

## **Section II. Instructions to Bidders**

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**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 defined in the IRR-A of R.A. 9184 and described in Section I hereof (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 34.

**2. Source of Funds**

- 2.1. The PROCURING ENTITY has a budget or has applied for or received financing (hereinafter called "funds") from the source indicated in the **BDS** (hereinafter called the "Funding Source") toward the cost of the project named in the **BDS**. The PROCURING ENTITY intends to apply a portion or the whole of the funds to payments under the contract for which this Bidding Documents is issued.
- 2.2. Unless otherwise provided in the **BDS**, payments will be made only at the request of the PROCURING ENTITY and upon approval by its Head in accordance with the provisions, terms, and conditions of existing and applicable law. No party other than the PROCURING ENTITY shall have a right or claim over the budget specifically appropriated for the project.

**3. Corrupt, Fraudulent, and Coercive Practices**

- 3.1. The PROCURING ENTITY as well as the bidders, contractors, manufacturers, suppliers or distributors shall observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the PROCURING ENTITY:
  - (a) defines, for purposes of this provision, the terms set forth below as follows:
    - (a.1) "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 Republic Act 3019.

- (a.2) "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.
- (a.3) "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.
- (a.4) "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.
- 3.2. 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).
- 3.3. Furthermore, the Funding Source and the PROCURING ENTITY reserve the right to inspect and audit records and accounts of a supplier or contractor in the bidding for and performance of a contract themselves or through independent auditors as reflected in the **GCC** Clause 3.

#### **4. Conflict of Interest**

- 4.1. 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.
- 4.2. In accordance with Section 47 of the IRR-A of R.A. 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 by consanguinity or affinity up to the third civil degree or any of the PROCURING ENTITY's officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the Technical Working Group (TWG), the BAC Secretariat, the members of the Project Management Office (PMO), and the designers of the project. 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.

## 5. Eligible Bidders

- 5.1. Unless otherwise indicated in the **BDS**, the following persons shall be eligible to participate in this Bidding:
- (a) Duly licensed Filipino citizens/sole proprietorships;

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- (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) Manufacturers, suppliers and/or distributors forming themselves into a JV, i.e., a group of two (2) or more manufacturers, Suppliers and/or distributors 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%); or
  - (e) Cooperatives duly registered with the Cooperatives Development Authority (CDA).
- 5.2. Unless otherwise indicated in the **BDS**, when the GOODS sought to be procured are not available from local sources as provided in this Clause, at the prescribed minimum specifications of the PROCURING ENTITY and/or the Approved Budget for the Contract (ABC) of the PROCURING ENTITY as certified by its Head, or when there is a need to prevent situations that defeat competition or restrain trade, the said PROCURING ENTITY may invite foreign Bidders not deemed eligible pursuant to **ITB** Clause 5.1.
- 5.3. Unless otherwise indicated in the **BDS**, citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to citizens of the Philippines are eligible pursuant to R.A. 5183 and subject to C.A. 138.
- 5.4. A JV of two or more firms as partners shall comply with the following requirements:
- (a) the Joint Venture Agreement (JVA) shall be signed so as to be legally binding on all partners, unless otherwise indicated in the BDS;
  - (b) one of the partners shall be authorized to be in charge; and this authorization shall be evidenced by submitting a special power of attorney signed by legally authorized signatories of all the partners;
  - (c) the partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the JV;
  - (d) all partners of the JV shall be jointly and severally liable for adherence to this ITB and performance of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be

included in the authorization mentioned under (b) above as well as in the Bid Form of Contract Agreement (in case of a successful Bid);

- (e) a copy of the notarized JVA entered into by the JV partners shall be submitted with the Bid.

**6. Origin of GOODS and Services**

- 6.1. Unless otherwise indicated in the **BDS**, there is no restriction on the origin of GOODS and services 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 33.1.

