

7,381 rds Ctg, 105mm, HE with Fuze

DND-AFP Acquisition Project

Project Nr: _____

Section V. Special Conditions of the Contract

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Contract***

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GCC Clause	
1.1(g)	The PROCURING ENTITY is Department of National Defense / Armed Forces of the Philippines (DND/AFP.)
1.1(i)	The Supplier is <i>[to be inserted at the time of contract award]</i> .
1.1(j)	<p>The Funding Source is:</p> <p>The Government of the Philippines (GOP) through the Philippine Army Appropriation CY 2016 under ASA # 0103 dtd 01 March 2016 with an ABC of Two Hundred Twenty-One Million Four Hundred Thirty Thousand Pesos (PhP221,430,000.00) only.</p> <p>Funds for this project will expire on 31 Dec 2017.</p>
1.1(k)	The Project Delivery Site is: Ammunition Company, Armament and Ammunition Battalion, Logistics Support Group, Army Support Command, Philippine Army, Camp Aquino, Tarlac City.
5.1	<p>The PROCURING ENTITY's address for Notices is:</p> <p style="text-align: center;">Department of National Defense DND Bids and Awards Committee Basement Right Wing, DND Building Camp General Emilio Aguinaldo, Quezon City Tel Nr: 911-6001 Loc 8414 Fax Nr: (632) 421-3531</p> <p>copy furnished:</p> <ul style="list-style-type: none"> a. C, DAO, DND b. Office of the Deputy Chief of Staff for Logistics, J-4 c. Office of the Assistant Chief of Staff for Logistics, G4 d. Chairman, TWG of Ctg, 105mm, HE with Fuze.
6.2	<p>Delivery and Documents –</p> <p>For purposes of the Contract, “EXW”, “FOB”, “FCA”, “CIF”, “CIP”, “DDP”, “DAP”, and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce, Paris. The responsibility over the GOODS shall be retained by the supplier until final acceptance by the PROCURING ENTITY. The Delivery terms of this Contract shall be as follows:</p> <p>The End-user Certificate, if required by the country of origin, shall be provided by the Procuring Entity to the Supplier after the issuance of</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>Notice to Proceed.</p> <p>For Goods Supplied from Abroad, the delivery terms applicable to the Contract is DAP delivered to the Ammunition Company, Armament and Ammunition Battalion, Logistics Support Group, Army Support Command, Philippine Army, Camp Aquino, Tarlac City. In accordance with INCOTERMS.</p> <p>For Goods supplied from within the Philippines, the delivery terms applicable to this contract are delivered at the Ammunition Company, Armament and Ammunition Battalion, Logistics Support Group, Army Support Command, Philippine Army, Camp Aquino, Tarlac City.</p> <p>Risk and title will pass from the Supplier to the PROCURING ENTITY upon receipt and final acceptance of the GOODS at their final destination.”</p> <p>Delivery of the GOODS shall be made by the Supplier in accordance with the terms specified in Section VI. Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are as follows:</p> <p><i>For GOODS supplied from within the Philippines:</i></p> <p>Upon delivery of the GOODS to the Delivery Site, the Supplier shall notify the PROCURING ENTITY and present the following documents to the PROCURING ENTITY:</p> <ul style="list-style-type: none"> (i) Original and four copies of the Supplier’s invoice showing GOODS’ description, quantity, unit price, and total amount; (ii) Original and four copies delivery receipt/note, railway receipt, or truck receipt; (iii) Original Supplier’s factory inspection report; (iv) Original and four copies of the Manufacturer’s and/or Supplier’s warranty certificate; (v) Original and four copies of the certificate of origin (for imported GOODS); (vi) Delivery receipt detailing number and description of items received signed by the authorized receiving personnel;

