

Section V. Special Conditions of Contract

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Special Conditions of Contract

GCC Clause	
1.1(g)	The PROCURING ENTITY is Department of National Defense /Armed Forces of the Philippines.
1.1(i)	The Supplier is _____.
1.1(j)	The Funding Source is: The Government of the Philippines (GOP) through the Revised AFP Modernization Program with SARO Nr.: _____ dated _____ in the amount of FIVE BILLION FIVE HUNDRED SIXTY MILLION PESOS (PhP5,560,000,000.00) being the Approved Budget for the Contract (ABC).
1.1(k)	The Delivery Site is: Pier 13, South Harbor, Philippines.
2.1	No further instructions.
5.1	<p>The PROCURING ENTITY’s address for Notices is: Office of the DND Bids and Awards Committee 1 Basement Left Wing, DND Building Camp General Emilio Aguinaldo, Quezon City, Philippines 1110 Tel Nr: 911-6001 Loc 8414 Fax Nr: (632) 421-3531</p> <p>copy Furnished: a. C, DAO b. Office of the AC of NS for Logistics, N4 c. Project Manager, Acquisition of Landing Docks for the Philippine Navy</p> <p>The Supplier’s address for Notices is: _____ _____</p>
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 Delivery terms of this Contract shall be as follows:</p> <p>For foreign Suppliers, the delivery terms applicable to the contract is “Delivered At Place” (DAP) and delivered to Pier 13, South Harbor, Philippines in accordance with INCOTERMS.</p> <p>For Domestic Suppliers, “The delivery terms applicable to this Contract are</p>

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delivered to **Pier 13, South Harbor, Philippines**. Risk and title will pass from the Supplier to the PROCURING ENTITY upon receipt and final acceptance of the GOODS at their final destination.”

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:

For GOODS supplied from within the Philippines or by Domestic Suppliers:

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:

- (i) Original and four copies of the Supplier’s invoice showing GOODS’ description, quantity, unit price, and total amount;
- (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 ;
- (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 PROCURING ENTITY’s representative at the Project Site;
- (vii) Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY’s representative at the Delivery Site; and
- (viii) Four copies of the Invoice Receipt for Property signed by the PROCURING ENTITY’s representative at the Delivery Site.

For GOODS supplied from abroad

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 Project 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:

- (i) Original and four copies of the Supplier’s invoice showing GOODS’ description, quantity, unit price, and total amount;
- (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 ;
- (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);

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- (vi) Delivery receipt detailing number and description of items received signed by the PROCURING ENTITY's representative at the Project Site;
- (vii) Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY's representative at the Delivery Site; and
- (viii) Four copies of the Invoice Receipt for Property signed by the PROCURING ENTITY's representative at the Delivery Site.

For purposes of this Clause the PROCURING ENTITY's Representative at the Delivery Site is:

COMMO ANTONIO C PALCES AFP
Project Manager
Landing Docks Acquisition Project

Incidental Services –

The Supplier is required to provide all of the following services, including additional services, if any, as specified in the Section VI. **Schedule of Requirements:**

- (a) performance or supervision of on-site assembly and/or start-up of the supplied GOODS with at least three (3) PN personnel as observers;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied GOODS;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied GOODS;
- (d) performance or supervision or maintenance and/or repair of the supplied GOODS, for fifteen (15) days, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) training for a given period as deemed necessary by the end user at the Supplier's plant and/or on-site for not less than hundred (100) personnel in the assembly, start-up, operation, maintenance, and/or repair of the supplied GOODS shall be completed at least fifteen (15) calendar days prior to the first delivery of the first Landing Dock.
- (f) supplier to ensure in-country availability of spares for the next twenty (20) years

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.

Spare Parts –

The Supplier is required to provide all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

- (a) such spare parts as the PROCURING ENTITY may elect to purchase from the

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- Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under this Contract; and
- (b) in the event of termination of production of the spare parts:
- i. advance notification to the PROCURING ENTITY of the pending termination, in sufficient time to permit the PROCURING ENTITY to procure needed requirements; and
 - ii. following such termination, furnishing at no cost to the PROCURING ENTITY, the blueprints, drawings, and specifications of the spare parts, if requested.

