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No. **152-A**)


Series of 2000)

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SUBJECT: **Implementation of the IRR of**
P.D. No. 1594

Enclosed, for your guidance and compliance, is the full text of the latest IMPLEMENTING RULES AND REGULATIONS (IRR) OF P.D. NO. 1594, AS AMENDED ON 12 AUGUST 2000. These already incorporate the amendments of the said IRR disseminated under Department Orders No. 120 and 152, series of 2000.

These amended IRR shall be used in all procurement of infrastructure contracts.


GREGORIO R. VIGILAR
Secretary

**P. D. No. 1594
and its
Implementing
Rules & Regulations
As Amended
12 August 2000**

DEPARTMENT OF PUBLIC WORKS & HIGHWAYS

TABLE OF CONTENTS
PRESIDENTIAL DECREE No. 1594 AND ITS IMPLEMENTING RULES AND
REGULATIONS, AS AMENDED ON 12 AUGUST 2000

Page No.

Presidential Decree No. 1594 - Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts Implementing Rules and Regulations as Amended on 12 August 2000

.....	i
I. Detailed Engineering	1
II. IB Instructions to Bidders.....	4
IB 1 Who May Be Allowed to Bid.....	4
IB 2 Organization of the BAC.....	4
IB 3 Invitation to Prequalify/Apply for Eligibility and to Bid.....	5
IB 4 Issuance of Qualification Statements/Forms	6
IB 5 Classification and Registration of Contractors.....	8
IB 6 Prequalification or Eligibility Screening of Contractors for Specific Contracts	8
IB 7 Issuance of Plans, Specifications, Proposal Book Form(s) and Draft Contract	9
IB 8 Interpretation of Bid/Tender Documents and Other Supplemental Notices	10
IB 9 Eligible Bidder's Responsibility	10
IB10 Bid/Tender and Award	11
IB10.1 Preparation of Bids and Bid Bonds and Pre-Qualification/Eligibility Statements	11
IB 10.2 Submission, Opening and Abstracting of Bids/Tenders..	12
IB 10.3 Determination of the Lowest Calculated Responsive Bid ..	13
IB 10.4 Detailed Evaluation of Bids.....	14
IB 10.5 Postqualification of Contractor with the Lowest Calculated Bid	15

IB 10.6	Awarding of Contract.....	17
IB 10.6.1	By Bid Contract.....	17
IB 10.6.2	By Negotiated Contract	20
IB 10.6.3	Disclaimer.....	21
IB 10.7	Documents Comprising the Contract.....	21
IB 10.8	Supporting Documents	22
IB 10.9	Approval of Contract	22
IB 10.10	Issuance of Notice to Proceed	22
IB 10.11	Monitoring of Contract Award Process.....	22
III. CI	Contract Implementation	23
CI 1	Variation Orders-Change Order/Extra Work Order/Supplemental Agreement.....	23
CI 2	Extra Work Costing	25
CI 3	Conditions Under Which Contractor is to Start Work Under Variation Orders and Receive Payments.....	26
CI 4	Advance Payment.....	27
CI 5	Progress Payment	27
CI 6	Retention Money	27
CI 7	Contract Completion	28
CI 8	Liquidated Damages	28
CI 9	Incentive Bonus	29
CI 10	Suspension of Work	30
CI 11	Extension of Contract Time	31
CI 12	Contract Price Escalation	32
CI 12.1	Guidelines on Contract Price Escalation	32
CI 12.2	Fluctuation Factor	34
CI 13	Accreditation of Testing Laboratories	43

IV.	PE	Evaluation of Contractors Performance	43
	PE 1	Subject and Scope.....	43
	PE 2	Evaluation Guidelines	43
	PE 3	Implementation Mechanisms for CPES.....	44
	PE 4	Submission of Evaluation Results	44
	PE 5	Utilization of Evaluation Results	44
V.		Administrative Sanctions	45
VI.		Applicability	45
ANNEX "A"		• The Procurement Process for Government Infrastructure Contracts	
		• Matrix Showing the Documents Used in the Procurement Process For Government Infrastructure Contracts	

I. DETAILED ENGINEERING

1. No bidding and/or award of contract for a construction project shall be made unless the detailed engineering investigations, surveys and designs for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the Head of office/agency/corporation concerned or his duly authorized representatives.
2. Detailed engineering shall proceed only on the basis of the feasibility or preliminary engineering study made which establishes the technical viability of the project and conformance to land use and zoning guidelines prescribed by existing laws. The findings contained in the feasibility study, if undertaken for the project, shall be examined. If, in the course of this exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes shall be supported by detailed justifications, including their effects on the cost, and (if necessary) the economic justification.
3. A schedule of detailed engineering activities shall include the following:
 - a. Survey
 - b. Site Investigation
 - c. Soils and Foundation Investigation
 - d. Construction Materials Investigation
 - e. Preparation of Design plans
 - f. Preparation of Technical Specifications
 - g. Preparation of Quantity and Cost Estimates
 - h. Preparation of Program of Work
 - i. Preparation of Proposed Construction Schedule (and estimated Cash Flow for projects with Schedule over Six (6) Months)
 - j. Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
 - k. Preparation of Utility Relocation Plan
 - l. Preparation and Submission of Design Report
 - m. Environmental Impact Statement for critical project as defined by the department of environment and natural resources (DENR)
 - n. Preparation of minimum requirements for a Construction Safety and Health Program for the project being considered
 - o. Preparation of Bid/Tender Documents
4. Work under detailed engineering shall include but not necessarily be limited to the following:
 - a. Design Standards - Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the office/agency/corporation concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.
 - b. Field Surveys And Investigations - Necessary field surveys and investigations which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys shall be carried out in accordance with the design guidelines, criteria and standards adopted by the office/agency/corporation concerned. all survey and investigation works shall

be prepared in a manner satisfactory to carry out accurate design and production of plans.

- c. Contract Plans - The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the office/agency/corporation concerned, incorporating at least the following:
 - (1) Site development plan
 - (2) Plans and profile sheet
 - (3) Typical sections and details
 - (4) Drainage details where applicable
 - (5) Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed
 - (6) Other details which may be required by the Head of office/agency/corporation
- d. Quantities - All construction quantities shall be computed to a reasonable accuracy of plus or minus fifteen percent (15%).
- e. Special Provisions - Specifications shall be prepared for specific terms of work or methods of construction, measurement and payment under each contract, which are not covered by Standard Construction and Material Specifications adopted by the office/agency/corporation concerned.
- f. Unit Prices - These shall be prepared for each contract using costs based on reasonable approved current prices, divided into local and foreign exchange costs, as the case may be.
- g. Budget for the contract - the budget for the contract to be bid shall be prepared by official(s) duly designated by the head of office/agency/corporation concerned or by his duly authorized representative. It shall be approved by the head of the office/agency/corporation or his duly designated representative.

The head of office/agency/corporation shall publicly announce the budget for the contract to be bid through advertisement/s and/or in the instructions to bidders.

The budget for the contract to be bid shall show the local and foreign currency requirements, as the case may be.

The budget for the contract to be bid shall specify for each major work item, such as earthwork, roadwork, and massive concreting, the components for equipment rentals, fuel, labor, materials and overhead.

- h. Bid/Tender Documents - The Bid/Tender Documents shall include: Instructions to Bidders, General Conditions, Addenda, Itemized Bill of Quantities, Day Work Schedule, Form of Bid Security, Performance Security, Contract Plans and Specifications, a Draft Contract which will include a price escalation clause, and all other information required for local and international bidding procedures.

For purposes of these implementing rules and regulations, securities shall be defined to mean any of the following: cash, manager's checks, cashier's checks, letters of credit, bank drafts/guarantees and surety bonds.

- i. Program of Work - Before prosecuting any project, the necessary program of work shall be prepared and submitted for approval. In no case shall construction funds be remitted to field offices or construction work on a project be started before the program of work is approved, in accordance with existing laws.

No program of work for any project shall be approved without detailed engineering.

The program of work shall include, among other things, estimates of the work, items, quantities and costs and a PERT/CPM network of the project activities. The program of work shall cover at least a usable portion of the project and no construction shall be started for portions of the project that are less than usable, except projects requiring stage construction, in which case continuity of construction up to the completion of a usable portion must be assured.
 - j. In the preparation of the bidding documents, the government shall make an estimate of the actual number of working days required to complete the project through PERT/CPM analysis of the project activities and corrected for holidays and weekends. Likewise, the government shall make an estimate of the number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site, which shall be indicated in the tender documents, and incorporate the same in the corrected actual number of working days determined above, and shall be made the basis of the total contract time. The estimated number of rainy/unworkable days considered unfavorable for the prosecution of the works at the site shall be made known before the date of bidding through the instructions to bidders, invitation to bid and other bidding documents for the purpose of guiding both the government and winning contractors in the request for an approval of time extensions. Without the estimated number of rainy/unworkable days established before the bidding date and known to all participating bidders, the contract time is presumed to have excluded the unfavorable conditions.
 - k. Unless otherwise specifically stated, all "days" as used in this IRR shall mean "calendar days."
5. The above rules and regulations shall apply to the implementation of infrastructure projects under normal or ordinary conditions. However, under severe emergency or extraordinary cases involving major calamities and disasters where time is of the essence to save lives and properties and restore damaged infrastructures, detailed engineering works shall be conducted in accordance with the guidelines and procedures to enable quick response to said cases, while maintaining the safety and integrity of the structure, as prescribed by the head of office/agency/corporation concerned.

II.
IB - INSTRUCTIONS TO BIDDERS:
THESE PROVISIONS REFER TO PRE-CONSTRUCTION ACTIVITIES
FROM ADVERTISEMENT TO CONTRACT AWARD

IB 1 - WHO MAY BE ALLOWED TO BID

1. The following may become contractors for government projects:
 - a. Filipino
 - (1) Citizens (single proprietorship)
 - (2) Partnership or corporation duly organized under the laws of the Philippines, and at least seventy five percent (75%) of the capital stock of which belongs to Filipino citizens.
 - b. Contractors forming themselves into a joint venture i.e., a group of two or more contractors that intend to be jointly and severally responsible for a particular contract, shall for purposes of bidding/ tendering comply with LOI 630, and, aside from being currently and properly licensed by the Philippine Contractors Accreditation Board (PCAB), shall comply with the provisions of R.A. 4566 and its Implementing Rules and Regulations, provided that joint ventures in which Filipino ownership is less than seventy five percent (75%) may be prequalified where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a Filipino entity as defined above.
 - c. Foreign contractors for internationally bid foreign-assisted projects as may be required by foreign financial institutions.

IB 2 - Organization of the BAC

1. Each office/agency/corporation shall have in its head office or in its implementing offices a Bid and Award Committee (BAC) or designated procurement unit which shall be responsible for the conduct of prequalification, or eligibility screening, bidding, evaluation of bids, postqualification, and recommending award of contracts. Each committee shall be composed of the following:
 - A. Chairman (regular) - at least third ranking official of the office/agency/corporation
 - B. Executive officer and secretary (regular) - legal officer of the office/agency/corporation. The administrative officer of the agency concerned may be the executive officer and secretary of the BAC or designated procurement unit when the agency does not have a legal officer in its plantilla positions.
 - c. Member (regular) - Technical member designated by the head of office/agency/corporation

- d. Member (provisional) - At least two, with experience in the type of contract to be bid and in project management, duly designated by the head of office/agency/corporation on a project to project basis.
- e. Members from the Private Sector - To ensure the transparency of bidding process, one qualified representative from a constructors' association duly recognized by the Construction Industry Authority of the Philippines (CIAP) and one qualified representative from any of the following organizations:
 - (1) End-user group or non-governmental organization to be designated by the head of the office/agency/corporation concerned
 - (2) Project-Related Professional associations accredited or duly recognized by the Professional Regulation Commission (PRC)/Supreme Court (SC).

Both representatives shall be non-voting members.
- f. Observer - the Commission on Audit (COA) of the concerned office/agency/corporation.

Members/observers of the BAC should receive the notice of meeting at least two calendar days before the date of meeting.

- 2. Government owned or controlled corporations shall organize their own BACs, the members of which shall be appointed by their respective boards preferably along the same line as other government offices.
- 3. Non-infrastructure agencies - that is, agencies other than the Department of Public Works and Highways, the Department of Transportation and Communication, their attached agencies and other Infrastructure Corporations - that do not possess an in-house technical capability to constitute their own BACs shall cause the designation of either of the two infrastructure departments mentioned above whichever is concerned, to undertake the Bid and Award services, as well as the preparation of project plans and designs and supervision of construction.