Section V. Special Conditions of the Contract

GCC Clause	
	<p>(vii) Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY's representative at the Delivery Site; and</p> <p>(viii) Original and four copies of the Invoice Receipt for property signed by the PROCURING ENTITY's representative at the Delivery Site.</p> <p>For GOODS supplied from abroad:</p> <p>Upon shipment, the Supplier shall notify the PROCURING ENTITY and the insurance company by cable the full details of the shipment, including Contract Number, description of the GOODS, quantity, vessel, bill of lading number and date, port of loading, date of shipment, port of discharge etc. Upon delivery to the Delivery Site, the Supplier shall notify the PROCURING ENTITY and present the following documents as applicable with the documentary requirements of any letter of credit issued taking precedence:</p> <p>(i) Original and four copies of the Supplier's invoice showing GOODS' description, quantity, unit price, and total amount;</p> <p>(ii) Original and four copies of the negotiable, clean shipped on board bill of lading marked "freight pre-paid" and five copies of the non-negotiable bill of lading ;</p> <p>(iii) Original Supplier's factory inspection report;</p> <p>(iv) Original and four copies of the Manufacturer's and/or Supplier's warranty certificate;</p> <p>(v) Original and four copies of the certificate of origin (for imported GOODS);</p> <p>(vi) Delivery receipt detailing number and description of items received signed by the PROCURING ENTITY's representative at the Delivery Site;</p> <p>(vii) Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY's representative at the Delivery Site; and</p> <p>(viii) Original and four copies of the Invoice Receipt for Property signed by the PROCURING ENTITY's representative at the Delivery Site.</p> <p>(ix) Four copies of permanent export license for controlled military items, if the GOODS is a controlled military item/s in the</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>originating country, if applicable.</p> <p>(x) Certificate and four copies of Pre-Delivery Inspection by the Procuring Entity</p> <p>For purposes of this Clause the PROCURING ENTITY’s Representative at the Delivery Site are:</p> <p>C, TIAC APAO MFO</p> <p>Incidental Services –</p> <p>The Supplier is required to provide all of the following services, including additional services as specified in Section VI. Schedule of Requirements:</p> <p>(a) performance or supervision of on-site assembly and/or start-up of the supplied GOODS;</p> <p>(b) furnishing of tools required for assembly and/or maintenance of the supplied GOODS;</p> <p>(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied GOODS;</p> <p>(d) performance or supervision or maintenance and/or repair of the supplied GOODS, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and</p> <p>(e) There may be a Product Pre-Delivery Inspection with Functional Testing at the manufacturer’s facility subject for approval of the Head of the Procuring Entity (HOPE). The Procuring Entity or its designated representatives of five (5) members compose of the TIAC and PATWG representative for Ordnance shall be entitled to attend the tests and/or inspections. Inspections and tests that will be conducted shall be based on the Procuring Entity’s product specifications and test and acceptance procedures. In the absence of test facilities, the manufacturer’s test procedure and/or product certificates shall be used. All expenses of the PDI Team’s official activities related to the inspection, travel, accommodation, meals and allowances shall be shouldered by the supplier.</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>(f) The supplier, at its own account, shall provide the necessary transportation requirements, lodging and meals for the members of the Inspection Team and Technical Inspection and Acceptance Committee during the conduct of tests and inspections of the delivered goods.</p> <p>The Contract price for the GOODS shall include the prices charged by the Supplier for incidental services and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.</p> <p>Packaging –</p> <p>The Supplier shall provide such packaging of the GOODS as is required to prevent their damage or deterioration during transit to their final destination, as indicated in this Contract. The packaging shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging case size and weights shall take into consideration, where appropriate, the remoteness of the GOODS' final destination and the absence of heavy handling facilities at all points in transit.</p> <p>The packaging, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified below, and in any subsequent instructions ordered by the PROCURING ENTITY.</p> <p>The outer packaging must be clearly marked on at least four (4) sides as follows:</p> <p>Name of the PROCURING ENTITY Name of the Supplier Contract Description Final Destination Gross weight Any special lifting instructions Any special handling instructions Any relevant HAZCHEM classifications</p> <p>A packaging list identifying the contents and quantities of the package is to be placed on an accessible point of the outer packaging if practical. If not practical the packaging list is to be placed inside the outer packaging but outside the secondary packaging.