The spare parts required are listed in **Section VI. Schedule of Requirements** and the cost thereof are included in the Contract Price.

The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the GOODS for a period of **twenty (20) years**.

Other spare parts and components shall be supplied as promptly as possible, but in any case within thirty (30) calendar days upon placing the order.

Packaging (as applicable) –

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.

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.

The outer packaging must be clearly marked on at least four (4) sides as follows:

- 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

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.

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Insurance –

The GOODS supplied under this Contract shall be fully insured by the Supplier in a 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.

Insurance coverage or indemnification for all personnel who will undergo training at the Supplier's plant and/or on-site in the assembly, start-up, operation, maintenance, and/or repair shall be in the amount equivalent to PHP 500,000.00 per personnel in accordance with item Nr 2a, Section VI (Schedule of Requirements).

Transportation (As applicable) –

Where the Supplier is required under Contract to deliver the GOODS CIF, CIP, DDP, DAP, or DAT, transport of the GOODS to the port of destination or such other 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.

Where the Supplier is required under this Contract to transport the GOODS to a specified place of destination within the Philippines, defined as the Project 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.

Where the Supplier is required under Contract to deliver the Goods CIF, CIP, DDP, DAP, or DAT, 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 *force majeure* in accordance with **GCC** Clause 22.

The PROCURING ENTITY accepts no liability for the damage of GOODS during transit other than those prescribed by INCOTERMS for DDU 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 final acceptance at the final destination.

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.

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	<p>The Supplier shall provide complete listing of Contractor, Sub-contractor and Third Party Intellectual Properties developed under the contract, which should be owned by the DND/AFP.</p> <p>Warranty -</p> <p>Warranty to be applied will be based on the running hours or number of years whichever is longer in terms of time frame as specified by the end user unless the warranty as provided by the supplier is longer for all systems and equipment such as but not limited to:</p> <ul style="list-style-type: none">a) Ship's Hullb) Propulsion Systemc) Auxiliary Machineriesd) Navigational Systemse) Weapons and Sensors Systemsf) Electrical and Electronics System and Wiringsg) Communications Systemsh) Piping and Fittings <p>If no warranty is prescribed by the supplier, the standard 2 years warranty period shall be applied.</p> <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>
10.1	<p>Payment shall be made only upon submission of the required auditorial document and issuance of Advise of Payment by the Secretary, Department of National Defense or his duly authorized representative as provided for under Section 12 of DND DO #12/ Executive Order # 423.</p> <p>The PROCURING ENTITY shall facilitate the opening the Irrevocable Letter of Credit (L/C) in favor of the supplier in accordance with the terms provided below in an Authorized Government Depository Bank after the approval of the Contract by the Secretary of National Defense and the issuance of Notice of Cash Allocation by the Secretary of Budget and Management, to wit:.</p> <ul style="list-style-type: none">(a) <u>Mode of Transmission</u>: Full cable telex/S.W.I.F.T;(b) <u>Advising and/or Confirmation</u>: L/C may be advised and/or confirmed by any bank to be identified by the Supplier, at the latter's sole expense;(c) <u>Payee Bank</u>: The L/C draft (if any) shall be drawn on the confirming Bank;