IB 3 - INVITATION TO PREQUALIFY/APPLY FOR ELIGIBILITY AND TO BID

- 1. For locally funded contracts, contractors shall be invited to apply for eligibility and to bid through:
 - a. For contracts to be bid costing more than P5,000,000 the advertisement shall be made at least three (3) times within a reasonable period depending upon the size and complexity of the contract to be bid but in no case less than two (2) weeks in at least two (2) newspapers of general nationwide circulation which have been regularly published for at least two (2) years before the date of issue of the advertisement. During the same period that the advertisement is posted in the newspaper or for a longer period as determined by the head of the office/agency/corporation concerned, the same advertisement shall be posted in the website of the office/agency/corporation concerned and at the place reserved for this purpose in the premises of the office/agency/corporation concerned. However, for contracts to be bid costing P5,000,000 and below or for contracts authorized to be bid by the regional/district offices involving costs as may be delegated by the head of

office/agency/corporation, the invitation to bid shall be advertised at least two (2) times within two (2) weeks in a newspaper of general local circulation in the region where the contract to be bid is located, which newspaper has been regularly published for at least six (6) months before the date of issue of the advertisement. During the same period that the advertisement is posted in the newspaper or for a longer period determined by the head of the office/agency/corporation concerned, the same advertisement shall be posted in the website of the office/agency/corporation concerned and at the place reserved for this purpose in the premises of the office/agency/corporation concerned. In addition to the foregoing, the invitation may also be advertised through other forms of media such as radio and television, provided that based on the agency's short list of contractors or referral within the Philippine contractors accreditation board, there are at least four contractors indigenous to the region duly classified and registered to undertake such contracts. The advertisement may likewise be made in a newspaper of general nationwide circulation as defined in the foregoing when there is evident lack of interest to participate among the region-based contractors.

- b. Additionally, in the case of contracts requiring special technology, direct invitation of contractors known for their capacity to undertake such type of contracts.
2. For foreign-financed/assisted contracts, contractors are invited under the same procedures above and/or in accordance with procedures established by, and agreed upon with, the lending/financing institution.

IB 4 - Issuance of Qualification Statements / Forms

1. The BAC or designated procurement unit shall provide prospective bidders with the notice for prequalification / eligibility screening, to contain, among others, the following information to guide them in evaluating their capabilities and decide whether or not to participate in the bidding of a specific contract.
 - a. Name and location of project
 - b. Project background and other relevant information regarding the proposed work, including a brief technical description of the work as to size, type, major items, and other important features of the work.
 - c. Approved budget for the contract to be bid and source of funding
 - d. Criteria to be used by the office/agency/corporation in (1) the prequalification or eligibility screening of contractors, (2) the evaluation of bids, and (3) the postqualification of the lowest calculated bid.
 - e. Cost and place of issuance of eligibility forms and bid/tender documents
 - f. Date, time and place of:
 - Submission of accomplished eligibility forms
 - Pre-bid conference
 - Submission of bids
 - Opening of bids

2. Prequalification or eligibility statements shall be required by the contracting government office/agency/corporation for every contract in which the contractor intends to bid. It shall be submitted not later than the deadline set in the published invitation to prequalify or apply for eligibility and to bid, after which date no application for prequalification or eligibility shall be submitted and received.
3. The following documents shall comprise the prequalification or eligibility statements, to be submitted by the contractor, which shall consist of the following documents which embody the non-discretionary "pass/fail" criteria for prequalification or eligibility for the contract to be bid, which shall be under oath and duly notarized:

A. Legal documents

- (1) Contractor's valid PCAB license for the type and cost of the contract to be bid
- (2) Valid joint venture agreement in the case of a joint venture
- (3) Letter authorizing the head of office/agency/corporation or his duly authorized representatives to verify any or all of the documents submitted for eligibility screening.
- (4) Statement that his firm is not included in the "blacklist" of contractors issued by the Construction Industry Authority of the Philippines (CIAP)

B. Technical documents

- (1) A statement of all government and private construction contracts, completed in at least the last three(3) years as specified in the notice for prequalification/eligibility screening, which are similar in nature and complexity to the contract to be bid. "similar" contracts shall be defined by the concerned office/agency/corporation in the notice for prequalification/eligibility screening. The contractor's statement shall include, for each contract, the name of the contract, owner's name and address, nature of work, contractor's role (sole contractor, sub-contractor, or partner in a joint venture), total contract value at completion, date of award, date of completion, and contract duration. The statement shall be supported by the Contractor's Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance.

The value of the contractor's largest single contract, escalated to present prices, completed within the period specified in the notice for prequalification/eligibility screening, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.

- (2) A statement of all ongoing government and private construction contracts, including contracts awarded but not yet started. This shall include, for each contract, the name of the contract, owner's name and address, nature of work, contractor's role, total contract value at award, date of award, percentages of planned and actual accomplishments, value of outstanding works, and estimated completion time. The statement shall be supported by the notices of award and/or notices to proceed issued by the owners.
- (3) A statement that the contractor has key personnel, such as project manager, project engineer, materials engineer, and foreman, that may be used for construction contracts.

- (4) A statement that the contractor owns, and/or has under lease, and/or has under purchase agreements, equipment that may be used for construction contracts.

C. Financial documents

Audited financial statements, stamped "received" by the bureau of internal revenue, for at least the past three (3) calendar years, showing, among others, the contractor's total and current assets and liabilities.

The contractor's Net Financial Contracting Capacity (NFCC), based on his net working capital (i.e., current assets less current liabilities) must be at least equal to the approved budget for the contract to be bid, calculated as follows:

$$\text{NFCC} = K (\text{current assets minus current liabilities}) \text{ minus (value of all outstanding works under ongoing contracts including awarded contracts yet to be started).}$$

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

IB-5 CLASSIFICATION AND REGISTRATION OF CONTRACTORS

1. The Philippine Contractors Accreditation Board (PCAB) shall register and classify contractors based on the PCAB guidelines for registration and classification of contractors.

IB 6 - PREQUALIFICATION OR ELIGIBILITY SCREENING OF CONTRACTORS FOR SPECIFIC CONTRACTS

1. A bidder must be found to be prequalified or eligible to submit a bid for the contract to be bid based on his prequalification or eligibility statements as evaluated by the BAC or designated procurement unit of office/agency/corporation, based on the criteria stated in the notice for prequalification/eligibility screening.
2. Notwithstanding the prequalification or eligibility of a contractor, the government reserves the right to review his prequalification or eligibility statements and other relevant information before the approval of the contract. Should such review uncover any misrepresentation made in the prequalification or eligibility statements, or any change in the situation of the contractor to downgrade the substance of his prequalification or eligibility statements, the government shall disqualify him from submitting a bid or from obtaining any award or contract.
3. The BAC designated procurement unit shall determine if each contractor is prequalified or eligible to submit bids for the contract to be bid by evaluating his prequalification or eligibility statements, using the non-discretionary "pass/fail" criteria or requirements stated in IB 4-3 and in the notice for prequalification/eligibility screening, based solely and exclusively on his prequalification or eligibility statements. If the contractor possess all of the said criteria, he shall be considered eligible to submit a bid for the contract to be bid. if

the contractor fails any of the said criteria, he shall be considered ineligible to submit a bid for the contract to be bid.

4. After undertaking the above processes, the BAC designated procurement unit shall mark the set of prequalification or eligibility documents of each contractor "eligible" or "ineligible" as the case may be, and the same shall be countersigned by the chairman or the duly designated authority. The documents shall then be submitted to the head of office/agency/corporation concerned or his duly authorized representative for review and approval. Accordingly, the BAC designated procurement unit shall inform in writing the eligible bidders within seven (7) calendar days after approval. Applicants found ineligible shall likewise be informed accordingly in writing within the same period by the BAC designated procurement unit, stating the grounds for their disqualification or ineligibility. Those found ineligible have seven (7) calendar days upon receipt of notice within which to appeal to the head of the office/agency/corporation for reconsideration.

IB7- ISSUANCE OF PLANS, SPECIFICATIONS, PROPOSAL BOOK FORM(S) AND DRAFT CONTRACT.

1. The BAC or designated procurement unit shall issue the plans, specifications, proposal book form(s) for the contract to be bid to the eligible bidders under the relevant classification, upon payment of the corresponding price thereof to the collecting/disbursing officer of the office/agency/corporation concerned in accordance with the following schedule:

Estimated Contract Cost (in pesos)	Issuance of Plans, Specifications, Proposal Book Form(s) and Draft Contracts
a. Up to five (5) million	15 days before the date of bidding
b. Above five (5) million up to twenty five (25) million	30 days before the date of bidding
c. Above twenty five (25) million up to fifty (50) million	45 days before the date of bidding
d. Above fifty (50) million up to one hundred (100) million	60 days before the date of bidding
e. Above one hundred (100) million	90 days before the date of bidding

2. The aforementioned schedules shall be considered as prescribed minimums and may be extended depending on the complexity of the contract to be bid subject to the approval of the office/agency/corporation head concerned.
3. In case of simple or repetitive or standardized jobs where time is of the essence, the head of office/agency/corporation may reduce the above time of issuance to not less than fifty percent (50%).
4. A Draft Contract shall be issued to the eligible bidders to form part of the bid documents.

IB 8 - INTERPRETATION OF BID/TENDER DOCUMENTS AND OTHER SUPPLEMENTAL NOTICES

1. If an eligible bidder is in doubt as to the meaning of any part of the bid documents, he may submit a written request for an interpretation to the head of office/agency/corporation concerned allowing sufficient time for a reply to reach him before submission of his bid. Any response given will be issued by the government in the form of a supplemental notice, copies thereof shall be made available to all eligible bidders at the same time.
2. The government may also issue to all eligible bidders supplemental notices at least seven (7) calendar days prior to the date of opening of bids for purposes of clarification or modification of the bid documents. Receipt of all supplemental notices shall be duly acknowledged by each eligible bidder prior to submittal of bids and compliance thereto shall be indicated on the bid form. Oral interpretation of the bid documents shall not be binding.
3. For contracts to be bid with an approved budget of P5 million or more, at least one (1) pre-bid conference is required. The pre-bid conference(s) shall cover among others the legal, technical, and financial requirements of the contract to be bid. The minutes of the conference(s) shall be recorded and made available to all bidders. Said pre-bid conference (s) shall be held at the place and time to be designated by the head of office/agency/corporation concerned which shall not be later than fourteen (14) calendar days prior to opening of bids. For this purpose, foreign prospective bidders shall be advised through their local representatives. In the absence of local representatives, cables shall be sent to contractors.

IB 9 - ELIGIBLE BIDDER'S RESPONSIBILITY

1. The eligible bidder shall be responsible for having taken steps to carefully examine all of the bid documents and also have acknowledged all conditions, local or otherwise, effecting the carrying out of the contract work, and to have arrived at an estimate of the facilities available and needed for the contract to be bid. Failure to do so shall be at the eligible bidder's risk.
2. It shall be the sole responsibility of the eligible bidder to determine and to satisfy himself by such means as he considers necessary or desirable as to all matters pertaining to the contract to be bid, including the location and the nature of the work; climatic conditions; the nature and condition of the terrain; geological conditions at the site; transportation and communication facilities; the requirement and the availability of materials, labor, water, electric power and roads; the locations and extent of aggregate source; and other factors that may affect the cost, duration and execution of the work. The eligible bidder by the act of submitting his bid, acknowledges that he has inspected the site and determined the general characteristics of the project and the condition indicated above. A certificate of such site inspection from the eligible bidders shall therefore be required.
3. The Government shall not assume any responsibility regarding erroneous interpretations of conclusions by the eligible bidder out of the data furnished by the Government.
4. Prior to submittal of bids, the eligible bidders are considered to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect or apply to the operations and activities of contractors. However, in

cases where the cost of the awarded contract is affected by any applicable new laws, decrees, ordinances, regulations and other acts of government promulgated after the date of bidding for publicly-bid and sealed-bid contracts of date of contract for negotiated contracts, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis provided such is not covered by the provisions on price escalation hereof.