</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>Insurance – The GOODS supplied under this Contract shall be fully insured by the Supplier in any freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery. The GOODS remain at the risk and title of the Supplier until their final acceptance by the PROCURING ENTITY.</p> <p>The insurance includes the indemnification in the amount of One Million Peso (PhP1,000,000.00) per AFP personnel involved during the conduct of the inspection and tests of the supplied goods by the inspection team and TIAC. The amount of premium shall be shouldered by the Supplier or winning proponent.</p> <p>Transportation – Where the Supplier is required under Contract to deliver the GOODS DAP, transport of the GOODS to the named place of destination in the Philippines, as shall be specified in this Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.</p> <p>Where the Supplier is required under this Contract to transport the GOODS to a specified place of destination within the Philippines, defined as the Delivery Site, transport to such place of destination in the Philippines, including insurance and storage, as shall be specified in this Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.</p> <p>Where the Supplier is required under Contract to deliver the Goods DAP, Goods are to be transported on carriers of Philippine registry. In the event that no carrier of Philippine registry is available, Goods may be shipped by a carrier which is not of Philippine registry provided that the Supplier obtains and presents to the Procuring Entity certification to this effect from the nearest Philippine consulate to the port of dispatch. In the event that carriers of Philippine registry are available but their schedule delays the Supplier in its performance of this Contract the period from when the Goods were first ready for shipment and the actual date of shipment the period of delay will be considered <i>force majeure</i> in accordance with GCC Clause 22.</p> <p>The PROCURING ENTITY accepts no liability for the damage of GOODS during transit other than those prescribed by INCOTERMS for DAP Deliveries. In the case of Goods supplied from within the Philippines or supplied by domestic Suppliers risk and title will not be deemed to have passed to the Procuring Entity until their receipt and</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>final acceptance at the final destination.</p> <p>Patent Rights – The Supplier shall indemnify the PROCURING ENTITY against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the GOODS or any part thereof.</p>
9	<p>For the given scope of work in this Contract as awarded, all bid prices are considered fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 of R.A. 9184 and its IRR.</p>
10.1	<p>Payment shall be made directly to the Manufacturer by check or through letter of credit, at the option of a local manufacturer, or through LC in case of a foreign manufacturer.</p> <p>Manufacturer’s Appointment authorizing their local representative company to receive/ accept payment on their behalf is not allowed.</p> <p>The PROCURING ENTITY may open the irrevocable L/C in favor of a local/foreign Supplier/ Manufacturer in accordance with the terms provided below in an Authorized Government Depository Bank after the approval of the Contract by the HOPE and the issuance of the Notice of Cash Allocation by the Secretary of Budget and Management, to wit:</p> <p>(a) <u>Mode of Transmission</u>: Full cable telex/S.W.I.F.T;</p> <p>(b) <u>Advising and/or Confirmation</u>: L/C may be advised and/or confirmed by any authorized government depository bank to be identified by the Supplier, at the latter’s sole expense;</p> <p>(c) <u>Payee Bank</u>: The L/C draft (if any) shall be drawn on the confirming bank;</p> <p>(d) <u>Beneficiary</u>: [Insert name and address of Supplier with Point of Contact];</p> <p>(e) <u>Currency and Amount of L/C</u>: L/C may be opened in foreign denominated currency provided that the equivalent amount shall be based on the Total Peso Contract Price. Exchange rate shall be determined during the opening of LC;</p> <p>(f) <u>Expiration Date</u>: Two Hundred Seventy (270) Calendar Days from issue date of the L/C;</p> <p>(g) <u>Payment Scheme/Drawdown Documentary Requirements</u>: Payment</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>shall be made to the Supplier based on the delivery schedule of the GOODS made in accordance with Section VI. Schedule of Requirements, and the submission or presentation of the following documents as necessary:</p> <ul style="list-style-type: none"> i. Supplier’s invoice showing GOODS’ description, quantity, unit price, and total amount; ii. Negotiable, clean shipped on board Bill of Lading marked “Freight Pre-Paid” and/or “Non-Negotiable Bill of Lading” or “Airway Bill”; iii. Original Supplier’s Factory Inspection Report and/or Certificate of Pre-delivery Inspection by the Procuring Entity’s representative (TIAC) ; iv. Manufacturer’s and/or Supplier’s Warranty Certificate; v. Certificate of Origin (for imported GOODS); vi. Delivery Receipt detailing number and description of items received signed by the Procuring Entity’s representative at the Delivery Site; vii. Philippine Army Management and Fiscal Office (PA MFO) Inspection