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<p>(d) <u>Beneficiary</u>: inset name and address of Supplier with Point of Contact;</p> <p>(e) <u>Currency and Amount of L/C</u>: L/C shall be in Philippine Peso or in foreign denominated currency, in an amount equivalent to the Total Contract Price;</p> <p>(f) <u>Expiration Date</u>: 1,125 calendar days from date of issuance of the L/C;</p> <p>(g) <u>Payment Scheme/Drawdown Documentary Requirements</u>: Payment shall be made to the Supplier upon Delivery and Acceptance of the GOODS made in accordance with the Section VI. Schedule of Requirements, and the submission or presentation of the following documents:</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. Certificate of Acceptance Inspection by the Procuring Entity's Pre Delivery Inspection (PDI) Team;iv. Certification that the GOODS delivered passed the Final Acceptance Test and Evaluation issued by the AFP TIAC;v. Manufacturer's and/or Supplier's Warranty Certificate;vi. Certificate of Origin (for imported GOODS);vii. Delivery Receipt detailing number and description of items received signed by the Procuring Entity's representative at the Delivery Site;viii. Test / Trials Results (For all Testing/ Trials to be conducted)ix. Certificate of Final Acceptance by the Technical Inspection and Acceptance Committee (TIAC);x. AFP Management and Fiscal Office (AFP MFO) Inspection Report;xi. SAO Acceptance Report;xii. Copy of Insurance Policy/ Paid Premium;xiii. Training Certificates;xiv. Copy of Warranty Security as per SCC Clause 15; andxv. Advice of Payment by the Secretary of National Defense or his authorized representative.xvi. The L/C shall be payable at Sight. <p>(h) <u>Description of Goods</u>: Two (2) units New Construction Landing Dock Vessels with Four (4) units Landing Craft Utility and Four (4) units Rigid Hull Inflatable Boats with Integrated Logistics Support (ILS);</p> <p>(i) <u>Delivery Terms</u>: Delivered At Place (DAP), in Pier 13, South Harbor, Philippines;</p> <p>(j) <u>Latest Date of Delivery</u>: 730 days for the first vessel and 1,095 days for the second vessel from receipt of NTP which date shall not be later than seven (7)</p>

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	<p>calendar days from the issuance of the NTP.</p> <p>(k) <u>Shipment</u>: Complete 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 the GCC clause 19 of the Contract.</p> <p>(n) <u>Other Instructions</u>:</p> <ul style="list-style-type: none"> 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; ii. The L/C must be in English; iii. No boycott or restrictive language;
10.4	No further instructions.
10.5	No further instructions.
11.3	<p>The terms of payment shall be as follows:</p> <p>On Contract Signature: An Advance Payment corresponding to Fifteen Percent (15%) of the Contract Price shall be paid within sixty (60) days from receipt of Notice to Proceed and upon submission of a written request and a bank guarantee for the equivalent amount valid until the Goods are delivered and in the form provided in Section VIII. Bidding Forms.</p> <p>The amount corresponding to forty percent (40%) of the Contract Price shall be paid through a letter of credit upon Delivery and Acceptance of the first vessel and another forty percent (40%) for the second vessel.</p> <p>The remaining Five Percent (5%) shall be retained to cover warranty obligations within the prescribed period indicated as per SCC Clause 17.3 and will be released after the expiration of the warranty or upon submission of special bank guarantee equivalent to the retention money</p> <p>All charges for the opening of LC and/or incidental expenses thereto (i.e. bank commission, documentary stamp, tax, cable, etc.) shall be for the account of the supplier.</p>
13.4(c)	No further instructions.
14.1	<p>Non-Disclosure Agreement</p> <p>The supplier shall execute a non-disclosure agreement in favor of the Philippine Government wherein the supplier shall warrant that all information and communication, whether oral or written, secured in the course of negotiation with the Department of National Defense/Armed Forces of the Philippines (DND/AFP) shall not be divulged or disclosed to any other person or entity, without the express written consent of the DND/AFP. It includes non-disclosure of, but not limited, to</p>

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	<p>the following: a) Terms of Reference, b) Technical Specifications of the Project, c) Annual Procurement Plan and related Project Procurement Management Plan and d) Proposals.</p>
<p>16.1</p>	<p>The inspections and tests that will be conducted are:</p> <p>(a) Critical Design Review</p> <ul style="list-style-type: none"> • Critical design review shall be conducted and completed within ninety (90) days from receipt of NTP. • Shipbuilder to submit the following within thirty (30) days from receipt of NTP: <ul style="list-style-type: none"> i. general arrangement plan; ii. building specification with design calculations; • All documents shall be reviewed and approved by the Head of PMT prior to construction. <p>(b) Prior to shipment of the vessel, a Pre-Delivery Inspection (PDI) and tests to confirm the Good's conformity to the Contract Specifications shall be conducted at the manufacturer's plant site by at least eight (8)-man completeness inspection team for each delivery for a duration of five (5) days, exclusive of travel time, at no extra cost to the Procuring Entity. The PN PDI team shall be formed by following composition:</p> <ul style="list-style-type: none"> - Team Leader - Technical for HME - Technical for Propulsion System - Technical for Electrical and Auxiliaries - Technical for Weapons and Sensors - Technical for Navigational and Information System - End User Integrated Logistics Officer - Legal Officer <p>(c) The quality and proof of performance shall be established through tests and trials. The LDs shall undergo functional test to verify the correct installation and integration of equipment and safe function of systems.</p> <p>(d) All reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.</p> <p>(e) 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, upon giving a notice pursuant to GCC Clause 5.</p> <p>(f) The ship builder shall prepare the Test Memoranda, which shall be</p>

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concurring by the Head PMT, for all the LD systems/machineries/equipment within the contract. The Test Memoranda, together with the Life Cycle Cost shall be submitted for review and concurrence by the PMT not less than thirty (30) calendar days prior the conduct of PDI.