IB 10 - BID/TENDER AND AWARD

IB 10.1-PREPARATION OF BIDS AND BID BONDS, AND PREQUALIFICATION / ELIGIBILITY STATEMENT

1. Bids shall be prepared on the proposal book form in accordance with the Instructions to Bidders.
2. The original copy of the bid shall be accompanied by a bid security in an amount equivalent to a percentage, in accordance with the schedule given below, of the approved budget for the contract to be bid, as published/advertised by the concerned agency, in the form of cash, certified check, manager's check, or bank draft/guarantee confirmed by a local bank (in the case of foreign contractor bonded by a foreign bank) against any reputable bank or letter of credit issued by a commercial bank or surety bond, callable on demand, issued by a surety or insurance company duly accredited by the Office of the Insurance Commission or any combination thereof as may be required by the Head of office/agency/corporation concerned payable to the office/agency/corporation as guarantee that the successful bidder shall within thirty (30) calendar days or less at the discretion of the Head of office/agency/corporation concerned, from receipt of Notice of Award, enter into contract with the Government and furnish the performance security for the faithful and complete prosecution of the work specified in the contract documents. The schedule of amounts for the bid securities are as follows:
 - a. Cash, manager's check, cashier's check, irrevocable letter of credit, or bank draft - one percent (1%) of the approved budget for the contract to be bid as published/advertised by the concerned agency.
 - b. Bank guarantee - one and a half percent (1 1/2 %) of the approved budget for the contract to be bid, as published/advertised by the concerned agency.
 - c. Surety bond - two and a half percent (2 1/2 %) of the approved budget for the contract to be bid, as published/advertised by the concerned agency.

Bids and bid securities shall be valid for a reasonable period to be determined by the Head of office/agency/corporation concerned as indicated in the Instruction to Bidders but in no case later than one hundred twenty (120) calendar days following the opening of the bids.

3. No bid securities submitted by any eligible bidder shall be returned after the opening of bids, except by those that failed to comply with any of the requirements to be submitted in the first envelope of the bid as hereinafter provided. Bid securities shall be returned only after the successful bidder has signed the contract and furnished the performance security but in any case not later than the expiration of the bid security validity period indicated in the Instructions to Bidders.

IB 10.2 - SUBMISSION, OPENING AND ABSTRACTING OF BIDS/TENDERS

1. Bids in the prescribed bid form including its annexes as specified under IB 10.7-1-h shall be submitted in two (2) sealed envelopes with the name of the contract to be bid and the name of the bidder in capital letters addressed to the BAC or designated procurement unit of the office/agency/corporation concerned. They shall be marked by the bidder "do not open before (date and time of opening of bids)".
2. The first envelope shall contain the following information/documents:
 - a. Authority of the Signing Official
 - b. Construction Schedule and S-curve
 - c. Construction Methods
 - d. Organizational Chart for the Contract to be Bid
 - e. List of Contractor's Personnel, (I.E., Project Manager, Project Engineer, Materials Engineer And Foreman), to be assigned to the contract to be bid, with their complete qualification and experience data.
 - f. Personpower Schedule
 - g. List of contractor's equipment units, owned and/or lease and/or under purchase agreements, supported by duly executed contract therefore, intended for the use exclusively in the contract to be bid.
 - h. Equipment utilization schedule
 - i. Certificate of site inspection
 - j. Bid Security
 - k. Certification that the Detailed Estimates, Cash Flow by Quarter, and Payments Schedule are in the second envelope.
 - l. Commitment from the contractor's bank to extend to him a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount fixed by the office/agency/corporation in the instructions to bidders, which shall be at least equal to the operating cash flow requirement of the contract to be bid (i.e., the estimated average operating expenses for two 92) months of the contract to be bid, or ten percent (10%) of the approved budget for the contract to be bid, whichever is less).
 - m. Construction Safety and Health Program by the contractor based on section IB1.3.g hereof as required by the Department of Labor and Employment's (DOLE) Occupational Safety and Health Standards.
 - n. Other non-discretionary criteria as stated in the instructions to bidders.

The first envelopes shall be opened in public to determine the contractor's compliance with the above documents required to be submitted in the first envelope. For this purpose, a checklist of the required documents shall be made and the submitted documents shall be checked against this checklist to ascertain if they are all present in the first envelope. In case one or more of the above required documents is missing in the first envelope, the BAC or designated procurement unit shall disqualify the concerned contractor outright and immediately return to him his second envelope unopened.
3. The second envelope shall contain the following information/documents:
 - a. Bid prices in the bill of quantities
 - b. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid.
 - c. Cash flow by quarter and payments schedule

The second envelopes shall be opened in public immediately after the opening of the first envelopes but only for the contractors that complied with the requirements stated in Section IB 10.2-2 above.

4. Bids shall be received on or before the designated time and date to be eligible for consideration. Bids may be withdrawn only in writing five (5) working days before the deadline of submission of bids.
5. Bids shall be opened at the place, date and time specified in the advertisement by the BAC or designated procurement . The bidder or their duly authorized representative may attend the opening of bids. Every page of the original copies of all bids received and read must be initialed by all members of the BAC or designated procurement unit and the auditor's representative.
6. Bids with submitted bid prices that are higher than the approved budget for the contract under bidding shall be rejected outright.
7. After all bids have been received and opened, the corresponding Abstract of Bids shall be prepared. The Abstract of Bids shall be signed by all members of the BAC or designated procurement unit attaching thereto all the bids with their corresponding bid securities and the minutes or proceedings of the bidding. The Abstract of Bids shall contain the following:
 - a. Name of the project and its location.
 - b. Time, date and place of bidding.
 - c. Names of bidders and their corresponding bids arranged from the lowest to highest, the amount of security and the name of the issuing entity.

IB 10.3 DETERMINATION OF THE LOWEST CALCULATED RESPONSIVE BID

1. The BAC or procurement unit shall determine the "lowest calculated responsive bid," which is the bid
 - (A) With the lowest price as calculated based on the provisions of IB 10.4 hereof, and
 - (B) Which complies with or is responsive to all the requirements in IB 0.5 hereof.
2. The lowest calculated responsive bid shall therefore be determined in two steps:
 - A. The first step is the detailed evaluation of all bids, to establish the correct calculated prices of the bids according to the requirements of clause 10.4 hereof, and to determine the order or ranking of the total bid prices as so calculated from the lowest, otherwise known as the lowest calculated bid, to the highest.
 - B. The second step is the postqualification of the bidder with the lowest calculated bid based on the results of the above evaluation. This shall be done in accordance with the provision of clause 10.5.

IB 10.4 - DETAILED EVALUATION OF BIDS

1. As the first step to determine the lowest calculated responsive bid, the BAC or designated procurement unit shall, within seven (7) days from the date of opening of bids, conduct a detailed evaluation of all bids, using non-discretionary criteria stated in the notice for prequalification/eligibility screening and the instructions to bidders, which shall include the following:
 - A. Bid security: the bid security must conform to the requirements of the instructions to bidders, as to type, amount, form and wording, and validity period.
 - B. Completeness of bid: unless the instructions to bidders specifically allow partial bids, bids not offering all of the required items shall be considered non-responsive and, thus, automatically disqualified.
 - C. Major deviations: major deviations from the instructions to bidders and bidding requirements shall be a basis for rejection of bids. Major deviations are those that, if accepted, would not fulfill the purposes for which the bid is requested, or would prevent a fair comparison with bids that comply with the bidding documents. Examples are:
 - (1) Stipulating price adjustment when fixed price bids were called for;
 - (2) Failing to respond to the specifications by offering a different design or work item;
 - (3) Subcontracting beyond allowable limits
 - (4) Refusing to bear contractual responsibilities specified in the bidding documents, such as performance guarantees;
 - (5) Taking exception to critical provisions or setting conditions to his bid, such as applicable laws, taxes and duties, and dispute resolution procedures.
 - D. Corrections for errors, discounts, and other modifications: corrections for arithmetical or computational errors, as well as for discrepancies between total bid prices and extended unit bid prices, between stated total prices and actual summations, between prices in figures and in words, and other errors/discrepancies, shall be made, using the methodology described in the instructions to bidders. Discounts and other modifications in the bid amounts shall be reflected in the evaluation of bids, in accordance with the methodology stated in the instructions to bidders.
 - E. The approved budget for the contract under bidding: As approved by the office/agency/corporation and stated in the instructions to bidders, the approved budget for the contract under bidding shall be the ceiling for acceptable bids. Therefore, all bids, as evaluated and calculated in accordance with the above provision, which are higher than the approved budget for the contract under bidding, shall automatically be disqualified.

Based on the detailed evaluations of the bids, those that comply with the above mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for errors, discounts, and other modifications.

2. At the time of opening of bids, there shall be at least two (2) competing bidders. In case there is only one bidder, the BAC or designated procurement unit has the option to either:

- a. Open the bid (second envelope) and subsequently consider the lone bid for award provided that it complies with the requirements of Section IB 10.2-2 hereof, and provided further that it does not exceed the approved budget for the contract under bidding; or
- b. Return the second envelope of the lone bidder unopened and conduct a rebidding thru sealed canvass of at least five (5) qualified contractors within fifteen (15) days from the date of the failed opening of bids. However, for contracts to bid costing P3.0 million and below, the number of qualified contractors to be invited may be reduced to at least three (3). The prospective bidders shall not be limited to those previously prequalified or found eligible for the contract to be bid, with the lone complying bidder automatically participating.

The bidders to be invited shall undergo and pass the same prequalification or eligibility criteria as specified in IB 4-3 and IB 6.

3. If after undertaking the above processes, there is failure to award the contract within the limits prescribed under section IB 10.6.1-1 hereof, the contract shall be advertised anew for bidding after the procedures prescribed under section IB 10.6.1 has failed to come up with the lowest calculated responsive bid.
4. The respective BACs or designated procurement UNITS of concerned government offices/agencies/corporations should normally complete the evaluation of bids not later than thirty (30) calendar days from the date of the opening of bids.

IB 10.5 POSTQUALIFICATION OF CONTRACTOR WITH THE LOWEST CALCULATED BID

As the second step to determine the lowest calculated responsive bid, the BAC or designated procurement unit shall, within thirty (30) days from the completion of the first step (clause 10.4), conduct a postqualification of the bidder with the lowest calculated bid. The postqualification shall verify and ascertain whether the bidder with the lowest calculated bid complies with or is responsive to all the requirements of the contract under bidding as stated in IB 4, IB 6, IB 10.2 and in the instructions to bidders, using the non-discretionary "pass/fail" criteria or requirements stated in the instructions to bidders. The BAC or designated procurement unit shall also verify, ascertain and evaluate the prequalification or eligibility statements of the lowest calculated bidder to be correct, relevant and adequate to comply, according to the following criteria:

A. LEGAL REQUIREMENTS AS PROVIDED IN IB 4-3A

B. TECHNICAL REQUIREMENTS

- (1) The contractor's stated experience must be verified and validated by the BAC or designated procurement unit to be correct, relevant, and adequate to comply with the following:
 - (A) The value of his single largest contract, escalated to present prices, completed within the period specified in the notice for prequalification/eligibility screening, and similar to the contract under bidding, must be at least fifty percent (50%) of the approved budget for the contract under bidding. The contractor's CPES rating sheets and/or certificate of satisfactory completion and acceptance issued by the owner must be verified.

- (B) The contractor must meet the specific minimum experience requirements in the instructions to bidders for particular major operations of the contract under bidding, such as having done the minimum annual volume of earth moving, underground excavation, or placing of concrete. The BAC or designated procurement unit shall have the authority to make appropriate inquiries with the contractor's previous clients and conduct checks on his past contracts.
- (2) The experience of the contractor's key personnel must be verified by the PBAC or designated procurement unit to be correct, relevant, and adequate to comply with the requirements specified in the instructions to bidders in terms of the following:
 - (A) Total experience in years
 - (B) Total experience in the proposed position
 - (C) Value of the single largest managed/supervised contract similar to the contract under bidding, escalated to present prices, which must be at least equal to fifty percent (50%) of the approved budget for the contract under bidding.

The BAC or designated procurement unit shall make appropriate inquiries with the personnel's previous employers and clients and conduct checks on their past contracts.

