# **SECTION II. Instructions to Bidders**

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#### 1. General

#### .....1.1. Scope of Bid

- 1..1 The procuring entity named in the **BDS** (hereinafter referred to as the "Procuring Entity") wishes to receive bids for supply and delivery of the goods as described in Section II. Technical Specifications (hereinafter referred to as the "Goods").
- 1..2 The name, identification, and number of lots specific to this bidding are provided in the <u>BDS</u>. The contracting strategy and basis of evaluation of lots is described in **ITB** Clause 28.

#### .....1.2. Source of Funds

The Procuring Entity has a budget or has applied for or received funds from the Funding Source named in the <u>BDS</u>, and in the amount indicated in the <u>BDS</u>. It intends to apply part of the funds received for the Project, as defined in the <u>BDS</u>, to cover eligible payments under the contract.

#### ......1.3. Corrupt, Fraudulent, Collusive, and Coercive Practices

- - ()a defines, for purposes of this provision, the terms set forth below as follows:
    - ()i "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in RA 3019.
    - ()ii "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
    - ()iii "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.

- ()iv "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
- ()b will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

#### .....1.7. Conflict of Interest

- - ()a A Bidder has controlling shareholders in common with another Bidder;
  - ()b A Bidder receives or has received any direct or indirect subsidy from any other Bidder;
  - ()c A Bidder has the same legal representative as that of another Bidder for purposes of this bid;
  - ()d A Bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder or influence the decisions of the Procuring Entity regarding this bidding process. This will include a firm or an organization who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project if the personnel would be involved in any capacity on the same project;
  - ()e A Bidder submits more than one bid in this bidding process. However, this does not limit the participation of subcontractors in more than one bid; or

- ()f A Bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are the subject of the bid.
- - ()a If the Bidder is an individual or a sole proprietorship, to the Bidder himself;
  - ()b If the Bidder is a partnership, to all its officers and members;
  - ()c If the Bidder is a corporation, to all its officers, directors, and controlling stockholders; and
  - ()d If the Bidder is a joint venture (JV), the provisions of items (a), (b), or (c) of this Clause shall correspondingly apply to each of the members of the said JV, as may be appropriate.

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

# .....1.10. Eligible Bidders

- - ()a Duly licensed Filipino citizens/sole proprietorships;
  - ()b Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
  - ()c Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
  - ()d Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines; and
  - ()e Persons/entities forming themselves into a JV, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%).

- - ()a When a Treaty or International or Executive Agreement as provided in Section 4 of the RA 9184 and its IRR allow foreign bidders to participate;
  - ()b Citizens, corporations, or associations of a country, included in the list issued by the GPPB, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations, or associations of the Philippines;
  - ()c When the Goods sought to be procured are not available from local suppliers; or
  - ()d When there is a need to prevent situations that defeat competition or restrain trade.

- For this purpose, contracts similar to the Project shall be those described in the <u>BDS</u>, and completed within the relevant period stated in the Invitation to Bid and ITB Clause 12.1(a)(iii).
- The NFCC, computed using the following formula, must be at least equal to the ABC to be bid:
  - NFCC = [(Current assets minus current liabilities) (K)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started coinciding with the contract for this Project.