Report; viii. Invoice Receipt for Property signed by the Procuring Entity’s representative at the Delivery Site ix. SAO Acceptance Report; x. Copy of Insurance Policy/ Paid Premium; xi. Copy of Warranty Security as per GCC Clause 17; and xii. Certificate of Final Acceptance by the Technical Inspection and Acceptance Committee (TIAC); xiii. The L/C shall be payable at Sight. <p>(h) <u>Description of Goods</u>: 7,381 rds Ctg, 105mm, HE with Fuze</p> <p>(i) <u>Project Site</u>: Ammunition Company, Armament and Ammunition Battalion, Logistics Support Group, Army Support Command, Philippine Army, Camp Aquino, Tarlac City, Philippines;</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>(j) <u>Latest Date of Delivery</u>: Complete delivery within Two Hundred Forty (240) calendar days upon receipt of NTP, which is the receipt of the Notice to Proceed by the supplier, which date shall not be later than seven (7) calendar days from the issuance of the NTP; should the supplier fail to comply, the delivery period shall commence.</p> <p>(k) <u>Shipment</u>: partial shipment; transshipment is acceptable.</p> <p>(l) <u>Negotiability</u>: The L/C shall be irrevocable;</p> <p>(m) <u>Liquidated Damages</u>: Liquidated damages shall be imposed in accordance with Clause 19 of the Contract.</p> <p>(n) <u>Other Instructions</u>:</p> <p style="padding-left: 40px;">i. The cost of the opening, as well as advising, confirmation, extension, and/or amendment, if any, of the L/C, and other bank charges shall be for the account of the Supplier; and shall be paid by the supplier within four (4) calendar days upon receipt of notification from the contract implementer on the selected Authorized Government Depository Bank (AGDB).</p> <p style="padding-left: 40px;">ii. The L/C must be in English; and</p> <p style="padding-left: 40px;">iii. No boycott or restrictive language.</p>
10.4	No further Instructions.
13.4 (c)	No further instructions.
16.1	<p>The inspections and tests that will be conducted are:</p> <p>a) Post-Qualification involving documents validation and manufacturer's plant visit shall be conducted by the Procuring Entity or its designated representatives (PQ Team) to determine the compliance to the requirements of the end-user as required in the bidding documents. Expenses incurred related hereto particularly travel and board and lodging expenses shall be borne by the Procuring Entity.</p> <p>a) Product Pre-Delivery Inspection with Functional Testing at the manufacturer's facility at the supplier's request and subject to the approval of the Head of the Procuring Entity (HOPE). The Procuring Entity or its designated representatives of five (5) members as per AFP Logistics Directive Nr QC-13-01, shall be entitled to attend the tests and/or inspections. Inspections and tests that will be conducted shall be based on the Procuring Entity's product specifications and Test and Acceptance Procedures (TAP). In the absence of test</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>facilities, the manufacturer’s test procedure and/or product certificates shall be used.</p> <p>After completion of the pre-delivery tests, if applicable, a Certification of Pre-shipment Inspection and Testing shall be furnished by the Inspection team to the manufacturer/supplier, and the Procuring Entity. Otherwise, a Certificate that the PDI was not conducted stating the reasons therein shall be issued by the Inspection Team to the manufacturer/supplier, and the Procuring Entity.</p> <p>b) Final Inspection and Acceptance at the Delivery Site. Completeness and appropriateness of the delivered goods shall be inspected by the Procuring Entity’s representative at the delivery site at the soonest time possible. After completion of the inspection, the inspection team shall furnish the following reports;</p> <ul style="list-style-type: none"> (c.1) Final Inspection and Acceptance Report by the TIAC; (c.2) PA MFO Inspection Report; (c.3) SAO/APAO Acceptance Report; (c.4) Advice of Payment from the Head of the Procuring Entity <p>The PROCURING ENTITY may reject any GOODS or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected GOODS or parts thereof or make alterations necessary to meet the specifications at no cost to the PROCURING ENTITY, and shall repeat the test and/or inspection, at no cost to the PROCURING ENTITY.</p> <p>The rectification of any defect noted on the inspected GOODS shall only be made for a maximum of two (2) times provided the defect/s is/are classified as “Minor Defect/s”. Both the rectification and replacement of the defective Goods shall only be made within the delivery period, or in case of delay, shall not exceed the maximum liquidated damages pursuant to GCC Clauses 19 and 23. The conduct of correction or replacement of Goods does not exempt the Supplier from GCC Clause 19.</p> <p>The supplier shall furnish to the inspectors all reasonable facilities and assistance, provide records/related documents of the GOODS at no charge to the PROCURING ENTITY. The supplier shall bear all costs and expenses of travel including accommodation, Daily Subsistence Allowance (DSA) pursuant to Sec 8 of EO 298 and securing Visas as necessary and travel insurance of all inspection team members. The supplier is required to issue the written invitation relative to PDI to the</p>