- (3) The equipment units listed by the contractor must be verified by the BAC or designated procurement unit to be owned and/or under lease and/or under purchase agreements by him, as supported by documented proofs of ownership and/or lease and/or purchase agreements. The units of equipment must be in full working condition, adequate as to number and capacities compared to the minimum requirements specified by the office/agency/corporation in the instructions to bidders, and, considering other known commitments, shall be available for use in the contract under bidding. The BAC or designated procurement unit shall have the authority to undertake an actual physical inspection of the equipment units and make appropriate inquiries and checks with the equipment lessors and suppliers concerned.
- (4) The BAC or designated procurement unit shall check the performance of the contractor in his ongoing government and private contracts. If there is a reported negative slippage of more than fifteen percent (15%), if there is substandard quality of work as per contract plans and specifications, or if there is unsatisfactory performance of his obligations as per terms and conditions under any of his ongoing contracts and if the BAC or designated procurement unit verifies any of these deficiencies to be due to the contractor's fault or negligence the office/agency/corporation shall disqualify the contractor from the award.

C. FINANCIAL REQUIREMENTS

- (1) The contractor's stated net working capital (i.e. current assets minus current liabilities) must be verified by the BAC or designated procurement unit to be correct, up-to-date, and unencumbered.

- (2) The value of all outstanding or unfinished works under ongoing contracts including awarded contracts yet to be started must be verified by the BAC or designated procurement unit to be correct and up-to-date. The BAC or designated procurement unit shall make appropriate inquiries with the contractor's clients and employers and conduct checks on the contracts.
- (3) The contractor's Net Financial Contracting Capacity (NFCC), as computed using the formula under IB 4-3c, shall be reviewed and updated by the BAC or designated procurement unit to ensure that it is at least equal to the contractor's total bid, as evaluated and calculated, for the contract under bidding.
- (4) The credit limit commitment from the contractor's bank must be verified by the BAC or designated procurement unit to be valid, adequate, and exclusively dedicated to the contract under bidding. To sustain its operating cash flow requirements as specified in the instructions to bidders, i.e., the average operating expenses for two (2) months of the contract under bidding or ten percent (10%) of the approved budget for the contract under bidding, whichever is less. The BAC or designated procurement unit shall make the appropriate inquiries with the contractor's bank.

If the bidder pass all of the above criteria, he shall be considered postqualified. If the bidder fails any of the above criteria, he shall be considered postdisqualified.

IB 10.6 - AWARDING OF CONTRACT

IB 10.6.1 - BY BID CONTRACT

1. If the BAC or designated procurement unit finds that the contractor with the lowest calculated total bid price passes the abovementioned postqualification criteria, his bid shall be considered as the "lowest calculated responsive bid", and the office/agency/corporation shall award the contract to him, at his bid price as calculated by the BAC or designated procurement unit, subject to the other provisions of this clause.
2. If, however, the BAC or the designated procurement unit finds that the contractor with the lowest calculated bid fails the abovementioned postqualification criteria, the office/agency/corporation shall immediately notify him in writing that he is postqualified and in the same notice be informed of the grounds for his postqualification. The postdisqualified bidder shall have seven (7) days from receipt of the said notification to request from the BAC or designated procurement unit, if he so wishes, a reconsideration of this decision. The BAC or designated procurement unit shall evaluate the request for reconsideration, if any, using the same non-discretionary "pass/fail" postqualification criteria as provided in clause IB 10.5
3. After the office/agency/corporation has notified the first contractor of his postdisqualification, the BAC or designated procurement unit shall initiate and, within seven (7) days, complete the same postqualification process (clause IB 10.5) on the contractor with the second lowest calculated bid. If the second contractor passes the postqualification criteria, and provided that the request for reconsideration of the bidder with the lowest calculated bid is denied, the bid of the second contractor shall be considered as the lowest calculated responsive bid. The

office/agency/corporation shall accordingly award the contract to the second contractor at his calculated bid, pursuant to the pertinent provisions of this clause.

4. If the second contractor, however, fails the postqualification criteria, the procedure in sections IB 10.6.1-1 to IB 10.6.1-3 shall be repeated for the bidder(s) with the next lowest calculated responsive bid is obtained for award.
5. In the event of refusal or failure of the lowest calculated responsive bidder for award to enter into contract within the stipulated time, the government shall impose the appropriate sanctions provided in the new section v-administrative sanctions.
6. In the event of refusal, inability or failure of the calculated responsive bidder to make good his bid by entering into a contract and to post his performance security within the time provided therefore, the second lowest calculated responsive bidder shall be considered for award at his bid calculated price provided that his calculated bid shall not exceed the approved budget for the contract hereof. This rule shall likewise apply to the third lowest calculated responsive bidder in case the second lowest calculated responsive bidder shall likewise refuse to enter into contract with the government. Otherwise, the contract shall be advertised anew for bidding.
7. If after rebidding, no bid still comes within the limits of award of contracts prescribed under section IB 10.6.1-1 hereof, the contract may be recommended to the head of office/agency/corporation concerned for prosecution by administration or by negotiated contract in accordance with existing laws, rules and regulations. The head of office/agency/corporation shall endorse the same to the Secretary concerned, as the case may be, for approval.
8. Normally within thirty (30) calendar days from the date the evaluation of bids shall have been completed, postqualification of the lowest calculated bidder to determine its responsiveness shall have been done and a decision on the results of the postqualification shall be made. If the decision is to award the contract, the notice of award shall be issued normally within seven (7) calendar days from the date the decision to award is made. For foreign-assisted projects, the decision to award the contract should be transmitted to the concerned foreign financial institution for concurrence as may be required normally within seven (7) calendar days from the date decision to award is made. Likewise, the notice of award shall be issued by the concerned implementing agency normally within seven (7) calendar days from the date concurrence of the concerned foreign financial institution shall have been secured. The successful bidder or his duly authorized representative shall execute the contract with the office/agency/corporation concerned normally within fifteen (15) calendar days from receipt of the Notice of Award.
9. The Government, however, reserves the right to reject any or all bids and to declare a failure of bidding, or not to award the contract if there is, among others evidence of collusion among contractors and other parties resulting in no competition.
10. To guarantee the faithful performance of the contractor under the contract, he shall post upon the signing of the contract a performance security in the form of cash, manager's check, cashier's check, bank draft/guarantee confirmed by a local bank (in the case of foreign contractor bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond, callable on demand, issued by the Government Service Insurance System or by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedule:

- a. Cash, manager's check, cashier/s check, irrevocable letter of credit, bank draft-five percent (5%) of the total contract price.
 - b. Bank Guarantee - ten percent (10%) of the total contract price.
 - c. Surety Bond - thirty percent (30%) of the total contract price.
- 11. This performance security shall be posted in favor of the office/agency/corporation concerned, and shall guarantee the payment of the amount of the security as penalty in the event it is established that the contractor is in default in his obligation there under.
- 12. In the execution of the performance security, the following conditions shall be complied with:
 - a. It shall be executed in accordance with the form as prescribed by the office/agency/corporation concerned in the instruction to bidders/tender documents.
 - b. It shall be at least co-terminus with the final completion of the project.
 - c. The following provisions shall form part of the performance security: "The right to institute action on the penal bond pursuant to Act No. 3688 of any individual firm, partnership, corporation and association supplying the contractor with labor and material for the prosecution of the work is hereby acknowledged and confirmed."
- 13. Subject to the conditions of the contract, the performance security may be released by the office/agency/corporation concerned after the issuance of the certificate of completion of the contract, provided that there are no claims for labor and materials filed against the contractor or the surety company.
- 14. Should any surety upon the bond for the performance of this contract become unacceptable to the Government, the contractor shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.
- 15. The contractor shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of adjustments in unit prices, and/or change orders, extra work orders and supplemental agreements. The contractor shall cause the extension of the validity of the performance security to cover approved contract time extensions.
- 16. In case of a reduction in the contract value and for partial utile work completed by the contractor and accepted by the Government and which in the judgment of the implementing department/agency/office/corporation concerned shall not affect the structural integrity of the entire project, the agency/office/corporation concerned shall not allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reduction is not more than fifty percent (50%) of the original performance security.

IB 10.6.2 - BY NEGOTIATED CONTRACT

1. Negotiated contract may be entered into only where any of the following conditions exists and the implementing office/agency/corporation is not capable of undertaking the contract by administration:
 - a. In times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property or to restore vital public services, infrastructure and utilities such as collapsed bridges, cut road sections, breached dikes, unroofed buildings and other severely damaged vital facilities.
 - b. Failure to award the contract after two (2) public biddings for valid cause or causes.
 - c. Where the subject contract is adjacent or contiguous to an ongoing contract and it could be economically prosecuted by the same contractor provided that subject contract has similar or related scope of works and is within the contracting capacity of the contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices adjusted to price levels prevailing at the time of negotiation using the parametric formulae herein prescribed without the 5% deduction and contract conditions, less mobilization cost, provided that he has no negative slippage and has demonstrated a satisfactory performance.
 - d. For contracts terminated in accordance with the provisions of Presidential Decree No. 1870 (Authorizing the government's take over by administration of delayed infrastructure contract or awarding of the contract to other qualified contractors) or similar laws or Section CI 8-3 and 4 (Liquidated Damages) hereof.

In cases a and b above, bidding may be undertaken through sealed canvass of at least three (3) qualified contractors. For case d, contract may be negotiated with the second lowest bidder for the contract under consideration at the bidder's original bid price escalated to the date of contract negotiation using the parametric formulae contained herein reckoned from the date of the bidding, or bidding may be undertaken through sealed canvass of at least three (3) qualified bidders. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by heads of agencies within their limits of approving authority.
2. Bona fide contractors whose ARC-C, Pre-C and other prequalification papers are on file with the CIAP and/or the office/agency/corporation concerned and who have been classified under the type of project where the subject contract falls are eligible to be invited for negotiation. Other contractors not previously prequalified may also be accepted for prequalification for the subject project.
3. Contractor(s) duly prequalified for the project under consideration shall be furnished copies of the Instruction to Offerors, Plans, Specifications, Proposal Book Form, and other Tender Documents for their use in submitting their quotation and other information called for in the format. The contractors shall submit, simultaneously with their quotation, the bid security as stipulated above.
4. Negotiation may be made with the complying offerors in ascending order starting from the lowest complying offeror.

IB 10.6.3 - DISCLAIMER

1. The Government assumes no obligation whatsoever to compensate or indemnify the bidders for any expenses or loss that they may incur in the preparation of their bid nor does the Government guarantee that an award will be made.

IB 10.7 - DOCUMENTS COMPRISING THE CONTRACT

1. The following documents shall form part of the contract:
 - a. Contract Agreement
 - b. Conditions of Contract
 - c. Drawings/Plans
 - d. Specifications
 - e. Invitation to Bid
 - f. Instructions to Bidders
 - g. Addenda
 - h. Bid form including the following annexes in two envelopes. The first envelope shall contain the following:
 - (1) Authority of the signing official
 - (2) Construction schedule and s-curve
 - (3) Construction methods
 - (4) Organizational chart for the contract to be bid
 - (5) List of contractor's personnel to be assigned to the contract to be bid, with their complete qualification and experience data.
 - (6) Personpower schedule
 - (7) List of contractor's equipment units, owned and/or under lease and/or under purchase agreements, supported by duly executed contracts, intended for use exclusively in the contract to be bid.
 - (8) Equipment utilization schedule
 - (9) Certificate of site inspection
 - (10) Bid security
 - (11) Certification that the detailed estimates, cash flow by quarter and payments schedule are in the second envelope
 - (12) Commitment from the contractor's bank to extend to him a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount fixed by the office/agency/corporation in the instructions to bidders, which shall be at least equal to the operating cash flow requirement of the contract to be bid (i.e., the estimated average operating expenses for two (2) months of the contract to be bid, or ten percent (10%) of the approved budget for the contract to be bid, whichever is less).
 - (13) Construction safety and health program by the contractor based on section IB 1.3.g hereof as required by the department of labor and employment's (dole) occupational safety and health standards.
 - (14) Other non-discretionary criteria as stated in the instructions to bidders
 - i. Performance Security
 - j. Prequalification Statements
 - k. Credit Line issued by an authorized bank in an amount equal to the average operating expenses of the contract for two (2) months or ten percent (10%) of the total project cost, whichever is less.
 - l. Notice of Award of Contract and Contractor's "Conforme" thereto
 - m. Other Contract Documents that may be required by the office/agency/corporation concerned.

IB 10.8 - SUPPORTING DOCUMENTS

1. To facilitate the approval of the contract, the following supporting documents shall be submitted:
 - a. Duly Approved Program of Work and Cost Estimates
 - b. Certificate of Availability of Funds
 - c. Abstract of Bids
 - d. Resolution of the BAC or designated procurement unit recommending Award
 - e. Approval of Award by Approving Authority
 - f. Concurrence of Lending Institution in case of Foreign-assisted contracts
 - g. Other pertinent documents as may be reasonably required by existing laws.