#### Where:

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

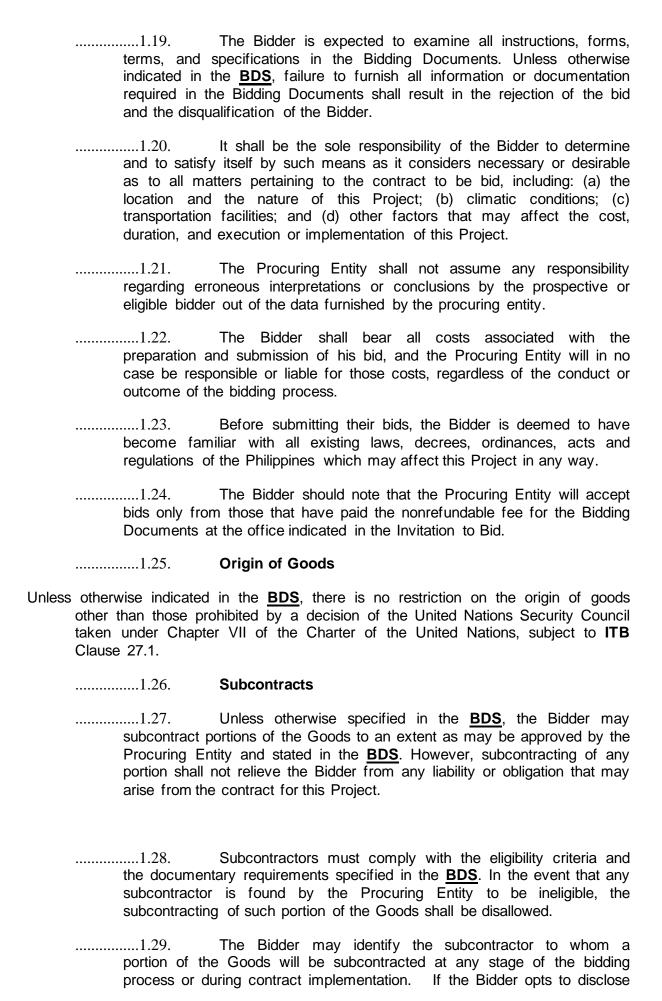
The CLC must be at least equal to ten percent (10%) of the ABC for this Project. If issued by a foreign bank, it shall be confirmed or authenticated

by a Universal or Commercial Bank. In the case of local government units (LGUs), the Bidder may also submit CLC from other banks certified by the *Bangko Sentral ng Pilipinas* (BSP) as authorized to issue such financial instrument.

# .....1.16. Bidder's Responsibilities

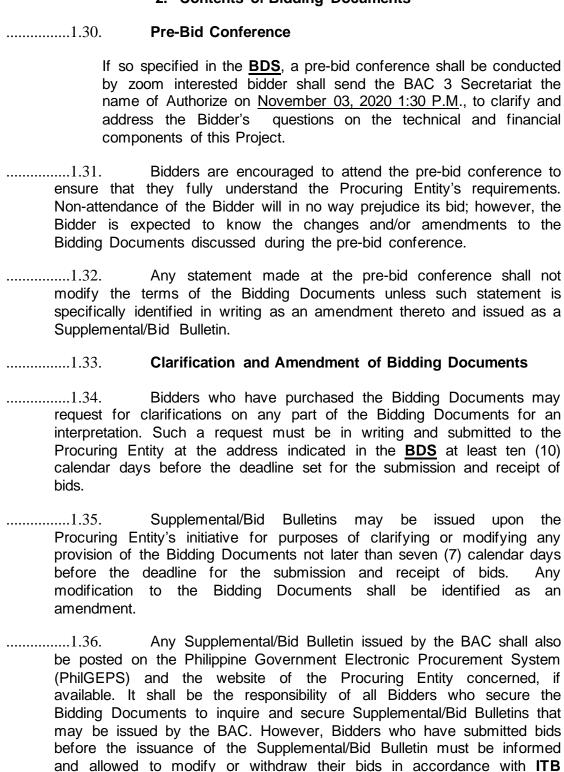
- ......1.18. The Bidder is responsible for the following:
  - ()a Having taken steps to carefully examine all of the Bidding Documents;
  - ()b Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
  - ()c Having made an estimate of the facilities available and needed for the contract to be bid, if any; and
  - ()d Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin(s) as provided under ITB Clause 10.3.
  - ()e Ensuring that it is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB:
  - ()f Ensuring that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
  - ()g Authorizing the Head of the Procuring Entity or its duly authorized representative/s to verify all the documents submitted:
  - ()h Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture;
  - ()i Complying with the disclosure provision under Section 47 of RA 9184 in relation to other provisions of RA 3019; and
  - ()j Complying with existing labor laws and standards, in the case of procurement of services.

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



the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

# 2. Contents of Bidding Documents



### 3. Preparation of Bids

.....1.37. Language of Bid

Clause 23.

The bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation in English certified by the appropriate embassy or consulate in the Philippines, in which case the English translation shall govern for purposes of interpretation of the bid.

