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 **BDS**. 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 **BDS**, and in the amount indicated in the **BDS**. It intends to apply part of the funds received for the Project, as defined in the **BDS**, to cover eligible payments under the contract.

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

.....1.4. The Procuring Entity as well as the bidders and suppliers shall observe the highest standard of ethics during the procurement and execution of the contract. In pursuance of this policy, the Procuring Entity:

()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.

.....1.5. Further, the Procuring Entity will seek to impose the maximum civil, administrative, and/or criminal penalties available under applicable laws on individuals and organizations deemed to be involved in any of the practices mentioned in **ITB** Clause 3.1(a).

.....1.6. Furthermore, the Funding Source and the Procuring Entity reserve the right to inspect and audit records and accounts of a bidder or supplier in the bidding for and performance of a contract themselves or through independent auditors as reflected in the **GCC** Clause 3.

.....1.7. **Conflict of Interest**

.....1.8. All Bidders found to have conflicting interests shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (f) below:

()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.

.....1.9. In accordance with Section 47 of the IRR of RA 9184, all Bidding Documents shall be accompanied by a sworn affidavit of the Bidder that it is not related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), members of the Technical Working Group (TWG), members of the BAC Secretariat, the head of the Project Management Office (PMO) or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. On the part of the Bidder, this Clause shall apply to the following persons:

()a If the Bidder is an individual or a sole proprietorship, to the Bidder himself;

()b If the Bidder is a partnership, to all its officers and members;

()c If the Bidder is a corporation, to all its officers, directors, and controlling stockholders; 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**

.....1.11. Unless otherwise indicated in the **BDS**, the following persons shall be eligible to participate in this bidding:

()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%).

.....1.12. Foreign bidders may be eligible to participate when any of the following circumstances exist, as specified in the **BDS**:

()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.

.....1.13. Government corporate entities may be eligible to participate only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the GOP or the Procuring Entity.

.....1.14. Unless otherwise provided in the **BDS**, the Bidder must have completed at least one contract similar to the Project the value of which, adjusted to current prices using the National Statistics Office consumer price index, must be at least equivalent to a percentage of the ABC stated in the **BDS**.

For this purpose, contracts similar to the Project shall be those described in the **BDS**, and completed within the relevant period stated in the Invitation to Bid and **ITB** Clause 12.1(a)(iii).

.....1.15. Unless otherwise provided in the **BDS**, the Bidder must submit a computation of its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial Bank to extend a credit line in its favor if awarded the contract for this Project (CLC).

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**

.....1.17. The Bidder or its duly authorized representative shall submit a sworn statement in the form prescribed in Section VIII. Bidding Forms as required in **ITB** Clause 12.1(b)(iii).

.....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.

.....1.19. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Unless otherwise indicated in the **BDS**, failure to furnish all information or documentation required in the Bidding Documents shall result in the rejection of the bid and the disqualification of the Bidder.

.....1.20. It shall be the sole responsibility of the Bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of this Project; (b) climatic conditions; (c) transportation facilities; and (d) other factors that may affect the cost, duration, and execution or implementation of this Project.

.....1.21. The Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity.

.....1.22. The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

.....1.23. Before submitting their bids, the Bidder is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect this Project in any way.

.....1.24. The Bidder should note that the Procuring Entity will accept bids only from those that have paid the nonrefundable fee for the Bidding Documents at the office indicated in the Invitation to Bid.

.....1.25. **Origin of Goods**

Unless otherwise indicated in the **BDS**, there is no restriction on the origin of goods other than those prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, subject to **ITB** Clause 27.1.

.....1.26. **Subcontracts**

.....1.27. Unless otherwise specified in the **BDS**, the Bidder may subcontract portions of the Goods to an extent as may be approved by the Procuring Entity and stated in the **BDS**. However, subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project.

.....1.28. Subcontractors must comply with the eligibility criteria and the documentary requirements specified in the **BDS**. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.