IB 10.9 - APPROVAL OF CONTRACT

1. Contracts should normally be approved/disapproved by the head of office/agency/corporation concerned in accordance with existing laws, rules and regulations within fifteen (15) calendar days from the date the successful bidder or his duly authorized representative shall have executed the contract with the office/agency/corporation concerned and submitted all documentary requirements to perfect the contract foremost of which is the performance security. For contracts requiring the approval by the Office of the President, the same should normally be approved/disapproved within thirty (30) calendar days from the date that request for approval of such contracts shall have been received by the Office of the President.

IB 10.10 - ISSUANCE OF NOTICE TO PROCEED

1. The concerned government office/agency/corporation should issue the Notice to Proceed (NTP) to the successful bidder not later than fifteen (15) calendar days from the date of approval of the contract by the concerned/authorized government official. The effectivity date of the NTP shall be specified by the agency concerned.
2. For projects whereby the Notice to Proceed (NTP) is issued after 120 calendar days from the bidding date, the awarded bidder may request for a contract unit price adjustment using the parametric formulae updated to the month of the NTP. Computation of the unit price adjustment shall be the original contract unit price multiplied by the fluctuation factor K without deducting the 5%. Such updated unit prices shall be used as basis for computing the regular progress billings, and price escalation for work accomplishment shall be calculated using the parametric formulae herein prescribed as applied to the updated unit prices reckoned from the month of the NTP. Adjustment of unit prices shall be made within fourteen (14) calendar days from the date the required indices are available/issued by the appropriate government agency.

IB 10.11 - MONITORING OF CONTRACT AWARDS PROCESS

1. All government tendering agencies shall submit to the NEDA Committee on Infrastructure (INFRACOM), for monitoring purposes, the list of all contracts involving contract cost of P 10.0 million and above approved by the appropriate authorities indicating such milestones as dates of advertisement, opening of bids, evaluation of bids, submission to and concurrence of foreign financial institutions, award of

contracts, approval of contracts and Notice to Proceed normally within fifteen (15) calendar days from the date of Notice to Proceed.

III.

CI - CONTRACT IMPLEMENTATION:

THESE PROVISIONS REFER TO ACTIVITIES DURING PROJECT CONSTRUCTION, I.E., AFTER CONTRACT AWARD UNTIL COMPLETION, EXCEPT AS MAY OTHERWISE BE SPECIFICALLY REFERRED TO PROVISIONS UNDER SECTION II. IB - INSTRUCTIONS TO BIDDERS.

CI 1 - VARIATION ORDERS - CHANGE ORDER/EXTRA WORK ORDER/SUPPLEMENTAL AGREEMENT

1. Variation orders may be issued by the concerned agency/office/corporation to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the government after award of the contract. The addition/deletion of works should be within the general scope of the project as bid and awarded. A variation order may either be in the form of a change order, extra work order or a supplemental agreement.
2. A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original work items in the contract after the same has been found to strictly comply with Section CI 1-1 and approved by the appropriate official if the amount of the change order is within the limits of the former's authority to approve original contracts and under the following conditions:
 - a. Where the aggregate cost of Change Order(s) is limited to 25% of the escalated original contract cost provided that no major pay item (i.e., pay item which represents at least 20% of total estimated cost of the contract) shall be increased by more than 100% of its original cost. All Change Orders shall be subject to price adjustment in accordance with duly approved guidelines.
 - b. Where there is a decrease or increase in original work items under the contract due to necessary deletion/addition of work items or sections of the project.
 - c. Where there is damage to structure and/or destruction of finished work in any section of the project due to force majeure or causes beyond the control of man.
3. For a unit-price contract, quantity overruns or underruns of not more than fifteen percent (15%) of the estimates per major pay item and twenty five percent (25%) per minor pay item in the Bill of Quantities need not to be covered by Change Order provided that the same is authorized by the Approving Authority for the contract
4. An Extra Work Order may be issued by the implementing official to cover the introduction of new work items after the same has been found to strictly comply with Section CI-1-1 and approved by the appropriate official if the amount of the Extra Work Order is within the limits of the former's authority to approve original contracts and under the following conditions:

- a. Where there are additional works needed and necessary for the completion, improvement or protection of the project which were not included as items of work in the original contract.
 - b. Where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract.
 - c. Where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.
 - d. Where there are duly approved construction drawings or any instruction issued by the implementing office/agency during the term of contract which involve extra cost.
5. Change Orders or extra Work Orders may be issued on a contract upon the approval of competent authorities provided that the cumulative amount of such Change Orders or Extra Work Orders does not exceed the limits of the former's authority to approve original contracts.
 6. A separate Supplemental Agreement may be entered into for all Change Orders and Extra Work Orders if the aggregate amount exceeds 25% of the escalated original contract price all change orders/extra work orders beyond 100% of the escalated original contract cost shall be subject to public bidding except where the works involved are inseparable from the original scope of the project in which case negotiation with the incumbent contractor may be allowed, subject to approval by the appropriate authorities.
 7. Any Variation Order (Change Order, Extra Work Order or Supplemental Agreement) shall be subject to the escalation formula used to adjust the original contract price less the cost of mobilization. In claiming for any Variation Order, the contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within 28 calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Change Orders, Extra Work Orders or Supplemental Agreements are as follows:
 - a. If the Project Engineer believes that a Change Order, Extra Work Order or Supplemental Agreement should be issued, he shall prepare the proposed Order or Supplemental Agreement accompanied with the notices submitted by the contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order, Extra Work Order or Supplemental Agreement, and shall submit the same to the Regional Director of office/agency/corporation concerned.
 - b. The Regional Director concerned, upon receipt of the proposed Change Order, Extra Work Order or Supplemental Agreement shall immediately instruct the technical staff of the Region to conduct an on-the-spot investigation to verify the

need for the work to be prosecuted. A report of such verification shall be submitted directly to the Regional Director concerned.

- c. The Regional Director concerned after being satisfied that such Change Order, Extra Work Order or Supplemental Agreement is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the head of office/agency/corporation for consideration.
- d. If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office/agency/corporation committee empowered to review and evaluate Change Orders, Extra Work Orders or Supplemental Agreements recommends approval thereof, the head of office/agency/corporation, believing the Change Order, Extra Work Order or Supplemental Agreement to be in order, shall approve the same. The limits of approving authority for any individual, and the aggregate of, Change Orders, Extra Work Orders or Supplemental Agreements for any project of the head of office/agency/corporation shall not be greater than those granted for an original project.
- e. The timeframe for the processing of variation orders from the preparation up to the approval by the implementing agency concerned shall not exceed thirty (30) calendar days.

CI 2 - ADDITIONAL/EXTRA WORK COSTING

1. Additional, extra works necessary to and within the general scope of the contract should be costed whether they are covered by change orders or extra work orders. the contractor shall be paid for additional work items whose unit prices shall be derived based on the following:
 - a. For additional/extra works duly covered by change orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items original contract shall be used.
 - b. For additional/extra works duly covered by extra work orders involving new work items that are not in the original contract, the unit prices of the new work items shall be derived as follows:
 - (1) Each component of the new work item shall be based on the direct unit costs used in the original contract (e.g. unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.) And updated to price levels as of the date agreed upon by the government and the contractor using appropriate NSO indices as follows:
$$\text{New unit cost} = \text{original unit cost} \times (P1/P0)$$
where $P1$ = appropriate NSO index during the agreed upon date/month
$$P0 = \text{appropriate NSO index at the month of bidding or negotiated bidding}$$
 - (2) All new components of the new work item shall be based on prices prevailing at that agreed date/month, provided the same is acceptable to both the

government and the contractor, and provided further that the direct unit costs of new components shall be based on the contractor's estimate as validated by the agency concerned via documented canvass in accordance with existing rules and regulations.

- (3) These two shall be combined to arrive at the direct cost of the new work item. It shall then be combined with the mark-up factor (i.e. taxes & profit) used by the contractor in his bid to determine the unit price of the new work item. The reckoning date for price escalation purposes shall be the date/month as agreed upon by both parties.
2. The cost of the extra work done shall be submitted at the intervals to be determined by the Project Engineer in a satisfactory form which shall be approved or adjusted at once by the Government. Request for payment by the contractor for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. Said request for payment shall be included with the contractor's statement for progress payment.

CI 3 - CONDITIONS UNDER WHICH CONTRACTOR IS TO START WORK UNDER VARIATION ORDERS AND RECEIVE PAYMENTS

1. Under no circumstances shall a contractor proceed to commence work under any Change Order, Extra Work Order or Supplemental Agreement unless it has been approved by the Secretary or his duly authorized representative. Exceptions to the preceding rule are the following:

- a. The Regional Director, or its equivalent position in agencies/offices/corporations without plantilla position for the same, may, subject to the availability of funds, authorize the immediate start of work under any Change or Extra Work Order under any or all of the following conditions:

- (1) In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or
- (2) When time is of the essence;

provided, however, that such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price, or P 500,000 whichever is less;

provided, further, that immediately after the start of work, the corresponding Change/Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change/Extra Work Order may be made only after approval of the same by the Secretary or his duly authorized representative.

- b. For a Change/Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract price or original adjusted contract price no work thereon may be commenced unless said Change/Extra Work Order has been approved by the Secretary or his duly authorized representative.

CI 4 - ADVANCE PAYMENT

1. The Government 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 equal to fifteen percent (15%) of the total contract price, to be made in lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.
2. The advance payment shall be made only upon the submission to and acceptance by the Government of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.
3. The advance payment shall be repaid by the contractor by deducting 20% from his periodic progress payments, with the first repayment to be made when the contract value of the work executed and materials delivered shall equal or have exceeded twenty percent (20%) of the contract price and further refunds shall be done thereafter at monthly intervals. The first work accomplishment equivalent to 20% of the contract price shall not be subject to the 20% deduction.
4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

CI 5 - PROGRESS PAYMENT

1. Once a month or for an accomplishment of at least P 1.0 million, the contractor may submit a request for payment for work accomplished. Such request for payment shall be verified and certified by the Government project engineer. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.
2. The government shall have the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the project.

CI 6 - RETENTION MONEY

1. Progress payments are subject to retention of ten percent (10%) referred to as the "retention money." Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the Government, are completed. If, after fifty percent (50%) completion, the work is satisfactory done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.
2. The total "retention money" shall be due for release upon final acceptance of the works. The contractor may however request for the substitution of the retention money for each progress billing with surety bonds callable on demand of amounts equivalent to the retention money substituted for and acceptable to government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said surety bonds, to be posted in favor of government shall be valid for a duration to be determined by the concerned

government implementing agency and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

CI 7 - CONTRACT COMPLETION

1. Once the project reaches an accomplishment of 95% of the total contract amount, the government may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time as of the date of contract suspension. this, however, shall not preclude the government's claim for liquidated damages, nor the contractor's claim for incentive bonus, as the case may be.

CI 8 - LIQUIDATED DAMAGES

1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the Government for liquidated damages, and not by way of penalty, an amount to be determined in accordance with the following formula for each calendar day of delay, until the work is completed and accepted or taken over by the Government:

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

$$VUUP = TCP - VCUP$$

WHERE:

TLD = Total Liquidated Damages, In Pesos

VUUP = value of the uncompleted and unusable portions of the contract work, 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 work, as of the expiry date of the contract, in pesos

OCC = prevailing opportunity cost of capital for government projects set by NEDA, which is currently pegged at 15%

n = total number of years that the contract work is delayed after the expiry date of the contract

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

i = annual inflation rate

The head of agency may also impose additional liquidated damages on the contractor provided such is prescribed in the instructions to bidders.

2. A project 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 agency.
3. To be entitled to such liquidated damages, the Government 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 Government.
4. In case that the delay in the completion of the work exceed a time duration equivalent to twenty percent (20%) of the specified contract time plus any time extension duly granted to the contractor, the office/agency/corporation concerned may forfeit the contractor's performance security and takeover the prosecution of the project or award the same to a qualified contractor through negotiated contract.
5. In no case however, shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price, in which event the contract shall automatically be taken over by the office/agency/corporation 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.
6. For terminated contracts where negotiation shall be undertaken, the procedures prescribed under section IB 10.4.2-1 shall be adopted.