**7. Subcontracts**

- 7.1. The Bidder shall specify in its Bid all portions of the GOODS that will be subcontracted, if any, including the entity(ies) to whom each portion will be subcontracted to, subject to the maximum allowable limit for subcontracting of GOODS specified in the **BDS**. Subcontracting of any portion of the GOODS shall not relieve the Bidder from any liability or obligation that may arise from its performance.
- 7.2. Subcontractors must comply with the provisions of **ITB** Clause 5. For this purpose, the Bidder shall include in its Technical Proposal all the documents required under **ITB** Clause 13 for any subcontractor. If the PROCURING ENTITY determines that a subcontractor is ineligible, the subcontracting of such portion of the GOODS assigned to the ineligible subcontractor shall be disallowed.

**8. Documents Establishing Bidder's Eligibility and Qualification**

- 8.1. The documentary evidence of the Bidder's qualifications to perform the contract if its Bid is accepted shall establish to the PROCURING ENTITY's satisfaction that:
  - (a) in the case of a Bidder offering to supply GOODS under the Contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the GOODS' Manufacturer or producer to supply the GOODS in the PROCURING ENTITY's country;
  - (b) the Bidder has the financial, technical, and production capability necessary to perform the Contract; and
  - (c) in the case of a Bidder not doing business in the Philippines or foreign Bidders eligible in accordance with **ITB** Clause 5, the Bidder is or will be (if awarded the contract) represented by an agent in the Philippines equipped and able to carry out the Supplier's maintenance, repair, and



spare parts, stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

- 8.2. To establish their eligibility in accordance with this Clause, Bidders shall:
- (a) complete the eligibility declarations in the Bid Form included in section VIII, Sample Forms, submitted as part of the Financial Proposal; and
  - (b) if the Bidder is an existing or intended JV in accordance with ITB Clause 5.4, submit a copy of the JVA, unless otherwise indicated in the **BDS**. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended JV, as appropriate.
- 8.3. The documentary evidence of the Bidder's eligibility to Bid shall establish to the PROCURING ENTITY's satisfaction that the Bidder, at the time of submission of its Bid, is eligible as defined under **ITB** Clause 5.

**9. Content of the Bidding Documents**

- 9.1. The Bidding Documents consist of Sections I to VIII which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with **ITB** Clause 11.

Section I. Invitation to Apply for Eligibility and to Bid  
Section II. Instructions to Bidders  
Section III. Bid Data Sheet  
Section IV. General Conditions of Contract  
Section V. Special Conditions of Contract  
Section VI. Schedule of Requirements  
Section VII. Technical Specifications  
Section VIII. Sample Forms  
Section IX. Post Qualification/Test and Evaluation Checklist

- 9.2. Bidders should note that the PROCURING ENTITY will only accept Bids from Bidders that have purchased the Bidding Documents from the office indicated in the ITAEB.
- 9.3. 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.

**10. Pre-Bid Conference**

- 10.1. To clarify and address the Bidders' questions on the requirements, terms and conditions, and specifications stipulated in the Bidding Documents, a

Pre-Bid Conference shall be held at the venue and on the date indicated in the **BDS**. 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. 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.

- 10.2. A prospective Bidder requiring any clarification on the Bidding Documents shall submit their request for clarification in writing to the BAC of the PROCURING ENTITY at the PROCURING ENTITY's address indicated in the **BDS**. The PROCURING ENTITY's BAC will respond in writing to any request for clarification by issuing a Supplemental/Bid Bulletin, provided that such request is received at least ten (10) calendar days before the deadline for submission and receipt of Bids. The PROCURING ENTITY's BAC shall issue its response not later than seven (7) calendar days before the deadline for the submission and receipt of Bids, to be made available to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the PROCURING ENTITY deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under **ITB** Clause 11.

## **11. Amendment of Bid Documents**

- 11.1. 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. It is the responsibility of the PROCURING ENTITY to notify in writing, and through posting in the website of the PROCURING ENTITY and the Government Electronic Procurement System (G-EPS) the said documents, all those who have properly secured the Bidding Documents. Any modification to the Bidding Documents shall be identified as an amendment. Bidders who have submitted Bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their Bids.
- 11.2. It shall be the responsibility of all Bidders who secure the Bidding Documents to ensure that they are aware of and secure any Bid Bulletins that may be issued.