.....1.29. The Bidder may identify the subcontractor to whom a portion of the Goods will be subcontracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose

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

2. Contents of Bidding Documents

.....1.30. **Pre-Bid Conference**

If so specified in the **BDS**, a pre-bid conference shall be held at Board Room 8th Floor Central Block Building Philippine General Hospital, Taft Avenue Manila on October 22, 2018 1:30 P.M., to clarify and address the Bidders' questions on the technical and financial components of this Project.

.....1.31. Bidders are encouraged to attend the pre-bid conference to ensure that they fully understand the Procuring Entity's requirements. Non-attendance of the Bidder will in no way prejudice its bid; however, the Bidder is expected to know the changes and/or amendments to the Bidding Documents discussed during the pre-bid conference.

.....1.32. Any statement made at the pre-bid conference shall not modify the terms of the Bidding Documents unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin.

.....1.33. **Clarification and Amendment of Bidding Documents**

.....1.34. Bidders who have purchased the Bidding Documents may request for clarifications on any part of the Bidding Documents for an interpretation. Such a request must be in writing and submitted to the Procuring Entity at the address indicated in the **BDS** at least ten (10) calendar days before the deadline set for the submission and receipt of bids.

.....1.35. Supplemental/Bid Bulletins may be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the Bidding Documents shall be identified as an amendment.

.....1.36. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted on the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the Procuring Entity concerned, if available. It shall be the responsibility of all Bidders who secure the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, Bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with **ITB** Clause 23.

3. Preparation of Bids

.....1.37. **Language of Bid**

The bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation 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 **BDS**, 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 **BDS**, 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.

.....1.2. **Documents Comprising the Bid: Financial Component (Envelope 2)**

.....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.

.....1.8. The Bidder shall fill in rates and prices for all items of the Goods described in the Bill of Quantities. Bids not addressing or providing all of the required items in the Bidding Documents 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 Government.

.....1.9. The terms Ex Works (EXW), Cost, Insurance and Freight (CIF), Cost and Insurance Paid to (CIP), Delivered Duty Paid (DDP), and other trade terms used to describe the obligations of the parties, shall be governed by the rules prescribed in the current edition of the International Commercial Terms (INCOTERMS) published by the International Chamber of Commerce, Paris.

.....1.10. Prices indicated on the Price Schedule shall be entered separately in the following manner:

()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 non-responsive 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**

.....1.14. Prices shall be quoted in the following currencies:

()a For Goods that the Bidder will supply from within the Philippines, the prices shall be quoted in Philippine Pesos.

()b 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.

.....1.15. If so allowed in accordance with **ITB** Clause 16.1, the 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.

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

.....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.

.....1.19. 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.	Two percent (2%)
()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.	
()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 **BDS**. Any bid not accompanied by an acceptable bid security shall be rejected by the Procuring Entity as non-responsive.

.....1.22. No bid securities shall be returned to bidders after the opening of bids and before contract signing, except to those that failed or declared as post-disqualified, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest. Without prejudice on its forfeiture, bid securities shall be returned only after the bidder with the Lowest Calculated and Responsive Bid has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in **ITB** Clause 18.2.

.....1.23. Upon signing and execution of the contract pursuant to **ITB** Clause 32, and the posting of the performance security pursuant to **ITB** Clause 33, the successful Bidder's bid security will be discharged, but in no case later than the bid security validity period as indicated in the **ITB** Clause 18.2.

.....1.24. The bid security may be forfeited:

()a if a Bidder:

()i withdraws its bid during the period of bid validity specified in **ITB** Clause 17;

()ii does not accept the correction of errors pursuant to **ITB** Clause 28.3(b);

()iii fails to submit the requirements within the prescribed period or a finding against their veracity as stated in **ITB** Clause 29.2; or

()iv any other reason stated in the **BDS**.

()b if the successful Bidder:

()i fails to sign the contract in accordance with **ITB** Clause 1.84.;

()ii fails to furnish performance security in accordance with **ITB** Clause 33; or

()iii any other reason stated in the **BDS**.