# ......1.38. Documents Comprising the Bid: Eligibility and Technical Components (Envelope 1)

- ......1.1. Unless otherwise indicated in the <u>BDS</u>, the first envelope shall contain the following eligibility and technical documents:
  - ()a Eligibility Documents -

#### Class "A" Documents:

- ()i Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration as stated in the **BDS**;
- ()ii Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located;
- ()iii Statement of all its ongoing and completed government and private contracts within the period stated in the <u>BDS</u>, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following:
  - (iii.)1 name of the contract;
  - (iii.)2 date of the contract;
  - (iii.)3 kinds of Goods:
  - (iii.)4 amount of contract and value of outstanding contracts;
  - (iii.)5 date of delivery; and
  - (iii.)6 end-user's acceptance or official receipt(s) issued for the contract, if completed.
- ()iv Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission;
- ()v NFCC computation or CLC in accordance with **ITB** Clause 5.5; and

# Class "B" Document:

()vi If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

#### ()b Technical Documents -

- ()i Bid security in accordance with **ITB** Clause 18. If the Bidder opts to submit the bid security in the form of:
  - (i.1) a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or
  - (i.2) a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;
- ()ii Conformity with technical specifications, as enumerated and specified in Sections VI and VII of the Bidding Documents; and
- ()iii Sworn statement in accordance with Section 25.2(a)(iv) of the IRR of RA 9184 and using the form prescribed in Section VIII. Bidding Forms.

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- ......1.3. Unless otherwise stated in the **BDS**, the financial component of the bid shall contain the following:
  - ()a Financial Bid Form, which includes bid prices and the bill of quantities and the applicable Price Schedules, in accordance with ITB Clauses 15.1 and 15.4:
  - ()b If the Bidder claims preference as a Domestic Bidder or Domestic Entity, a certification from the DTI, SEC, or CDA issued in accordance with ITB Clause 27; and
  - ()c Any other document required in the BDS.
- ......1.4. Unless otherwise stated in the **BDS**, all bids that exceed the ABC shall not be accepted.

#### .....1.5. Alternative Bids

Alternative Bids shall be rejected. For this purpose, alternative bid is an offer made by a Bidder in addition or as a substitute to its original bid which may be included as part of its original bid or submitted separately therewith for purposes of bidding. A bid with options is considered an alternative bid regardless of

whether said bid proposal is contained in a single envelope or submitted in two (2) or more separate bid envelopes.

#### .....1.6. Bid Prices

- ......1.7. The Bidder shall complete the appropriate Price Schedules included herein, stating the unit prices, total price per item, the total amount and the expected countries of origin of the Goods to be supplied under this Project.

- - ()a For Goods offered from within the Procuring Entity's country:
    - ()i The price of the Goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable:
      - (i.1) on the components and raw material used in the manufacture or assembly of Goods quoted ex works or ex factory; or
      - (i.2) on the previously imported Goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf and any Procuring Entity country sales and other taxes which will be payable on the Goods if the contract is awarded.
    - ()ii The price for inland transportation, insurance, and other local costs incidental to delivery of the Goods to their final destination.
    - ()iii The price of other (incidental) services, if any, listed in the **BDS**.
  - ()b For Goods offered from abroad:

- ()i Unless otherwise stated in the BDS, the price of the Goods shall be quoted DDP with the place of destination in the Philippines as specified in the BDS. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible country. Similarly, the Bidder may obtain insurance services from any eligible source country. ()ii The price of other (incidental) services, if any, listed in the BDS. .....1.11. Prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation or price escalation on any account, unless otherwise specified in the BDS. A bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB Clause 24. .....1.12. All bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances as indicated in the BDS and specified in the GCC and its corresponding SCC provision. .....1.13. **Bid Currencies** Prices shall be quoted in the following currencies: .....1.14. For Goods that the Bidder will supply from within the Philippines, the prices shall be quoted in Philippine Pesos. For Goods that the Bidder will supply from outside the Philippines, the prices may be quoted in the currency(ies) stated in the BDS. However, for purposes of bid evaluation, bids denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate as published in the BSP reference rate bulletin on the day of the bid opening. If so allowed in accordance with ITB Clause 16.1, the
- .....1.15. Procuring Entity for purposes of bid evaluation and comparing the bid prices will convert the amounts in various currencies in which the bid price is expressed to Philippine Pesos at the foregoing exchange rates.
- .....1.16. Unless otherwise specified in the BDS, payment of the contract price shall be made in Philippine Pesos.