## **12. Language of Bid**

- 12.1. 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 of the relevant passages in English, in which case, for purposes of interpretation of the Bid, the English translation shall govern.

### **13. Eligibility Check**

13.1. Unless otherwise indicated in the **BDS**, prior to Bid opening the Bidder must first pass an eligibility check. Only after a Bidder has satisfactorily passed this eligibility check will its Bid be included in the Bid opening. A Bidder shall include its eligibility documents in a separate envelope marked "Eligibility Documents" and shall be submitted together with the Technical and Financial Bid envelope on or before the deadline specified in the **BDS** provision for **ITB** Clause 28.1. At the Bid opening, the PROCURING ENTITY shall first open the envelope marked "Eligibility Documents". The eligibility documents are described in the following Clause.

#### 13.2. Eligibility Documents

(a) **Class "A" Documents - PhilGEPs platinum certificate of registration or in lieu thereof**

##### Legal Documents

- (a.1) Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), or CDA registration certificate, whichever may be appropriate under existing laws of the Philippines;
- (a.2) Valid and current Mayor's permit/municipal license;
- (a.3) Tax Clearance Certificate;
- (a.4) Audited Financial Statement;

##### Technical Documents

- (a.5) Statement of the prospective Bidder of all its ongoing and completed government and private contracts including contracts awarded but not yet started, if any. The statement shall state for each contract whether said contract is: Ongoing, Completed, or Awarded but not yet started: where applicable. The statement shall include, for each contract, the following:
  - (i) the name of the Contract;
  - (ii) date of the Contract;
  - (iii) kinds of goods sold;

- (iv) amount of Contract and value of outstanding contracts;
  - (v) date of delivery;
  - (vi) end user's acceptance, if completed; and
  - (vii) specification whether prospective Bidder is a manufacturer, Supplier or distributor;
- (a.6) The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the Invitation to Apply for Eligibility and to Bid and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.
- (a.7) For the procurement of goods, a contract shall be considered "similar" to the contract to be bid if it involves goods or related services of the same nature and complexity as those which are subject of the public bidding concerned.

Financial Documents

- (a.8) The prospective Bidder's audited financial statements, stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective Bidder's total and current assets and liabilities;
- (a.9) Prospective Bidder's computation of its Net Financial Contracting Capacity (NFCC) as described in the **BDS**, or at the Bidder's option, a commitment from a licensed bank to extend a credit line, in the event of an award in the Bidder's favor, or at the Bidder's option a cash deposit certificate, of not less than ten percent (10%) of the approved budget for the contract to be bid;
- (a.10) Income tax return (ITR) for the last two (2) Taxable Years, be it on a calendar or fiscal year, filed with the BIR. For new establishment, which, therefore, have no annual ITR yet, it shall refer to the most recent quarter's ITR. This shall not be required for foreign bidders who have not previously derived income from sources within the Philippines subject to income tax. In lieu thereof, a sworn statement by the foreign bidder that it has not previously derived income from sources within the Philippines subject to income tax shall be submitted; and
- (a.11) Tax clearance issued by the Accounts Receivable and Monitoring Division of the Bureau of Internal Revenue (BIR)

attesting that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account.

(b) **Class "B" Documents –**

- (b.1) Valid joint venture agreement pursuant to ITB Clause 5.4, in case of a JV;
- (b.2) Letter authorizing the BAC or its duly authorized representative(s) to verify any or all of the documents submitted for the eligibility check; and
- (b.3) Any other document listed in the **BDS**.

13.3. Unless otherwise indicated in the **BDS**, in the case of a prospective foreign Bidder, if eligible as described in **ITB** Clause 5, the eligibility requirements described in **ITB** Clauses 13.2 (a.1) to 13.2 (a.5) and 13.2 (a.9) may be substituted with the appropriate equivalent documents issued by the country of the prospective Bidder concerned, such documents must be duly acknowledged or authenticated by the appropriate Philippine Consulate therein.