.....1.25. **Format and Signing of Bids**

.....1.26. Bidders shall submit their bids through their duly authorized representative using the appropriate forms provided in Section VIII. Bidding Forms on or before the deadline specified in the **ITB** Clauses 21 in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under **ITB** Clause 12.1, and the second shall contain the financial component of the bid.

.....1.27. Forms as mentioned in **ITB** Clause 19.1 must be completed without any alterations to their format, and no substitute form shall be accepted. All blank spaces shall be filled in with the information requested.

.....1.28. The Bidder shall prepare and submit an original of the first and second envelopes as described in **ITB** Clauses 12 and 13. In the event of any discrepancy between the original and the copies, the original shall prevail.

.....1.29. The bid, except for unamended printed literature, shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative/s of the Bidder.

.....1.30. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

.....1.31. **Sealing and Marking of Bids**

.....1.32. Unless otherwise indicated in the **BDS,** Bidders shall enclose their original eligibility and technical documents described in **ITB** Clause .....1.38. in one sealed envelope marked "ORIGINAL - TECHNICAL COMPONENT", and the original of their financial component in another sealed envelope marked "ORIGINAL - FINANCIAL COMPONENT", sealing them all in an outer envelope marked "ORIGINAL BID".

.....1.33. Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY NO. ___ - TECHNICAL COMPONENT" and "COPY NO. ___ – FINANCIAL COMPONENT" and the outer envelope as "COPY NO. ___", respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

.....1.34. The original and the number of copies of the Bid as indicated in the **BDS** shall be typed or written in indelible ink and shall be signed by the bidder or its duly authorized representative/s.

.....1.35. All envelopes shall:

()a contain the name of the contract to be bid in capital letters;

()b bear the name and address of the Bidder in capital letters;

()c be addressed to the Procuring Entity's BAC in accordance with **ITB** Clause 1.1;

()d bear the specific identification of this bidding process indicated in the **ITB** Clause 1.2; and

()e bear a warning "DO NOT OPEN BEFORE…" the date and time for the opening of bids, in accordance with **ITB** Clause 21.

.....1.36. If bids are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the bid. Moreover, failure to comply with the required sealing and marking of bids shall be a ground for disqualification.

4. Submission and Opening of Bids

.....1.37. **Deadline for Submission of Bids**

Bids must be received by the Procuring Entity's BAC at the address and on or before the date and time indicated in the **BDS**.

.....1.38. **Late Bids**

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 bid marked as "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

.....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.

.....1.42. Bids requested to be withdrawn in accordance with **ITB** 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 **ITB** Clause .....1.24., and the imposition of administrative, civil and criminal sanctions as prescribed by RA 9184 and its IRR.

.....1.44. **Opening and Preliminary Examination of Bids**

.....1.45. 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-discretionary "pass/fail" criterion. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed".

.....1.46. Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible bidder whose first bid

envelope was rated “passed”. The second envelope of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC unless otherwise provided in **ITB** Clause 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.

.....1.47. Letters of withdrawal shall be read out and recorded during bid opening, and the envelope containing the corresponding withdrawn bid shall be returned to the Bidder unopened. If the withdrawing Bidder’s representative is in attendance, the original bid and all copies thereof shall be returned to the representative during the bid opening. If the representative is not in attendance, the bid shall be returned unopened by registered mail. The Bidder may withdraw its bid prior to the deadline for the submission and receipt of bids, provided that the corresponding Letter of Withdrawal contains a valid authorization requesting for such withdrawal, subject to appropriate administrative sanctions.

.....1.48. If a Bidder has previously secured a certification from the Procuring Entity to the effect that it has previously submitted the above-enumerated Class “A” Documents, the said certification may be submitted in lieu of the requirements enumerated in **ITB** Clause 12.1(a), items (i) to (v).

.....1.49. In the case of an eligible foreign Bidder as described in **ITB** Clause 5, the Class “A” Documents described in **ITB** Clause 12.1(a) may be substituted with the appropriate equivalent documents, if any, issued by the country of the foreign Bidder concerned.