#### **Bid Validity** .....1.17.

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- .....1.18. Bids shall remain valid for the period specified in the BDS which shall not exceed one hundred twenty (120) calendar days from the date of the opening of bids.
- In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. The bid security described in ITB Clause 18 should also be extended corresponding to the extension of the bid validity period at

the least. A Bidder may refuse the request without forfeiting its bid security, but his bid shall no longer be considered for further evaluation and award. A Bidder granting the request shall not be required or permitted to modify its bid.

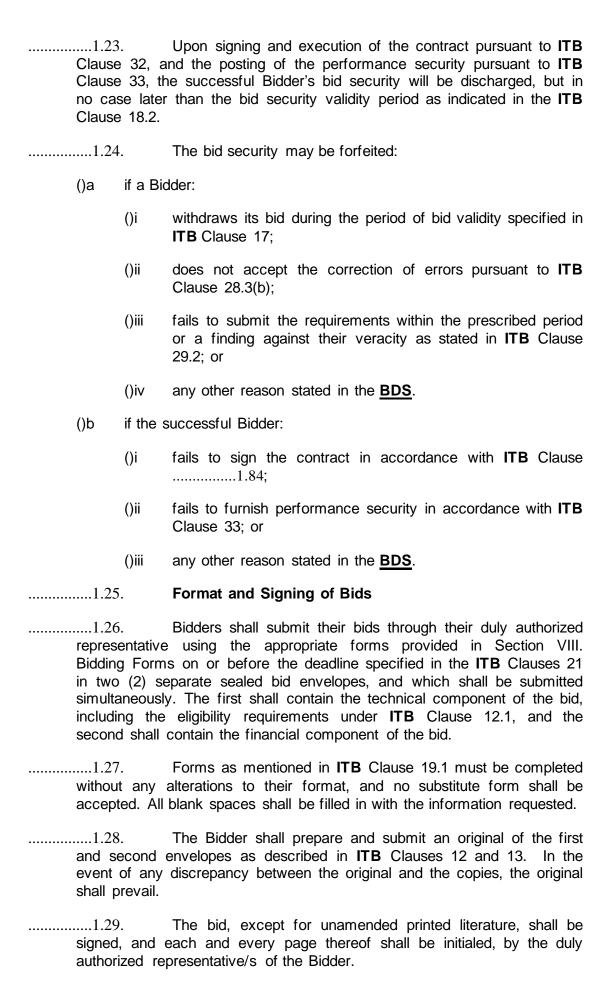
# .....1.20. Bid Security

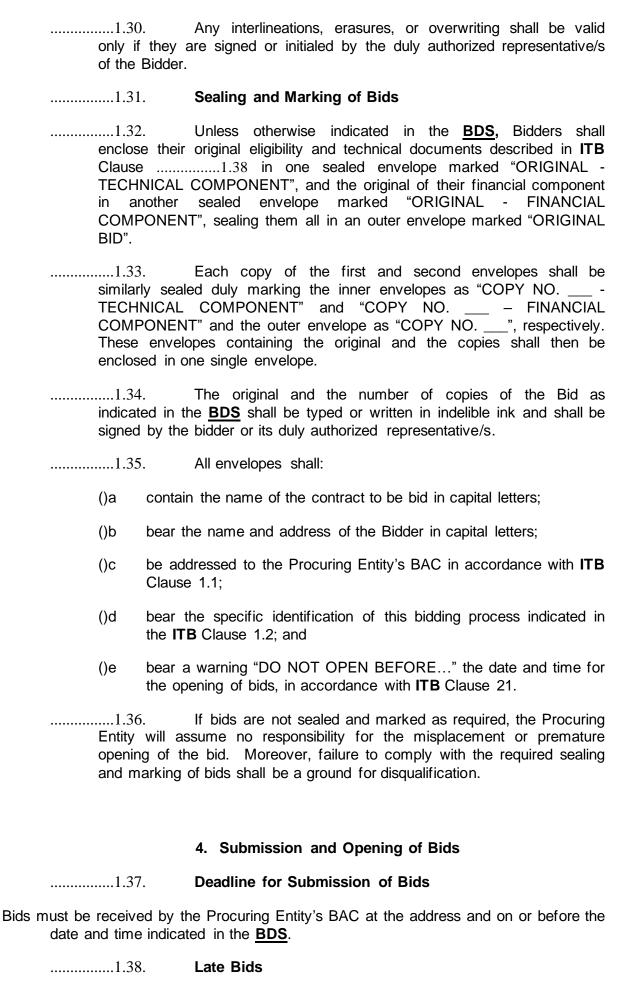
The bid security, shall include the bid Securing Declaration and at least one (1) other form, the amount of which shall be equal to a percentage of the ABC in accordance with the following schedule:

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

For biddings conducted by LGUs, the Bidder may also submit bid securities in the form of cashier's/manager's check, bank draft/guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial statement.

- ......1.21. The bid security should be valid for the period specified in the <u>BDS</u>. Any bid not accompanied by an acceptable bid security shall be rejected by the Procuring Entity as non-responsive.



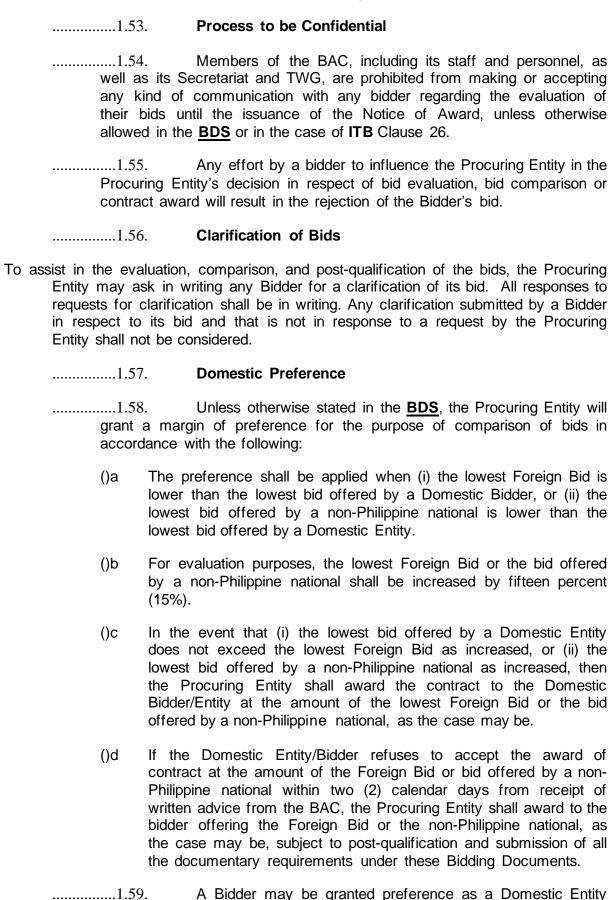


Any bid submitted after the deadline for submission and receipt of bids prescribed by the Procuring Entity, pursuant to ITB Clause 21, shall be declared "Late" and shall not be accepted by the Procuring Entity. .....1.39. Modification and Withdrawal of Bids .....1.40. The Bidder may modify its bid after it has been submitted; provided that the modification is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Bidder shall not be allowed to retrieve its original bid, but shall be allowed to submit another bid equally sealed, properly identified, linked to its original "TECHNICAL MODIFICATION" bid marked as or "FINANCIAL MODIFICATION" and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened. .....1.41. A Bidder may, through a Letter of Withdrawal, withdraw its bid after it has been submitted, for valid and justifiable reason; provided that the Letter of Withdrawal is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. Bids requested to be withdrawn in accordance with ITB .....1.42. Clause 23.1 shall be returned unopened to the Bidders. A Bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped by the BAC before the deadline for submission and receipt of bids. A Bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract. .....1.43. No bid may be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Financial Bid Form. Withdrawal of a bid during this interval shall result in the forfeiture of the Bidder's bid security, pursuant to criminal sanctions as prescribed by RA 9184 and its IRR. .....1.44. Opening and Preliminary Examination of Bids The BAC shall open the first bid envelopes of Bidders in public as specified in the BDS to determine each Bidder's compliance with the documents prescribed in ITB Clause 12. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-"pass/fail" criterion. If a bidder submits the required discretionary document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed". .....1.46. after determining compliance **Immediately** with the requirements in the first envelope, the BAC shall forthwith open the