Section V. Special Conditions of the Contract

GCC Clause	
	<p>concerned procurement service within 60 days from the receipt of NTP.</p> <p>The Supplier agrees that neither the execution of a test and/or inspection of the GOODS or any part thereof, nor the attendance by the PROCURING ENTITY or its representative, shall release the Supplier from any warranties or other obligations under this Contract.</p>
17.3	<p>The goods to be delivered must have been manufactured not more than one (1) year from the date of delivery. The manufacturer shall issue a certification that the goods came from lots manufactured within the prescribed production period.</p> <p>The supplier shall be required to issue a Warranty Certificate for a minimum of one (1) year after the final acceptance by the Procuring Entity of the delivered Goods or after the Goods are consumed, whichever is earlier.</p> <p>The warranty shall be covered by, at the Supplier's option, either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee in the form of a <u>warranty bond</u> equivalent to at least ten percent (10%) of the Contract Price in favor of the Armed Forces of the Philippines.</p> <p>The retention money or bank guarantee, as the case may be, will be released after the lapse of the warranty period inclusive of its extension, if any.</p> <p>The PROCURING ENTITY through the TIAC may invoke for warranty claims for the GOODS or any part thereof that fail to conform to the specifications within the warranty period. The Supplier shall either rectify or replace such defective GOODS or parts thereof or make alterations necessary to meet the specifications at no cost to the PROCURING ENTITY, and shall inspect the rectified/ replaced goods, at no cost to the PROCURING ENTITY, upon giving a notice pursuant to Clause 5.</p>
17.4 and 17.5	<p>The period of correction of defects in the warranty period is within ninety (90) calendar days upon receipt of notice from the PROCURING ENTITY of any claim arising from the warranty obligation of the supplier.</p>
19	<p>The applicable rate is one tenth (1/10) of one (1) percent of the cost of the unperformed services for every day of delay.</p> <p>The maximum amount of liquidated damages to be deducted from the contract price shall be ten percent (10%) of the amount of the contract.</p>

Section V. Special Conditions of the Contract

GCC Clause	
	Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the PROCURING ENTITY shall rescind the contract, without prejudice to other courses of action and remedies open to it.
20.4	In the case of a dispute between the PROCURING ENTITY and the Supplier, the dispute shall be resolved in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."
21	All partners to the Joint Venture shall be jointly and severally liable to the Procuring Entity.