CI 9 - INCENTIVE BONUS

1. For major and urgent projects, except for negotiated contracts and provided that the Instructions to Bidders and other Tender and Contract Documents so prescribed, if the contractor completes the contract works ahead of schedule without any suspension order effected or extension of contract time granted, he may be given a bonus for saving the Government additional expenses for engineering and inspection services and for allowing the Government the early use of the completed facilities, in an amount to be determined in accordance with the following formula, but not to exceed ten percent (10%) of the contract price:

$$TIB = VCUP \times [(1 + OCC)^t - 1] \times K'$$

WHERE:

TIB = total incentive bonus, in pesos, which shall not exceed or be greater than 10% of the total contract price

VCUP = value of the completed and usable portion of the contract work done ahead of schedule, i.e. before the expiry of the contract, in pesos

OCC = prevailing opportunity cost of capital for government projects set by neda which is currently pegged at 15 %

t = total number of years that the contract work was completed before the expiry date of the contract

K' = adjustment factor to cover additional returns

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

WHERE:

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

i = annual inflation rate

$$VCUP = TCP - VPSCU$$

WHERE:

TCP = total construction price, in pesos

VPSCU = value of the portion of the contract work supposed to be completed and usable, per approved PERT/CPM schedule, on the date of actual contract completion, in pesos

2. The completion of a project ahead of schedule shall also be considered a "plus-factor" in favor of the contractor in assessing/evaluating the prequalification for future projects.

CI 10 - SUSPENSION OF WORK

1. The Government or its duly authorized representative shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public to carry out valid orders given by the Government or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.
2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant, as the case may be, due to the following:
 - a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.

- b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
 - c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) regional director.
 - d. There is failure on the part of the government to deliver government-furnished materials and equipment as stipulated in the contract.
 - e. Delay in the payment of contractor's claim for progress billing and/or price escalation beyond forty-five (45) calendar days from the time the contractor's claim has been certified to by the implementing agency's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.
3. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

CI 11 - EXTENSION OF CONTRACT TIME

- 1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the Government shall determine the amount of such extension; provided that the Government is not bound to take into account any claim for an extension of time unless the contractor has prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the Government 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 Government shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the Government's opinion, the findings of facts justify an extension.
- 2. No extension of contract time shall be granted the contractor due to (a) ordinary unfavorable weather conditions (b) inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials, or (c) other causes for which Government is not directly responsible.
- 3. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
- 4. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as prescribed under Section 1.4.j (Detailed Engineering) as agreed upon by the parties before contract perfection.

5. Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, for such period in excess of the number of rainy/unworkable days pre-determined by the government in accordance with Section I.4.j hereof (Detailed Engineering) and/or for equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the Government, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralyzation of construction activities, and other meritorious causes as determined by the Government's authorized Engineer and approved by the Government. Shortage of construction material, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the contractor may be considered as additional grounds for extension of contract time provided they are publicly felt certified by appropriate government agencies such as DTI, DOLE, DILG, and DND, among others. Provided, further, that the written consent of bondsmen must be attached to any request of the contractor for extension of contract time and submitted to the Government for consideration and that the validity of the performance security shall be correspondingly extended.

CI 12 - CONTRACT PRICE ESCALATION

CI 12.1 - GUIDELINES ON CONTRACT PRICE ESCALATION

1. These guidelines for the computation and payment of price escalations shall apply to existing infrastructure contracts (as of August 27, 1980), where a specific price escalation clause is not provided therein or where there is no specified methodology for calculation of price escalation. All infrastructure contracts entered into after the date of effectivity of these guidelines (August 27, 1980) shall employ the escalation method using the parametric formulae provided for in these guidelines. Formulae other than those prescribed herein may also be used for price escalation purposes provided the adoption of the same is clearly stipulated in the tender and contract documents provided to tenderers prior to the bidding and agreed upon by the government and the contractor. equipment supply contracts, whether or not included as an integral part of the infrastructure contract, shall not be covered by this provision.
2. The respective implementing offices shall determine all price escalation in accordance with these guidelines.
3. A committee shall be created by the NEDA Committee on Infrastructure which shall review periodically the parametric formulae for the computation of contract price escalation herein specified and shall revise the same whenever necessary, such revisions to be made effective upon the approval by the NEDA Committee on Infrastructure. The revised/updated parametric formulae, if any, shall apply to works to be accomplished on a project after the effectivity/approval of such revisions.
4. For on-going contracts and contracts bid out but yet unawarded as of 31 December 1990, the unit prices for the remaining balance of work based on the approved/revised construction schedule, including any time extension granted, shall be updated using the current parametric formulae to January 1991 prices with the original unit prices multiplied by the fluctuation factors without the 5% deduction. Such updated unit prices as of 01 January 1991 shall be used as basis for computing

regular progress billings thereafter. Any price escalation after 01 January 1991 shall be calculated using the new parametric formulae herein prescribed as applied to the updated unit prices as of 01 January 1991.

5. All price escalation to be granted may be approved by the Secretary or head of office/agency/corporation concerned in accordance with Section 8 of Presidential Decree No. 1594 to become effective. Payments for price escalation on works accomplished on a project beginning 01 January 1990 may be made by the Secretary and/or agency head concerned irrespective of the amount involved. For works accomplished prior to 01 January 1990, payments for price escalation may be made by the Secretary/Agency Head concerned within the limits of authority specified under the previously amended Implementing Rules and Regulations as the case may be.
6. Escalation of prices for work accomplishment on infrastructure construction, rehabilitation and/or improvement projects shall be made periodically, using the parametric formula as described below, to compensate for fluctuation of prices of construction supplies and materials, equipment and labor which would bring about during the period under consideration an increase or decrease of more than five percent (5%) of the original or adjusted contract unit price of items of work.
7. Price escalation shall be reckoned from the month of bidding of the project, and shall be allowed for every progress billing. When the contract has not been the subject of competitive bidding, price escalation shall be reckoned from the month agreed upon in the contract and shall be granted for every progress billing. For construction and related materials under government - controlled prices, the computation of price escalation shall be reckoned from the actual date of bidding the project, or the actual date agreed upon in the contract has not been the subject of competitive project.
8. In case the project is behind schedule by more than five percent (5%) from the approved PERT/CPM network on the date when computation of price escalation is scheduled, computation on such portion of the work that should have been, but was not actually, accomplished within the period (in accordance with the PER/CPM network) shall be reckoned on the basis of the escalation rate applicable during the period in which it should have been accomplished. Payment of the computed amount shall not be made until the project activities for the period under consideration as covered by such amount are completed. This shall not in any way affect the final date of completion.
9. Payments for price escalation of work accomplished within the period shall be based on actual escalation amount computed in accordance with appropriate indices provided for in the formulate under this clause or expressly stipulated in the contract.
10. In case of some project where advance payment of mobilization purposes and/ or purchases of supplies and materials is made, it is only fair to the Government that price escalation shall not be made on the items of work or components thereof to which such advance payments are applied, since these monies are receive by the contractor in advance and may be used for the payment of expenditures in connection with the prosecution of the project.

Hence, in calculating price escalation for contracts entered into after the effectivity of these guidelines, no price escalation shall be made for:

- a. That portion of work accomplished during the period corresponding to a value equal to the amount of recoupment of advance payment. For example, if during the 6 -

month-period under consideration, ten percent (10%) of the amount payable to the contract was recoup to recover advance payment, ten percent (10 %) likewise of the price escalation calculated to be otherwise payable shall be deducted from the price escalation.

- b. That amount of materials for which advance payment is made. Usually such advance payment when made is equal to seventy-five percent (75%) of the cost of material purchased therefrom. Since the funds were logically used by the contractor to purchase at the same price, it is not fair to the Government that he should both profit from making such advance purchases and at the same time enjoy interest-free such funds. In those cases where the contractor enjoys such advance payments, an interest charge of one and one-fourth percent (1 - 1/4 %) per month on the outstanding balance, shall be imputed from the time he receives the advance payments, and the equivalent amount be deducted from the next succeeding price escalation payment in lieu of deducting the portion of price escalation corresponding to such materials. No payment of imputed interest charge under this paragraph shall be collected in excess of price escalation payment for the period.

CI 12.2 - FLUCTUATION FACTOR

1. The Fluctuation Factor, K, is the coefficient representing the increase or decrease of the unit price as a result of price fluctuation. The value of the K varies for each item of work and is represented by the following:

$$K = a + b (X_i/X_o) + c (Y_i/Y_o) + d (Z_i/Z_o) + \dots n (N_i/N_o)$$

Where:

a - is a 0.15 fixed coefficients representing contractor's profit, and other non-adjustable items.

b,c,d,...n - are the coefficients representing the proportionate value of each pay item to the total. $b + c + d + \dots + n = 0.85$.

$X_i, Y_i, Z_i, \dots N_i$ - are the current price indices representing costs of labor, materials and other contract items after bidding or, where the contract has not been the subject of competitive bidding, after the date agreed upon in the contract, and every month thereafter.

$X_o, Y_o, Z_o, \dots N_o$ - are the price indices representing costs of labor, materials and other contract items at the date of the bidding or, where the contract has not been the subject of competitive bidding, at the date agreed upon in the contract.

The sum of $a + b + c + \dots + n$ must be equal to 1 (100%)

2. The fluctuation factor and its application in the parametric formula shall include among others, any or combination of the following:

- 1) Common earthwork fluctuation factor for clearing and grubbing, subgrade preparation, common excavation, common borrow, embankment construction, common fill or backfill and select borrow.

$$K_1 = 0.15 + 0.05 (L_i/L_o) + 0.60 (E_i/E_o) + 0.20 (F_i/F_o)$$

- 2) Rock excavation fluctuation factor

$$K2 = 0.15 + 0.08 (Li/Lo) + 0.27 (Zi/Zo) + 0.12 (Fi/Fo) + 0.38 (Ei/Eo)$$
- 3) Structural excavation fluctuation factor

$$K3 = 0.15 + 0.08 (Li/Lo) + 0.19 (Fi/Fo) + 0.58 (Ei/Eo)$$
- 4) Structural BACKfill fluctuation factor

$$K4 = 0.15 + 0.15 (Li/Lo) + 0.17 (Fi/Fo) + 0.53 (Ei/Eo)$$
- 5) Daywork fluctuation factor for equipment

$$K5 = 0.15 + 0.05 (Li/Lo) + 0.20 (Fi/Fo) + 0.60 (Ei/Eo)$$
- 6) Daywork fluctuation factor for labor

$$K6 = 0.15 + 0.85 (Li/Lo)$$
- 7) Graded subbase or base course fluctuation factor using screened or processed aggregate, granular materials, crushed adobe or the like

$$K7 = 0.15 + 0.02 (Li/Lo) + 0.62 (Bi/Bo) + 0.05 (Fi/Fo) + 0.16 (Ei/Eo)$$
- 8) Asphaltic materials fluctuation factor for prime or tack coat

$$K8 = 0.15 + 0.01 (Li/Lo) + 0.82 (Ai/Ao) + 0.01 (Fi/Fo) + 0.01 (Ei/Eo)$$
- 9) Asphaltic concrete fluctuation factor for bituminous wearing or surface course

$$K9 = 0.15 + 0.01 (Li/Lo) + 0.62 (Ai/Ao) + 0.12 (Bi/Bo) + 0.03 (Fi/Fo) + 0.07 (Ei/Eo)$$
- 10) Portland cement concrete pavement (PCCP) fluctuation factor

$$K10 = 0.15 + 0.02 (Li/Lo) + 0.47 (Ci/Co) + 0.21 (Bi/Bo) + 0.02 (Di/Do) + 0.03 (Fi/Fo) + 0.10 (Ei/Eo)$$
- 11) Concrete fluctuation factor for curb, gutter and sidewalk

$$K11 = 0.15 + 0.06 (Li/Lo) + 0.36 (Ci/Co) + 0.16 (Bi/Bo) + 0.03 (Di/Do) + 0.06 (Fi/Fo) + 0.18 (Ei/Eo)$$
- 12) Reinforced concrete structures fluctuation factor for bridge, culvert, retaining wall, bulkhead, piles, precast, parapet wall, railing, footing, columns, supporting slab and beam.

$$K12 = 0.15 + 0.03 (Li/Lo) + 0.28 (Ci/Co) + 0.13 (Bi/Bo) + 0.03 (Di/Do) + 0.25 (Ri/Ro) + 0.03 (Fi/Fo) + 0.10 (Ei/Eo)$$
- 13) Reinforced concrete structures fluctuation factor for headwall, catchbasin, manhole, drop inlet concrete post.