second bid envelope of each remaining eligible bidder whose first bid

envelope was rated "passed". The second envelope of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC unless otherwise provided in ITB Clause 13.2, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.

## 5. Evaluation and Comparison of Bids

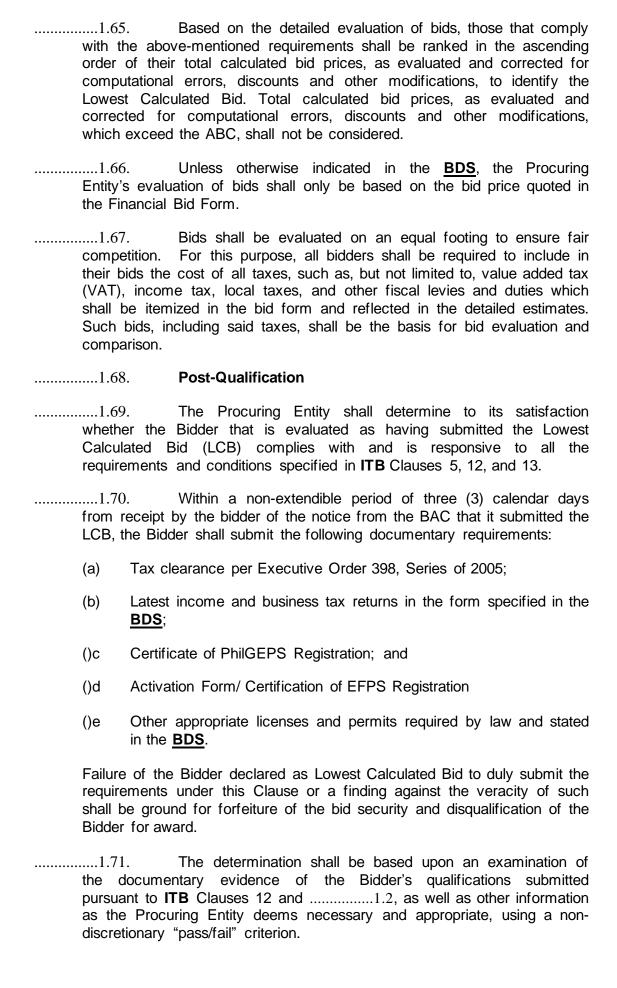


subject to the certification from the DTI (in case of sole proprietorships), SEC (in case of partnerships and corporations), or CDA (in case of

cooperatives) that the (a) sole proprietor is a citizen of the Philippines or the partnership, corporation, cooperative, or association is duly organized under the laws of the Philippines with at least seventy five percent (75%) of its interest or outstanding capital stock belonging to citizens of the Philippines, (b) habitually established in business and habitually engaged in the manufacture or sale of the merchandise covered by his bid, and (c) the business has been in existence for at least five (5) consecutive years prior to the advertisement and/or posting of the Invitation to Bid for this Project.

# ......1.61. Detailed Evaluation and Comparison of Bids

- ......1.63. The Lowest Calculated Bid shall be determined in two steps:
  - ()a The detailed evaluation of the financial component of the bids, to establish the correct calculated prices of the bids; and
  - ()b The ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the Lowest Calculated Bid.
- ......1.64. The Procuring Entity's BAC shall immediately conduct a detailed evaluation of all bids rated "passed," using non-discretionary pass/fail criteria. Unless otherwise specified in the **BDS**, the BAC shall consider the following in the evaluation of bids:
  - ()a Completeness of the bid. Unless the ITB specifically allows partial bids, bids not addressing or providing all of the required items in the Schedule of Requirements including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Procuring Entity; and
  - ()b <u>Arithmetical corrections.</u> Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications, if allowed in the <u>BDS</u>. Any adjustment shall be calculated in monetary terms to determine the calculated prices.