13.4. The prospective Bidder or its duly authorized representative shall certify under oath that each of the documents submitted in satisfaction of the eligibility requirements is an authentic and original copy, or a true and faithful reproduction or copy of the original, complete, and that all statements and information provided therein are true and correct.

13.5. The PROCURING ENTITY's eligibility check will be limited to establishing the completeness of each prospective Bidder's eligibility requirement by determining the presence or absence of the documents required against a checklist of requirements using non-discretionary pass/fail criteria. The eligibility check will not examine the substance of the contents of the documents. If a prospective Bidder submits the specific eligibility document required, it shall be rated as "passed" for that particular requirement. However, failure to submit a requirement or an incomplete or patently insufficient submission shall be considered "failed" for the particular eligibility requirement concerned.

**14. Documents Comprising the Bid, Technical Proposals**

14.1. The Technical Proposal, unless otherwise indicated in the **BDS**, shall contain the following information:

- (a) The Bid Security in accordance with ITB Clause 22;
- (b) Authority of the signatory;
- (c) Production/delivery schedule;

- (d) Manpower requirements, if indicated in the **BDS**;
- (e) After-sales service/parts, if indicated in the **BDS**;
- (f) Technical Specifications;
- (g) Commitment from licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid: Provided, however, that if the bidder previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice;
- (h) A sworn affidavit of compliance with the Disclosure Provision under Section 47 of R.A. 9184 as described in **ITB** Clause 4.2; and
- (i) Other documents/materials as stated in the **BDS**.

**15. Documents Comprising the Bid, Financial Proposal**

15.1. The Financial Proposal shall contain the following:

- (a) Financial Proposal Submission Sheet, which includes bid prices and the bill of quantities and the applicable Price Schedules, in accordance with **ITB** Clauses 18.1 and 18.3; and
- (b) Any other documents required in the **BDS**.

15.2. Unless indicated in the **BDS**, all Bids that exceed the ABC shall not be accepted.

**16. Bid Submission: Technical and Financial Proposals**

16.1. The Bidder shall submit their Bids through their authorized managing officer or their authorized representative using the appropriate Bid Form provided in Section VIII. Sample Forms on or before the deadline specified in the **ITB** Clause 25.1, and in two (2) separate sealed envelopes, the first envelope containing the technical component of the Bid and the second envelope containing the financial component of the Bid addressed to the BAC of the PROCURING ENTITY. These forms 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.

16.2. The Bidder shall submit, as part of the Financial Proposal, the Price Schedules for GOODS and Related Services, according to their origin as appropriate, using the forms provided in Section VIII. Sample Forms.

16.3. The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the PROCURING ENTITY shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**17. Alternative Bids**

17.1. Alternative Bids shall be rejected.

**18. Bid Prices**

18.1. 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 the Contract.

18.2. The terms EXW, CIF, CIP, DDP etc., shall be governed by the rules prescribed in the current edition of INCOTERMS published by the International Chamber of Commerce, Paris.

18.3. 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:

(a.1) 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) on the components and raw material used in the manufacture or assembly of GOODS quoted ex works or ex factory; or

(ii) 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.

(a.2) the price for inland transportation, insurance, and other local costs incidental to delivery of the GOODS to their final destination;

(a.3) the price of other (incidental) services, if any, listed in the **BDS**.

(b) For GOODS offered from abroad:

- (b.1) the price of the GOODS shall be quoted DAP named 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.
  - (b.2) the price of other (incidental) services, if any, listed in the **BDS**.
- 18.4. 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 28.

**19. Bid Currencies**

19.1. Prices shall be quoted in the following currencies:

- (a) For GOODS and services that the Bidder will supply from within the Philippines, the prices shall be quoted in Philippine Pesos.
- (b) For GOODS and services 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 prevailing on the day of the bid opening.

19.2. Unless otherwise specified in the **BDS**, payment of the contract price shall be made in Philippine Pesos.

**20. Documents Establishing the GOODS' Conformity to the Bidding Documents**

20.1. The documentary evidence of conformity of the GOODS and services to the Bidding Documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the GOODS;
- (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuous functioning of the GOODS for a period to be specified in the **BDS**, following commencement of the use of the GOODS by the PROCURING ENTITY; and
- (c) an item-by-item commentary on the PROCURING ENTITY's Technical Specifications demonstrating substantial responsiveness of the



GOODS and services to those specifications, or a statement of deviations and exceptions to the provisions of Section VII. Technical Specifications.