.....1.50. Each partner of a joint venture agreement shall likewise submit the requirements in **ITB** Clauses 12.1(a)(1) and 12.1(a)(ii). Submission of documents required under **ITB** Clauses 12.1(a)(iii) to 12.1(a)(v) by any of the joint venture partners constitutes compliance.

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

.....1.52. The Procuring Entity shall prepare the minutes of the proceedings of the bid opening that shall include, as a minimum: (a) names of Bidders, their bid price, bid security, findings of preliminary examination; and (b) attendance sheet. The BAC members shall sign the abstract of bids as read.

5. Evaluation and Comparison of Bids

.....1.53. **Process to be Confidential**

.....1.54. Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award, unless otherwise allowed in the **BDS** or in the case of **ITB** Clause 26.

.....1.55. Any effort by a bidder to influence the Procuring Entity in the Procuring Entity's decision in respect of bid evaluation, bid comparison or contract award will result in the rejection of the Bidder's bid.

.....1.56. **Clarification of Bids**

To assist in the evaluation, comparison, and post-qualification of the bids, the Procuring Entity may ask in writing any Bidder for a clarification of its bid. All responses to requests for clarification shall be in writing. Any clarification submitted by a Bidder in respect to its bid and that is not in response to a request by the Procuring Entity shall not be considered.

.....1.57. **Domestic Preference**

.....1.58. Unless otherwise stated in the **BDS**, the Procuring Entity will grant a margin of preference for the purpose of comparison of bids in accordance with the following:

()a The preference shall be applied when (i) the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder, or (ii) the lowest bid offered by a non-Philippine national is lower than the lowest bid offered by a Domestic Entity.

()b For evaluation purposes, the lowest Foreign Bid or the bid offered by a non-Philippine national shall be increased by fifteen percent (15%).

()c In the event that (i) the lowest bid offered by a Domestic Entity does not exceed the lowest Foreign Bid as increased, or (ii) the lowest bid offered by a non-Philippine national as increased, then the Procuring Entity shall award the contract to the Domestic Bidder/Entity at the amount of the lowest Foreign Bid or the bid offered by a non-Philippine national, as the case may be.

()d If the Domestic Entity/Bidder refuses to accept the award of contract at the amount of the Foreign Bid or bid offered by a non-Philippine national within two (2) calendar days from receipt of written advice from the BAC, the Procuring Entity shall award to the bidder offering the Foreign Bid or the non-Philippine national, as the case may be, subject to post-qualification and submission of all the documentary requirements under these Bidding Documents.

.....1.59. A Bidder may be granted preference as a Domestic Entity 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.

.....1.60. A Bidder may be granted preference as a Domestic Bidder subject to the certification from the DTI that the Bidder is offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

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

.....1.62. The Procuring Entity will undertake the detailed evaluation and comparison of bids which have passed the opening and preliminary examination of bids, pursuant to **ITB** Clause 24, in order to determine the Lowest Calculated Bid.

.....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 Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications, if allowed in the **BDS**. Any adjustment shall be calculated in monetary terms to determine the calculated prices.

.....1.65. Based on the detailed evaluation of 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 computational errors, discounts and other modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC, shall not be considered.

.....1.66. Unless otherwise indicated in the **BDS**, the Procuring Entity's evaluation of bids shall only be based on the bid price quoted in the Financial Bid Form.

.....1.67. Bids shall be evaluated on an equal footing to ensure fair competition. For this purpose, all bidders shall be required to include in their bids the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.

.....1.68. **Post-Qualification**

.....1.69. The Procuring Entity shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Lowest Calculated Bid (LCB) complies with and is responsive to all the requirements and conditions specified in **ITB** Clauses 5, 12, and 13.

.....1.70. Within a non-extendible period of three (3) calendar days from receipt by the bidder of the notice from the BAC that it submitted the LCB, the Bidder shall submit the following documentary requirements:

(a) Tax clearance per Executive Order 398, Series of 2005;

(b) Latest income and business tax returns in the form specified in the **BDS**;

()c Certificate of PhilGEPS Registration; and

()d Activation Form/ Certification of EFPS Registration

()e Other appropriate licenses and permits required by law and stated in the **BDS**.