(g) The initial tests and trials that encompass all LD's system and to be conducted are as follows:

1. Dock trial for a period of not less than one (1) hour;
2. Initial sea trial/ HATs for a period of not less than ten (10) hours; and

The following are the detailed trials to be performed:

1. Stability and Buoyancy Trials;
2. Progressive speed trials;
3. Full power trials;
4. Auxiliary machinery trials including steering gear, etc.
5. Vibration trials; and
6. Turning and maneuvering trials.

(h) The functional tests and trials of machineries and equipment shall be conducted in addition to the HATs to prove that they function efficiently on board the LDs. The trials shall encompass the following:

1. Machinery Operations;
2. Operation of Alarm Systems;
3. Electrical Power Supply; and

(i) Sea trials shall be conducted to prove performance of the LDs including the following:

1. Top speed;
2. Maneuverability;
3. Loading and unloading capability;
4. LCU/RHIB deployment and recovery;

(j) The sea trials shall be conducted at full load and light load condition at prevailing sea state.

(k) Endurance trial shall be conducted for a minimum distance of 600NM, nonstop, prior to final acceptance. The endurance test shall be manned jointly by the PMT and contractor/shipyard representatives. Each Landing Dock must be able to sustain the top speed of at least 16 knots for at least a period of one (1) hour, on full load, and at prevailing sea state.

Non-compliance to this requirement shall correspond to payment deduction to be computed as follows:

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Attained Speed	Corresponding Payment Deduction
Less than 16 knots	8% of contract price exclusive of 5% retention
Less than 15 knots	10% of contract price exclusive of 5% retention
Less than 14 knots	12% of contract price exclusive of 5% retention
Less than 13 knots	Non acceptance

(l) During the conduct of the above trials, a Technical Inspection and Acceptance Committee (TIAC) that will be composed of ten (10) technical personnel from the Philippine Navy/AFP and consultants shall board the LDs to observe the proper conduct of the trials based on, but not limited to, the test memoranda. The TIAC report shall be the basis whether the PN will accept the LDs or not.

(m) The PROCURING ENTITY shall issue the following documents after the successful completion of the Final Acceptance Test:

1. Certificate of Final Acceptance by the AFP TIAC;
2. AFP MFO Inspection Report;
3. SAO Acceptance Report;
4. Advice of Payment from the Secretary of National Defense or his authorized official representative.

(n) All costs incidental to inspections and tests, if any, shall be borne by the SUPPLIER. All costs, such as POL requirements and other incidental expenses relative to the final inspection and testing as discussed above shall be borne by the Supplier including the transportation, board and lodging, and meals of the PN PMT / PDI and TIAC.

17.3 Two (2) years warranty on equipment and spare parts from the issuance of the certificate of final acceptance.
 The obligation for the warranty shall be covered by, at the Supplier's option, either retention money in an amount equivalent to five percent (5%) of every progress payment, or a special bank guarantee equivalent to five percent (5%) of the total Contract Price or other such amount if so specified in the **SCC**. The said amounts shall only be released after the lapse of the warranty period specified in the **SCC**; provided, however, that the Supplies delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.

17.4 The period for correction of defects in the warranty period is forty five (45) calendar days.
 The warranty should cover any and all defects that may be discovered during the warranty period of two (2) years. The proponent is required to provide a temporary replacement unit or to replace the whole system itself immediately or not later than

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	one month which will be used until the equipment is repaired in the proponent's facility at no cost to the PN.
19.1	<p>The applicable rate is one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay.</p> <p>The maximum deduction shall be ten percent (10%) of the amount of contract. 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.</p>
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."