#### .....1.75. Reservation Clause

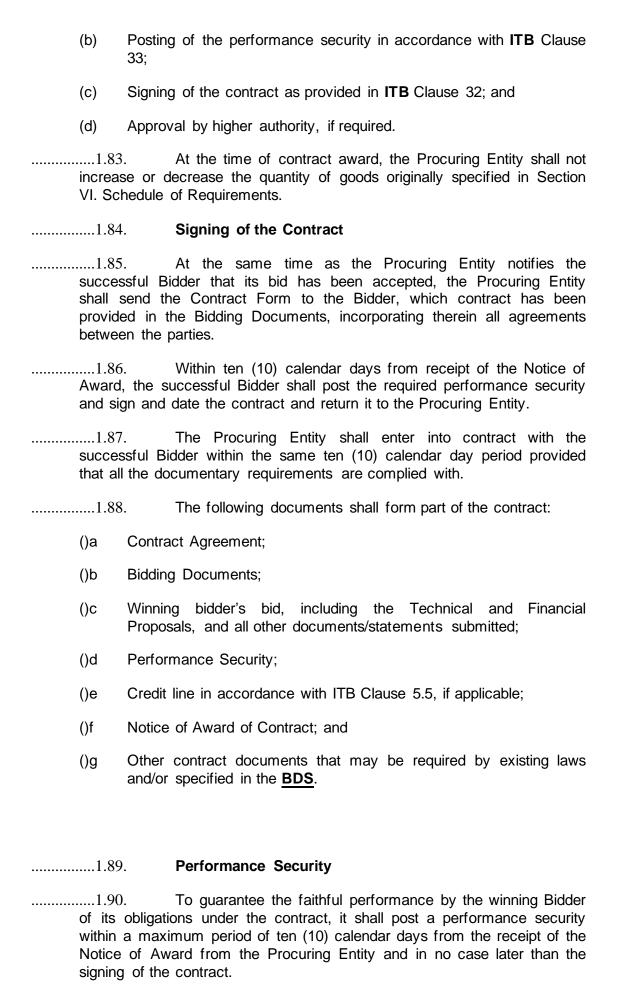
- ......1.77. Based on the following grounds, the Procuring Entity reserves the right to reject any and all bids, declare a Failure of Bidding at any time prior to the contract award, or not to award the contract, without thereby incurring any liability, and make no assurance that a contract shall be entered into as a result of the bidding:
  - ()a If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
  - ()b If the Procuring Entity's BAC is found to have failed in following the prescribed bidding procedures; or
  - ()c For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP as follows:

- ()i If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity;
- ()ii If the project is no longer necessary as determined by the head of the procuring entity; and
- ()iii If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.
- ......1.78. In addition, the Procuring Entity may likewise declare a failure of bidding when:
  - ()a No bids are received;
  - ()b All prospective bidders are declared ineligible;
  - ()c All bids fail to comply with all the bid requirements or fail postqualification; or
  - ()d The bidder with the Lowest Calculated Responsive Bid (LCRB) refuses, without justifiable cause to accept the award of contract, and no award is made.

#### 6. Award of Contract

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- - (a) Submission of the valid JVA, if applicable, within ten (10) calendar days from receipt by the Bidder of the notice from the BAC that the Bidder has the LCRB:



Form of Performance Security	Amount of Performance Security If to Percentage of the Total Contract Price)
()a Cash or cashier's/manager's check issued by a Universal or Commercial Bank.      ()b Bank draft/guarantee or	
irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	Five percent (5%)
()c Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security; and/or	Thirty percent (30%)
()d Any combination of the foregoing.	rtionate to share of form with respect to total amount of security

Bidder passed post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement.

#### .....1.93. **Notice to Proceed**