$$K13 = 0.15 + 0.21 (Li/Lo) + 0.25 (Ci/Co) + 0.03 (Di/Do) + 0.19 (Ri/Ro) + 0.09 (Bi/Bo) + 0.02 (Fi/Fo) + 0.06 (Ei/Eo)$$

14) Reinforced concrete pipe (RCP) or culvert pipe (RCCP) fluctuation factor

$$K14 = 0.15 + 0.05 (Li/Lo) + 0.61 (Qi/Qo) + 0.02 (Ci/Co) + 0.01 (Bi/Bo) + 0.04 (Fi/Fo) + 0.12 (Ei/Eo)$$

15) Non-reinforced concrete pipes fluctuation factor

$$K15 = 0.15 + 0.13 (Li/Lo) + 0.69 (Qi/Qo) + 0.02 (Ci/Co) + 0.01 (Bi/Bo)$$

16) Concrete for structure Class A or B fluctuation factor

$$K16 = 0.15 + 0.03 (Li/Lo) + 0.41 (Ci/Co) + 0.19 (Bi/Bo) + 0.09 (Di/Do) + 0.04 (Fi/Fo) + 0.09 (Ei/Eo)$$

17) Grouted rip-rap or stone masonry fluctuation factor

$$K17 = 0.15 + 0.18 (Li/Lo) + 0.27 (Ci/Co) + 0.13 (Bi/Bo) + 0.07 (Fi/Fo) + 0.20 (Ei/Eo)$$

18) Concrete masonry (CHB) fluctuation factor

$$K18 = 0.15 + 0.33 (Li/Lo) + 0.30 (Qi/Qo) + 0.13 (Ci/Co) + 0.04 (Bi/Bo) + 0.01 (Fi/Fo) + 0.04 (Ei/Eo)$$

19) Reinforcing steel bars fluctuation factor

$$K19 = 0.15 + 0.06 (Li/Lo) + 0.67 (Ri/Ro) + 0.04 (Fi/Fo) + 0.08 (Ei/Eo)$$

20) Structural steel works fluctuation factor

$$K20 = 0.15 + 0.03 (Li/Lo) + 0.71 (Si/So) + 0.03 (Fi/Fo) + 0.08 (Ei/Eo)$$

21) Demolition of concrete structure fluctuation factor

$$K21 = 0.15 + 0.07 (Li/Lo) + 0.20 (Fi/Fo) + 0.58 (Ei/Eo)$$

22) Demolition of concrete structure fluctuation factor

$$K21 = 0.15 + 0.07 (Li/Lo) + 0.20 (Fi/Fo) + 0.58 (Ei/Eo)$$

23) Demolition of PCCP strip fluctuation factor

$$K22 = 0.15 + 0.09 (Li/Lo) + 0.19 (Fi/Fo) + 0.57 (Ei/Eo)$$

24) Demolition AC pavement strip fluctuation factor

$$K23 = 0.15 + 0.05 (Li/Lo) + 0.20 (Fi/Fo) + 0.60 (Ei/Eo)$$

25) Painting fluctuation factor with use of equipment

$$K24 = 0.15 + 0.28 (Li/Lo) + 0.48 (Ni/No) + 0.02 (Fi/Fo) + 0.07 (Ei/Eo)$$

26) Painting fluctuation factor using labor only

$$K25 = 0.15 + 0.19 (Li/Lo) + 0.66 (Ni/No)$$

- 27) Wood structure fluctuation factor for falsework, temporary wood bridge, wood guardrail

$$K26 = 0.15 + 0.19 (Li/Lo) + 0.66 (Di/Do) + 0.04 (Fi/Fo) + 0.12 (Ei/Eo)$$

- 28) Carpentry works fluctuation factor

$$K27 = 0.15 + 0.15 (Li/Lo) + 0.62 (Di/Do) + 0.02 (Fi/Fo) + 0.06 (Ei/Eo)$$

- 29) Cast and/or galvanized iron pipes fluctuation factor

$$K28 = 0.15 + 0.02 (Li/Lo) + 0.78 (Li/Lo) + 0.01 (Fi/Fo) + 0.04 (Ei/Eo)$$

- 30) Steel pipes fluctuation factor

$$K29 = 0.15 + 0.03 (Li/Lo) + 0.69 (li/lo) + 0.03 (Fi/Fo) + 0.10 (Ei/Eo)$$

- 31) Asbestos cement pipes fluctuation factor

$$K30 = 0.15 + 0.02 (Li/Lo) + 0.77 (Ki/Ko) + 0.02 (Fi/Fo) + 0.04 (Ei/Eo)$$

- 32) PVC pipes fluctuation factor

$$K31 = 0.15 + 0.07 (Li/Lo) + 0.69 (Ji/Jo) + 0.02 (Fi/Fo) + 0.07 (Ei/Eo)$$

- 33) Gate valves and fire hydrants fluctuation factor

$$K32 = 0.15 + 0.04 (Li/Lo) + 0.77 (li/lo) + 0.01 (Fi/Fo) + 0.03 (Ei/Eo)$$

- 34) Check valves fluctuation factor

$$K33 = 0.15 + 0.03 (Li/Lo) + 0.79 (Pi/Po) + 0.01 (Fi/Fo) + 0.02 (Ei/Eo)$$

- 35) Water service connection fluctuation factor

$$K34 = 0.15 + 0.10 (Li/Lo) + 0.40 (Pi/Po) + 0.35 (Ji/Jo)$$

- 36) Plumbing fixtures fluctuation factor

$$K35 = 0.15 + 0.08 (Li/Lo) + 0.77 (Pi/Po)$$

- 37) Plain and corrugated G.I. sheets fluctuation factor

$$K36 = 0.15 + 0.09 (Li/Lo) + 0.76 (Wi/Wo)$$

- 38) Cement plaster fluctuation factor

$$K37 = 0.15 + 0.38 (Li/Lo) +) 0.37 (Ci/Co) + 0.10 (Bi/Bo)$$

- 39) Marble floor finish fluctuation factor

$$K38 = 0.15 + 0.07 (Li/Lo) + 0.03 (Ci/Co) + 0.01 (Bi/Bo) + 0.65 (Xi/Xo) + 0.03 (Fi/Fo) + 0.06 (Ei/Eo)$$

40) Glazed and ceramic tiles fluctuation factor

$$K39 = 0.15 + 0.12 (Li/Lo) + 0.66 (Xi/Xo) + 0.05 (Ci/Co) + 0.02 (Bi/Bo)$$

41) Window frames and grills fluctuation factor

$$K40 = 0.15 + 0.09 (Li/Lo) + 0.53 (Si/So) + 0.06 (Fi/Fo) + 0.17 (Ei/Eo)$$

42) Glazing fluctuation factor

$$K41 = 0.15 + 0.03 (Li/Lo) + 0.82 (Gi/Go)$$

43) Electrical rough-in fluctuation factor

$$K42 = 0.15 + 0.16 (Li/Lo) + 0.69 (Vi/Vo)$$

44) Lighting fixtures & devices fluctuation factor

$$K43 = 0.15 + 0.13 (Li/Lo) + 0.72 (Ui/Uo)$$

45) PVC waterstop (9") fluctuation factor

$$K44 = 0.15 + 0.03 (Li/Lo) + 0.82 (Ji/Jo)$$

46) Electrical wood pole fluctuation factor

$$K45 = 0.15 + 0.01 (Li/Lo) + 0.73 (Di/Do) + 0.03 (Fi/Fo) + 0.08 (Ei/Eo)$$

47) Wood crossarm fluctuation factor

$$K46 = 0.15 + 0.11 (Li/Lo) + 0.74 (Di/Do)$$

48) Lightning arrester (3,000v to 15,000v) fluctuation factor

$$K47 = 0.15 + 0.09 (Li/Lo) + 0.76 (Ti/To)$$

49) Transformers (10KVA to 50KVA) fluctuation factor

$$K48 = 0.15 + 0.01 (Li/Lo) + 0.81 (Ti/To) + 0.01 (Fi/Fo) + 0.02 (Ei/Eo)$$

50) Bare copper wire fluctuation factor

$$K49 = 0.15 + 0.04 (Li/Lo) + 0.79 (Ti/To) + 0.01 (Fi/Fo) + 0.01 (Ei/Eo)$$

51) Bare aluminum wire fluctuation factor

$$K50 = 0.15 + 0.13 (Li/Lo) + 0.69 (Ti/To) + 0.01 (Fi/Fo) + 0.02 (Ei/Eo)$$

52) Dredging fluctuation factor

$$K51 = 0.15 + 0.06 (Li/Lo) + 0.20 (Fi/Fo) + 0.59 (Ei/Eo)$$

- 53) General construction fluctuation factor (for others not covered by any or combination of the above 51 fluctuation factors.)

$$K52 = 0.15 + 0.85 (Mi/Mo)$$

Where:

Mi - current general construction price index figure

Mo - base general construction price index figure

Li - current labor index figure

Lo - base labor index figure

Ei - current equipment index figure

Eo - base equipment index figure

Ai - current asphaltic material price index figure

Ao - base asphaltic material price index figure

Bi - current aggregates material price index figure

Bo - base aggregates material price index figure

Ci - current cement material price index figure

Co - base cement material price index figure

Di - current lumber material price index figure

Do - base lumber material price index figure

Fi - current automotive fuel price index figure

Fo - base automotive fuel price index figure

Gi - current glass and glazing material price index figure

Go - base glass and glazing material price index figure

Hi - current hardware material price index figure

Ho - base hardware material price index figure

li - current galvanized and/or cast iron pipe (Plumbing) material price index figure

lo - base galvanized and/or cast iron pipe (Plumbing) material price index figure

Ji - current polyvinyl chloride pipe (Plumbing) material price index figure

Jo - base polyvinyl chloride pipe (Plumbing) material price index figure

Ki - current asbestos cement pipe (Plumbing) material price index figure

Ko - base asbestos cement pipe (Plumbing) material price index figure

Ni - current paint material price index figure

No - base paint material price index figure

Pi - current plumbing fixture material price index figure

Po - base plumbing fixture material price index figure

Qi - current concrete products material price index figure

Qo - base concrete products material price index figure

Ri - current reinforcing steel material price index figure

Ro - base reinforcing steel material price index figure

Si - current structural steel material price index figure

So - base structural steel material price index figure

Ti - current exterior electrical material price index figure

To - base exterior electrical material price index figure

Ui - current electrical fixtures/devices material price index figure

Uo - base electrical fixtures/devices material price index figure

Vi - current electrical (rough-in) material price index figure

Vo - base electrical (rough-in) material price index figures

Wi - current metal products material price index figure

Wo - base metal products material price index figure

Xi - current tile work material price index figure

Xo - base tile work material price index figure

Zi - current blasting material price index figure

Zo - base blasting material price index figure

3. For future contracts, the Office/Agency/Corporation concerned are authorized to update these formulate provided that such updated formulae shall be spelled out clearly in the contract documents, and provided further that the value of the constant "a" in the factors representing the contractor's profit and other items as indicated in the contract shall be fixed at 0.15.

4. The following Price Indices shall be used:

General construction price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Labor cost index as published by the Department of Labor and Employment.

Equipment index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Asphaltic material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Aggregates material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Cement material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Lumber material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Automotive fuel price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Glass and glazing material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Hardware material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Galvanized and/or cast iron pipe (Plumbing) material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Polyvinyl chloride pipe (Plumbing) material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Asbestos cement pipe (Plumbing) material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Paint material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Plumbing fixture material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Concrete products material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Reinforcing steel material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Structural steel material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Exterior electrical material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Electrical (rough-in) material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Electrical fixtures/devices material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Metal product material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Tile work material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

Blasting material price index as published by the National Statistics Office (NSO) or other appropriate/authorized government agency.

In the absence of any price index for a specified adjustable item, the price index of the nearest related item shall be used.

5. Price escalation shall be calculated for every whole month and the average fluctuation factor for the month under consideration shall be used. In case the initial month of the contract duration is less than full a month, the average fluctuation factor for that entire month shall be used; in case the last month of the contract duration is less than one half of a full month, the fluctuation factor for the preceding month shall be used and in case it is more than one half of a full month, the fluctuation factor for that month shall be used. The applicable fluctuation factor shall then be applied to the original contract unit price of the corresponding work item and the formula would be as follows;

Where $K > 1.05$, $P = P_o (K - 0.05)$

Where $0.95 \leq K \leq 1.05$, $P = P_o$

Where $K < 0.95$; $P = P_o (K + 0.05)$

Where:

P - is the escalated bid/unit price

P_o - is the original bid/unit price

K - is the fluctuation factor

6. For the foreign currency component of the contract prices, price escalations shall be computed using the parametric formulae in Section CI 12.2-5 where:

P - is the escalated unit price of foreign currency component or escalated amount of foreign currency component.