- 20.2. Standards for workmanship, process, material, and equipment, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the PROCURING ENTITY's satisfaction, that the substitution are equivalent or as specified in the technical specifications and/or Scheduled performance.

## **21. Bid Validity**

- 21.1. Bids shall remain valid for the period specified in the **BDS** which shall not exceed one hundred twenty (120) days from the date of the opening of Bids.
- 21.2. 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 22 should also be extended corresponding to, at least, the extension of the bid validity period. 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.

## **22. Bid Security**

- 22.1. Pursuant to **ITB** Clause 14, the Bidder shall furnish, as part of its Bid, a Bid security in the form and amount specified in the **BDS**. The PROCURING ENTITY shall prescribe the acceptable forms of Bid Security from among the following, from which acceptable forms the Bidder may choose:

- (a) cash;
- (b) cashier's or certified check;
- (c) irrevocable letter of credit;
- (d) bank guarantee;
- (e) surety bond; or
- (f) Affidavit of Bid Securing Declaration

In case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in or another form acceptable to the

PROCURING ENTITY. The form must include the complete name of the Bidder.

- 22.2. 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.
- 22.3. No Bid Securities shall be returned to bidders after the opening of bids and before contract signing, except to those that failed to comply with any of the requirements to be submitted in the first bid envelope. Without prejudice on its forfeiture, Bid Securities shall be returned only after the bidder with the Lowest Calculated 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 the **BDS**.
- 22.4. Upon signing and execution of the contract, pursuant to **ITB** Clause 0, and the posting of the performance security, pursuant to **ITB** Clause 41, the successful Bidder's Bid Security will be discharged, but in no case later than the Bid Security validity period as indicated in the **BDS**.
- 22.5. The Bid Security may be forfeited:
- (a) If a Bidder:
    - (a.1) withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Form;
    - (a.2) does not accept the correction of errors pursuant to **ITB**; or
    - (a.3) any other reason stated in the **BDS**.
  - (b) In the case of a successful Bidder, if the Bidder fails:
    - (b.1) to sign the Contract in accordance with **ITB** Clause 0;
    - (b.2) to furnish performance security in accordance with **ITB** Clause 41; or
    - (b.3) any other reason stated in the **BDS**.

### **23. Format and Signing of Bids**

- 23.1. Bidders shall submit their bids through their duly authorized representative using the appropriate forms provided in **Error! Reference source not found.** on or before the deadline specified in the **ITB** Clauses 25 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 13.2, and the

second shall contain the financial component of the bid. This shall also be observed for each lot in the case of lot procurement.

- 23.2. 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 a person or persons duly authorized to bind the Bidder to the Contract. **All pages of the Bid, including attachments thereto such as brochures. Shall be initialed by the person or persons signing the bid.**
- 23.3. Forms as mentioned in **ITB** Clause 23.123.1 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.
- 23.4. The Bidder shall prepare and submit an original of the first and second envelopes as described in **ITB** Clauses 13.2, 14 and 15. In addition, the Bidder shall submit copies of the first and second envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 23.5. Each and every page of the Bid Form, including the Schedule of Prices, under Section VIII hereof, shall be signed by the duly authorized representative/s of the Bidder. Failure to do so shall be a ground for the rejection of the bid.
- 23.6. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

#### **24. Sealing and Marking of Bids**

- 24.1. Bidders shall enclose their original eligibility and technical documents described in ITB Clause 13.2, 14, and 15 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".
- 24.2. 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.
- 24.3. The original and the number of copies of the Bid as indicated in the **BDS** shall be typed or written in ink and shall be signed by the Bidder or its duly authorized representative/s.
- 24.4. 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 25.1.

