10	The Site Investigation Reports are: <i>[List here or state none]</i>				
12.3	<p><i>Select one from a to c below, whichever is applicable to the Contract, and delete the rest:</i></p> <p>a, <u>Permanent Structures: Fifteen (15) years</u></p>				

	<p>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.</p> <p><i>Or</i></p> <p>b. <u>Semi-Permanent Structures: Five (5) years</u></p> <p>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.</p> <p><i>Or</i></p> <p>c. <u>Other Structures: Two (2) years</u></p> <p>Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.</p>
30.1	<p><i>Select one, delete the other:</i></p> <p>Dayworks are applicable at the rate shown in the Contractor's original Bid.</p> <p><i>Or</i></p> <p>No dayworks are applicable to the contract.</p>
32.1	<p>The Contractor shall submit a report on the progress of the activities in the PERT/CPM network diagram of the Works on <i>[Insert dates]</i>.</p>
47.2-c	<p>The expected number of rainy/unworkable days for each month in the vicinity of the Site is given below:</p> <p>January - <i>number</i> April - <i>number</i> July - <i>number</i> October - <i>number</i> February - <i>number</i> May - <i>number</i> August - <i>number</i> November - <i>number</i> March - <i>number</i> June - <i>number</i> September - <i>number</i> December - <i>number</i></p>
51.1	<p>The date by which the As-Built Drawings are required is <i>[Insert date]</i>.</p>
51.2	<p>The amount to be withheld for failing to supply the As-Built Drawings by the date required is <i>[Insert amount in Pesos equal to 10% of the Contract Price]</i>.</p>

Part II - Section V: Specifications

1. DPWH Standards

The DPWH Standard Specifications for Public Works and Highways (“Blue Book”) shall be the basis for the standards and codes to be met by the goods and materials to be furnished and work performed or tested for the Contract. In particular, Volume II, 2004 edition, of these Specifications shall be used if the Contract pertains to Highways, Bridges and Airports. Volume III, 1995 edition, shall be used if the Contract pertains to Buildings, Flood Control and Drainage, or Water Supply.

2. Modifications of Standards

- 2.1** Modifications of standards and codes as stated in the DPWH Standard Specifications for Public Works and Highways Volume, if any, are included in the enclosed Supplemental Specifications, which is part of these Bidding Documents.
- 2.2** Entries in the Supplemental Specifications are numbered to coincide with the numbering of items in the DPWH Standard Specifications for Public Works and Highways.

Part II - Section V: Drawings

Insert here a list of approved Drawings for the Contract. The actual Drawings, including Site plans, shall be attached to this Section or annexed in a separate folder.

Part II - Section VII: Bill of Quantities

1. The Bill of Quantities (BOQ) contains the following parts:
 - a. BOQ for each Part of the Contract, using Form DPWH-INFR-48
 - b. Summary of Bid Prices for all Parts of the Contract, using Form DPWH-INFR-49
2. For the BOQ for each Part of the Contract, the Bidder shall not change the entries under Pay Item No. (Column 1), Pay Item Description (Column 2), Unit (Column 3), and Quantity (Column 4) in the Bill of Quantities, which are set by the PROCURING ENTITY. For each pay item in the BOQ, the Bidder shall indicate its unit bid price in words and in figures (₱) in Column 5, and its total bid price in Column 6 (Column 4 x Column 5)
3. For the Summary of Bid Prices, the Bidder shall not change the entries and Part No. (Column 1) and Part Description (Column 2), which are provided by the PROCURING ENTITY. The Bidder shall indicate the Total Amount (Column 3) for each Part No. at the Total of All Amounts at the bottom.

Part II - Section VIII: Forms

The Bidder shall use the Standard Forms listed below in preparing its Bid. The Bidder may obtain from the PROCURING ENTITY hard copies of these forms as part of the Bidding Documents for the Contract. The Bidder may also download these forms from the DPWH website.

DPWH-INFR-08: Contractor's Confidential Application Statement for Registration (CCASR)

DPWH-INFR-15: Letter of Intent (LOI) for Eligibility

DPWH-INFR-16: Credit Line Commitment

DPWH-INFR-17: Certificate of Cash Deposit

DPWH-INFR-18: Affidavit of Non-Inclusion in the Blacklist

DPWH-INFR-19: Affidavit of Disclosure of No Relationship

DPWH-INFR-20: Nominated Subcontractors

DPWH-INFR-29: Bidder's Checklist of Requirements for Its Bid, Including Technical and Financial Proposals Requirement for Bidders

DPWH-INFR-30: Form of Bid

DPWH-INFR-31: Form of Bid Security: Irrevocable Letter of Credit

DPWH-INFR-32: Form of Bid Security: Bank Guarantee

DPWH-INFR-33: Authority of Signing Official: Sole Proprietorship

DPWH-INFR-34: Authority of Signing Official: Corporation

DPWH-INFR-35: Construction Schedule and S-curve

DPWH-INFR-36: Construction Methods: Outline of Narrative Description

DPWH-INFR-37: Contractor's Organizational Chart for the Contract

DPWH-INFR-37: Contractor's Certification on Key Personnel for the Contract

DPWH-INFR-39: Key Personnel's Affidavit of Commitment to Work on the Contract

DPWH-INFR-40: Manpower Utilization Schedule

DPWH-INFR-41: List of Contractor's Equipment Pledged to the Contract

- DPWH-INFR-42: Equipment Utilization Schedule
- DPWH-INFR-43: Affidavit of Site Inspection
- DPWH-INFR-44: Contractor's Construction Safety and Health Program
- DPWH-INFR-45: Affidavit of Compliance with Existing Labor Laws and Standards
- DPWH-INFR-46: Affidavit of Compliance with Responsibilities under IRR-A Section 17.7.1
- DPWH-INFR-47: Bill of Quantities (BOQ)
- DPWH-INFR-48: Summary of Bid Prices (All Parts of Bill of Quantities)
- DPWH-INFR-49: Cash Flow by Quarter and Payment Schedule
- DPWH-INFR-60: Notice of Award (NOA) (Letter of Acceptance)
- DPWH-INFR-63: Checklist of Contract Documents and Supporting Documents
- DPWH-INFR-64: Form of Contract Agreement
- DPWH-INFR-65: Performance Security: Irrevocable Letter of Credit
- DPWH-INFR-66: Performance Security: Bank Guarantee
- DPWH-INFR-67: Credit Line
- DPWH-INFR-68: Notice to Proceed (NTP)