Failure of the Bidder declared as Lowest Calculated Bid to duly submit the requirements under this Clause or a finding against the veracity of such shall be ground for forfeiture of the bid security and disqualification of the Bidder for award.

.....1.71. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted pursuant to **ITB** Clauses 12 and .....1.2., as well as other information as the Procuring Entity deems necessary and appropriate, using a non-discretionary "pass/fail" criterion.

.....1.72. If the BAC determines that the Bidder with the Lowest Calculated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid, and recommend to the Head of the Procuring Entity the award of contract to the said Bidder at its submitted price or its calculated bid price, whichever is lower.

.....1.73. A negative determination shall result in rejection of the Bidder's Bid, in which event the Procuring Entity shall proceed to the next Lowest Calculated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily. If the second Bidder, however, fails the post qualification, the procedure for post qualification shall be repeated for the Bidder with the next Lowest Calculated Bid, and so on until the Lowest Calculated Responsive Bid is determined for contract award.

.....1.74. Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the BAC, the Head of the Procuring Entity shall approve or disapprove the said recommendation. In the case of GOCCs and GFIs, the period provided herein shall be fifteen (15) calendar days.

.....1.75. **Reservation Clause**

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

.....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 post-qualification; 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

.....1.79. **Contract Award**

.....1.80. Subject to **ITB** Clause 29, the Procuring Entity shall award the contract to the Bidder whose bid has been determined to be the LCRB.

.....1.81. Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Bidder in writing that its bid has been accepted, through a Notice of Award received personally or sent by registered mail or electronically, receipt of which must be confirmed in writing within two (2) days by the Bidder with the LCRB and submitted personally or sent by registered mail or electronically to the Procuring Entity.

.....1.82. Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

(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;

(b) Posting of the performance security in accordance with **ITB** Clause 33;

(c) Signing of the contract as provided in **ITB** Clause 32; and

(d) Approval by higher authority, if required.

.....1.83. At the time of contract award, the Procuring Entity shall not increase or decrease the quantity of goods originally specified in Section VI. Schedule of Requirements.

.....1.84. **Signing of the Contract**

.....1.85. At the same time as the Procuring Entity notifies the successful Bidder that its bid has been accepted, the Procuring Entity shall send the Contract Form to the Bidder, which contract has been provided in the Bidding Documents, incorporating therein all agreements between the parties.

.....1.86. Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall post the required performance security and sign and date the contract and return it to the Procuring Entity.

.....1.87. The Procuring Entity shall enter into contract with the successful Bidder within the same ten (10) calendar day period provided that all the documentary requirements are complied with.

.....1.88. The following documents shall form part of the contract:

()a Contract Agreement;

()b Bidding Documents;

()c Winning bidder's bid, including the Technical and Financial Proposals, and all other documents/statements submitted;

()d Performance Security;

()e Credit line in accordance with ITB Clause 5.5, if applicable;

()f Notice of Award of Contract; and

()g Other contract documents that may be required by existing laws and/or specified in the **BDS**.

.....1.89. **Performance Security**

.....1.90. To guarantee the faithful performance by the winning Bidder of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the contract.

.....1.91. The performance security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity in an amount equal to the percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
()a Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Five percent (5%)
()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.	
()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.	Proportionate to share of form with respect to total amount of security

.....1.92. Failure of the successful Bidder to comply with the above-mentioned requirement shall constitute sufficient ground for the annulment of the award and forfeiture of the bid security, in which event the Procuring Entity shall initiate and complete the post qualification of the second Lowest Calculated Bid. The procedure shall be repeated until the LCRB is identified and selected for contract award. However if no

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**

.....1.94. Within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority, the Procuring Entity shall issue its Notice to Proceed to the Bidder.

.....1.95. The date of the Bidder's receipt of the Notice to Proceed will be regarded as the effective date of the contract, unless otherwise specified in the **BDS**.