(f) Bid envelopes that are not properly sealed and marked, as required in the bidding documents, shall not be rejected, but the Bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC or the Procuring Entity shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening.

24.5.

**25. Deadline for Submission of Bids**

25.1. 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**.

**26. Late Bids**

26.1. Any Bid submitted after the deadline for submission and receipt of Bids prescribed by the PROCURING ENTITY, pursuant to **ITB** Clause 25, shall be declared "Late" and shall not be accepted by the PROCURING ENTITY.

**27. Modification and Withdrawal of Bids**

27.1. 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.

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; provided further that the corresponding Letter of Withdrawal contains a valid authorization requesting for such withdrawal, subject to appropriate administrative sanctions.

- 27.2. Bids requested to be withdrawn in accordance with **ITB** Clause 27.1 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.
- 27.3. 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 Bid Form. Withdrawal of a Bid during this interval shall result in the forfeiture of the Bidder's Bid Security, pursuant to **ITB** Clause 22.5, and the imposition of administrative, civil and criminal sanctions as prescribed by R.A. 9184 and its IRR-A.

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

- 28.1. The PROCURING ENTITY's BAC will open Bid envelopes in the presence of Bidders' representatives who choose to attend, at the time, on the date, and at the place specified in the **BDS**. The Bidders' representatives who are present shall sign a register evidencing their attendance.
- 28.2. 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.
- 28.3. If the Bidding is subject to an Eligibility Check as described in ITB Clause 13.1, the PROCURING ENTITY shall not accept the Bids of ineligible Bidders. All eligible Bidders will have their Bids opened in accordance with the following paragraphs. A Bidder determined as "failed" has seven (7) 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

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file a motion for reconsideration, in the case of a Bidder who fails in the first (Technical) Bid envelopes, the BAC shall hold the second (Financial) Bid envelope of the said failed Bidder unopened and duly sealed until such time that the motion for reconsideration or protest has been resolved.

- 28.4. Outer envelopes marked "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" will be identified but not opened. The PROCURING ENTITY's BAC will announce the presence and type of modification from the information contained on the outer envelope.
- 28.5. The envelopes holding the Technical Proposals and modifications, if any, shall be opened one at a time, and the following read out and recorded:
- (a) the name of the Bidder;
  - (b) whether there is a technical modification or substitution;
  - (c) the presence, amount and validity of the Bid security; and
  - (d) the presence or absence of each document comprising the technical proposal vis-à-vis a Checklist of the required documents.
- 28.6. The PROCURING ENTITY's BAC shall determine each Bidder's compliance with the documents required to be submitted for the Technical Proposal of the Bid, as prescribed in **ITB** Clause 14. For this purpose, the PROCURING ENTITY's BAC shall check the submitted documents of each Bidder against a checklist of required documents to ascertain if they are all present in the first envelope, using a non-discretionary "pass/fail" criteria, as stated in the ITAEB and this ITB. If a Bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered "failed" for the particular requirement concerned. In case one or more of the above required documents in the first envelope of a particular Bid is missing, incomplete, or patently insufficient, the PROCURING ENTITY's BAC shall rate the Bid concerned as "failed" and immediately return to the Bidder concerned its second Bid envelope unopened. Otherwise, the PROCURING ENTITY's BAC shall rate the said first Bid envelope as "passed."
- 28.7. Immediately after determining compliance with the requirements in the first envelope, the PROCURING ENTITY's BAC shall forthwith open the second bid envelope (Financial Proposals) and modifications, if any, of each remaining eligible bidder whose first bid envelope was rated "passed" and announce the total Bid price inclusive of any discounts that may be offered and modifications made. 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 approved budget for the contract, unless otherwise provided in the **BDS**, 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.

28.8. 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 and the observers may witness the same. The minutes of the proceedings of the Bid opening shall be available to the public upon written request and payment of a specified fee to recover cost of materials.

**29. Process to be Confidential**

29.1. 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 this ITB. The entire evaluation process shall be completed in not more than fifteen (15) days from the deadline for receipt of proposals.