P_o - is the original unit price of foreign currency component or original amount of foreign currency component

K - is the fluctuation factor computed using the price indices in the foreign country source of the specified adjustable item or the nearest related price index.

In case of the absence of the specific price index the payable price escalation shall be converted to local currency at the time of the accomplishment of the work.

7. In the computation of price escalation for the first partial progress payment, the applicable fluctuation (K) factor to be adopted shall be the average of the values of the specific fluctuation factors from the date of the issuance of Notice to Proceed to the first partial billing, wherein the base price indices are those at the month of bidding for contracts subjected to competitive bidding or at the month agreed upon in the contract when the contract has not been the subject of competitive bidding. For construction and related materials under government controlled prices, the base price indices shall be those at the actual date of bidding of the project, or the actual date agreed upon in the contract when the contract has not been the subject of competitive bidding.

CI 13 - ACCREDITATION OF TESTING LABORATORIES

1. To help ensure the quality of materials being used in infrastructure projects, the Bureau of Research and Standards (BRS) of the DPWH or Department of Science and Technology (DOST) shall accredit, in accordance with industry guidelines, the testing laboratories whose services are engaged or to be engaged in infrastructure projects. all government infrastructure project owners must accept results of material test(s) coming only from DOST/BRS - accredited laboratories.

IV.

PE - EVALUATION OF CONTRACTORS PERFORMANCE

PE 1 SUBJECT AND SCOPE

All contractors undertaking projects with the government, regardless of contract amount and funding source and whose contracts are awarded either thru bidding or negotiation, shall have their performance evaluated by offices/agencies/corporations concerned. This evaluation shall be done during construction and upon completion of each government project.

PE 2 EVALUATION GUIDELINES

All offices/agencies/corporations concerned are mandated to adopt the CPES implementing guidelines as approved by the NEDA INFRACOM. While the CPES is specific for road, bridge, housing, building, port and harbor projects, agencies concerned may formulate and adopt their own implementing guidelines specific to project types other than those above-mentioned but along the same line with the approved CPES, provided the NEDA-INFRACOM has no objection for the adoption of the formulated guidelines, and provided further that the formulated guidelines are made known to all prospective bidders.

PE 3 - IMPLEMENTATION MECHANISM FOR CPES

1. Each agency shall establish a CPES Implementing Unit (IU) which shall be responsible for CPES guidelines implementation, including but not limited to the supervision of performance evaluators accredited by the CIAP.

PE 4 SUBMISSION OF EVALUATION RESULTS

All offices/agencies/corporations concerned shall submit the results of their performance evaluation to the CIAP within a week after the conduct of the final evaluation.

PE 5 UTILIZATION OF EVALUATION RESULTS

The CIAP shall consolidate all of the evaluation results received and shall disseminate the same to all offices/agencies/corporations concerned. Such data shall be used, among others, in the prequalification and blacklisting of construction firms, and in adopting measure to further improve performance of contractors in the prosecution of government projects.

V.

ADMINISTRATIVE SANCTIONS

1. The administrative sanctions as provided for under the uniform guidelines for blacklisting constructors involved in public construction (CIAP Blacklisting Guidelines) shall be imposed for offenses/violations committed by contractors during prequalification, bidding, award and contract implementation.
2. The imposition of administrative sanctions in this section shall be pursuant to the CIAP blacklisting guidelines approved by the NEDA-INFRACOM on 14 august 1996 and by the NEDA Board on 17 September 1996. The CIAP Blacklisting Guidelines shall, however, be subject to review and revision by the CIAP Inter-Agency Committee (IAC) on blacklisting amendments/revisions to such guidelines shall be approved by the CIAP board and become effective fifteen (15) days after filing of the same with the office of the national administrative register pursuant to Administrative Code of 1987.
3. Violation of the provisions of the IRR of PD 1594 will subject the erring government official/employee to the sanctions provided under existing laws particularly Republic Acts 3019 (known as the "Anti-Graft and Corrupt Practices Act") and 6713 (known as the "Code Of Conduct And Ethical Standards For Public Officials And Employees"), and the Civil Service Law, among others. Complaints against government officials/employees may be filed with the agency head, or if the agency head is the official being complained, with the Office of the President.

VI.

APPLICABILITY

1. These implementing rules and regulations as amended shall apply to all contracts for infrastructure and other construction projects of all government agencies including government-owned or controlled corporations and other instrumentalities that will either be bid out or negotiated including those through sealed canvass or simplified public bidding after ten (10) days from date of dissemination of these amended implementing rules and regulations by the National Economic and Development Authority (NEDA) Committee on Infrastructure (INFRACOM), unless otherwise

specifically provided herein. For contracts bid out before said effectivity date, the previous implementing rules and regulations shall apply. Any violations hereof shall be punishable under existing laws, rules and regulations as may be appropriate. These amended implementing rules and regulations shall not apply to lump sum "Pakyaw" contracts.

The above notwithstanding, nothing in these implementing rules and regulations shall negate any existing and future commitments with respect to the bidding, award and execution of contracts financed partly or wholly with funds from international financial institutions, as well as from bilateral and other similar sources.

PRESIDENTIAL DECREE NO. 1594

PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS

WHEREAS, the present policies, rules and regulations covering government contracts for infrastructure and other construction projects are generally fragmented and have been found to be inadequate to cope with the intricate and complex processes involved;

WHEREAS, there is a need to adopt a comprehensive, uniform, and updated set of policies, guidelines, rules and regulations covering government contracts for infrastructure and other construction projects in order to achieve a more efficient and effective implementation of these projects.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

SECTION 1. Policy Objectives - It is the policy of the government to adopt a set of rules and regulations covering government contracts for infrastructure and other construction projects which shall:

- a. bring about maximum efficiency in project implementation and minimize project cost and contract variations through sound practices in contract management;
- b. promote a healthy partnership between the government and the private sector furthering national development; and
- c. enhance the growth of the local construction industry and optimize the use of indigenous manpower, materials, and other resources.

SECTION 2. Detailed Engineering - No bidding and/or award of contract for a construction project shall be made unless detailed engineering investigations, surveys, and designs for project have been sufficiently carried out in accordance with the standards and specifications to be established under the rules and regulations to be promulgated pursuant to Section 12 of this Decree so as to minimize quantity and cost overruns and underruns, change orders and extra work orders, and unless the detailed engineering documents have been approved by the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be.

SECTION 3. Prequalification of Prospective Contractors - The prospective contractor may be prequalified to offer his bid for a construction project only if he meets the following requirements:

- a. **Legal Requirements** - The prospective contractor must have been licensed as a Contractor for the current year pursuant to Republic Act No. 4066, must have paid his privilege tax to practice or engage in the contracting business for the current year, must comply with Administrative Order No. 66 of the Office of the President of the Philippines, and must comply with other existing pertinent laws, rules and regulations.

- b. Technical Requirements** - The Prospective contractor must meet the following technical requirements to be established in accordance with the rules and regulations to be promulgated pursuant to Section 12 of this Decree, to enable him to satisfactorily prosecute the subject project:
1. Competence and experience of the contractor in managing projects similar to the subject project.
 2. Competence and experience of the contractor's key personnel to be assigned to the subject project.
 3. Availability and commitment of the contractor's equipment to be used for the subject.
- c. Financial Requirements** - The net worth and liquid assets of the prospective contractor must meet the requirements to be promulgated pursuant to Section 12 of this Decree to enable him satisfactorily execute the subject project. The prospective contractor may be allowed to cover the deficiency in the required net worth through a line of credit fully committed to the subject project by a bank or financial institution acceptable to the Ministry concerned.
- d. Filipino Participation** - The Government shall promote a maximum participation of eligible Filipino contractors in all construction projects.

SECTION 4. Bidding - Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provisions of laws and acts on the matter, subject to the approval of the Minister of Public Works, Transportation and Communications, the Ministry of Public Highway, of the Ministry of Energy, as the case may be, if the project cost is less than P 1 Million and the President of the Philippines, upon recommendation of the Minister, if the project cost is P 1 Million or more.

A bidder's bond, in an amount to be established in accordance with the rules and regulations to be promulgated pursuant to Section 12 of this Decree shall accompany the bid to guarantee that the successful bidder shall, within a prescribed period from receipt of the notice of award, enter into contract and furnish the required performance bond for the faithful and complete prosecution of the work specified in the contract documents.

SECTION 5. Award and Contract - The contract may be awarded to the lowest prequalified bidder whose bid as evaluated complies with all the terms and conditions in the call for bid and is the most advantageous to the Government.

To guarantee the faithful performance of the contractor, he shall, prior to the award, post a performance bond, in an amount to be established in accordance with the rules and regulations to be promulgated under Section 12 of this Decree.

All awards and contracts duly executed in accordance with the provisions of this Decree shall be subject to the approval of the Minister of Public Works,

Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be.

SECTION 6. Assignment and Subcontract - The contractor shall not assign, transfer, pledge, subcontract or make any other disposition of the contract or any part of interest therein except with the approval of the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be. Approval of the subcontract shall not relieve the main contractor from any liability or obligations under this contract with the Government nor shall it create any contractual relation between the subcontractor and the Government.

SECTION 7. Responsibility of the Contractor - The contractor shall assume full responsibility for the contract work until its final acceptance by the Government and shall be held responsible for any damage or destruction of works except those occasioned by force majeure.

Except likewise for force majeure, the contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties and the public at the large, as well as the works, equipment, installation and the like to be affected by his construction work.

SECTION 8. Adjustment of Contract Price - Adjustment of contract price for construction projects may be authorized by the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, upon recommendation of the National Economic and Development Authority, if during the effectivity of the contract, the cost of labor, equipment, materials and supplies required for the construction should increase or decrease due to direct acts of the Government. The adjustments of the contract price shall be made using appropriate formulas established in accordance with the rules and regulations to be promulgated under Section 12 of this Decree.

SECTION 9. Change Order and Extra Work Order - A change order or extra work order may be issued only for works necessary for the completion of the project and, therefore, shall be within the general scope of the contract as bid and awarded. All change orders and extra work orders shall be subject to the approval the Minister of Public Works, Transportation and Communications, of the Minister of Public Highways, or the Minister of Energy, as the case may be.

SECTION 10. Inspection and Construction of Contract Work - Inspection of the Contract work shall be made by the Government while such contract work is in progress to ascertain that the completed works comply in all respects with the standards and requirements set forth in the contract documents. Notwithstanding such inspection, the contractor shall be held responsible for the acceptability of the finished works. The contractor shall promptly replace all materials and correct all works determined by the Government as failing to meet contract requirements.

SECTION 11. Government's Right to Take Over Contract Work - The Government may take over the contract work should the contractor abandon the contract work, or unduly delay the prosecution of the contract work, or become insolvent, or assign his assets for the benefit of his creditors, or be adjudged bankrupt, or assign the contract work without written approval by the Government or

violate any condition or term of the contract. In any of these cases, the Government may terminate the employment of the contractor and take over the contract work after giving due notice to the contractor and his sureties.

SECTION 12. Implementing Rules and Regulations - The Minister of Public Works, Transportation and Communications, as the head official, the Minister of Public Highways, the Minister of Energy, and the Director-General of the National Economic and Development Authority, shall jointly promulgate the rules and regulations to implement the provisions of this Decree. Once approved by the President of the Philippines, these implementing rules and regulations shall be applicable to all contracts for infrastructure and other construction projects of all government agencies including government-owned or controlled corporations and other instrumentalities.

SECTION 13. Separability Clause - If any provision of this Decree is held unconstitutional, the other provisions shall remain valid.

SECTION 14. Repealing Clause - All Acts, Charters, Decrees, Letters of Instructions, Executive Orders, Proclamations, rules and regulations, or parts thereof in conflict with the provisions of the Decree are hereby repealed or modified accordingly.

SECTION 15. Effectivity - This Decree shall take effect immediately.

Done in the City of the Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy eight.

(SGD.) **FERDINAND E. MARCOS**
President of the Philippines