**30. Contacting the PROCURING ENTITY**

30.1. Subject to **ITB** Clause 31, no Bidder shall contact the PROCURING ENTITY on any matter relating to its Bid, from the time of Bid opening to the time the Contract is awarded, unless required by the BAC.

30.2. 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.

**31. Clarification of Bids**

31.1. 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 indicated in the **BDS**.

**32. Conversion to a Single Currency**

32.1. If so allowed in accordance with **ITB** Clause 19.1, 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 exchange rates officially prescribed for similar transactions as established by the *Bangko Sentral ng Pilipinas* on the date of Bid opening.

**33. Domestic Preference**

33.1. If the **BDS** so specifies and for the purpose of comparison of Bids, the PROCURING ENTITY will grant a margin of preference in accordance with the procedures outlined in the **BDS**.

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

34.1. 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 28, in order to determine the Lowest Calculated Bid.

34.2. The methodology of evaluation to determine the Lowest Calculated Bid is indicated in the **BDS**.

34.3. 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.

34.4. The PROCURING ENTITY's BAC shall immediately conduct a detailed evaluation of all Bids rated "passed," using non-discretionary pass/fail criteria, which shall include consideration of the following:

(a) The Bid must be complete. Except in case of 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) Minor arithmetical corrections to consider computational errors, omissions and discounts if so allowed in the BDS. Any adjustment shall be calculated in monetary terms to determine the calculated prices.

34.5. Unless otherwise indicated in the **BDS**, the PROCURING ENTITY's evaluation of Bids shall only be based on the Bid price quoted in accordance with **ITB** Clause 18.



**35. Post-Qualification**

- 35.1. The PROCURING ENTITY shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Lowest Calculated Bid is qualified to perform the contract satisfactorily. The determination shall use non-discretionary "pass/fail" criteria and in accordance with the criteria listed in **ITB** Clause 7. In this case the said Bidder's Bid shall be considered and declared the Lowest Calculated and Responsive Bid.
- 35.2. The determination shall take into account the Bidder's legal, financial, technical, and production capabilities. It shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to **ITB** Clause 14, as well as such other information as the PROCURING ENTITY deems necessary and appropriate.
- 35.3. An affirmative determination shall be a prerequisite for award of the contract to the Bidder. 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 and Responsive Bid is determined for contract award.

**36. PROCURING ENTITY's Right to Reject Bids, Declare a Failure of Bidding, and not to Award the Contract**

- 36.1. 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 Government 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.

36.2. 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 refuses, without justifiable cause to accept the award of contract, and no award is made.

**37. Award Criteria**

37.1. Subject to **ITB** Clause 35, the PROCURING ENTITY shall award the contract to the Bidder whose Bid has been determined to be substantially responsive and has been determined to be the Lowest Calculated and Responsive Bid.

**38. Prohibition Against Variation of Bid Quantities at Time of Award**

38.1. At the time of contract award, the PROCURING ENTITY shall not increase or decrease the quantity of GOODS specified in Section VI. Schedule of Requirements.

**39. Notice of Award**

39.1. 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 successful Bidder and submitted personally or sent by registered mail or electronically to the PROCURING ENTITY.

39.2. Upon the issuance of the Notice of Award to the successful Bidder, the PROCURING ENTITY shall promptly notify each unsuccessful Bidder of the fact of award to the successful Bidder, pursuant to **ITB** Clause 35.

**40. Signing of the Contract**

- 40.1. 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.
- 40.2. Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall sign and date the contract and return it to the PROCURING ENTITY.

**41. Performance Security**

- 41.1. 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 between the successful Bidder and the PROCURING ENTITY, the successful Bidder shall furnish to the PROCURING ENTITY the Performance Security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents.
- 41.2. Failure of the successful Bidder to comply with the requirement of **ITB** Clauses 40.2 or 41.1 shall constitute sufficient grounds 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 Lowest Calculated and Responsive Bid 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.

**42. Notice to Proceed**

- 42.1. Within seven (7) 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 successful Supplier.
- 42.2. The date of the Supplier's receipt of the Notice to Proceed will be regarded as the effective date of the Contract, unless otherwise specified in the **BDS**