

Section V. Special Conditions of the Contract

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1.1(g)	The PROCURING ENTITY is <i>Department of National Defense / Armed Forces of the Philippines (DND/ AFP)</i>														
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: AFP Modernization Trust Fund</p> <p>The Government of the Philippines (GOP) through AFP Mod Act Trust Fund with the <i>Special Allotment Release Order Nr BMB-D-18-0113736</i> in the amount EIGHTY-EIGHT MILLION SEVEN HUNDRED FIFTY THOUSAND PESOS (88,750,000.00) composed of the following lots:</p> <table border="1" data-bbox="451 667 1458 856"> <thead> <tr> <th data-bbox="451 667 516 741">Lot Nr</th> <th data-bbox="516 667 1214 741">Particulars</th> <th data-bbox="1214 667 1458 741">ABC (Php)</th> </tr> </thead> <tbody> <tr> <td data-bbox="451 741 516 783">3</td> <td data-bbox="516 741 1214 783">Tracked Excavators</td> <td data-bbox="1214 741 1458 783">80,000,000.00</td> </tr> <tr> <td data-bbox="451 783 516 825">26</td> <td data-bbox="516 783 1214 825">MPT 4x4 Pick-up</td> <td data-bbox="1214 783 1458 825">8,750,000.00</td> </tr> <tr> <td colspan="2" data-bbox="451 825 1214 856" style="text-align: right;">Total ABC</td> <td data-bbox="1214 825 1458 856">88,750,000.00</td> </tr> </tbody> </table>			Lot Nr	Particulars	ABC (Php)	3	Tracked Excavators	80,000,000.00	26	MPT 4x4 Pick-up	8,750,000.00	Total ABC		88,750,000.00
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1.1(k)	<p>The Delivery Site is:</p> <p>420th Supply Wing, AFC, Clark Air Base, Pampanga</p> <ul style="list-style-type: none"> • Completeness of delivered goods • Inspection free from defects • Booking and/or inventory of the delivered goods. <p>During training of operators and maintenance personnel at delivery area, the winning PROPONENT for each Lot shall shoulder all the logistical expenses related to the training not limited to the following: snacks, meals and classrooms. Except for Lot Nr 2.</p>														
5.1	<p>The PROCURING ENTITY's address for Notices is:</p> <p>Department of National Defense Bids and Awards Committee Basement, DND Building Camp General Emilio Aguinaldo, Quezon City Philippines 1110 Contact Person: Head, DND-BAC 2 Secretariat Tel No/ Fax (02) 421-3531 Email: dndsbacsec@gmail.com</p> <p>The Supplier's address for Notices is:</p> <p>_____</p>														
6.2	Delivery and Documents -														

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	<p>For purposes of the Contract, "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><i>For foreign Suppliers, "The delivery terms applicable to the Contract are DAP, (see locations below). In accordance with INCOTERMS."</i></p> <p><i>For domestic Suppliers, "The delivery terms applicable to this Contract are delivered DAP, (see locations below). Risk and title will pass from the Supplier to the PROCURING ENTITY upon receipt and final acceptance of the GOODS at their final destination."</i></p> <p>Location for all Lots:</p> <p>420th Supply Wing, AFC, Clark Air Base, Pampanga, Philippines</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 or by domestic Suppliers:</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) Four copies of permanent export licenses for controlled military items, if the goods is a controlled military items in the originating country; (vii) Delivery receipt detailing number and description of items received

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	<p>signed by the authorized receiving personnel;</p> <p>(viii) Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY's representative at the Delivery Site; and</p> <p>(ix) Four copies of the Invoice Receipt for property signed by the PROCURING ENTITY's representative at the Delivery Site.</p> <p>(x) Certificate of Pre-delivery inspection for all Lots except Lot Nrs 2, 6, & 31 by the procuring entity/PDI team.</p> <p><i>For GOODS supplied from abroad (excluding domestic Suppliers):</i></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>Original and four copies of the Supplier's invoice showing GOODS' description, quantity, unit price, and total amount;</p> <p>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>Original Supplier's factory inspection report;</p> <p>Original and four copies of the Manufacturer's and/or Supplier's warranty certificate;</p> <p>Original and four copies of the certificate of origin (for imported GOODS);</p> <p>Delivery receipt detailing number and description of items received signed by the PROCURING ENTITY's representative at the Delivery Site;</p> <p>Certificate of Acceptance/Inspection Report signed by the PROCURING ENTITY's representative at the Delivery Site; and</p> <p>Four copies of the Invoice Receipt for Property signed by the PROCURING ENTITY's representative at the Delivery Site.</p> <p>For purposes of this Clause the PROCURING ENTITY's Representative at the Delivery Site is:</p>

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	<p>For all Lots:</p> <p>COL LITO D VILLANUEVA PAF (MNSA) The Project Manager Project Management Team</p> <p>Incidental Services -</p> <p>The Supplier is required to provide all of the following incidental services, including additional services as specified in Section VI. Schedule of Requirements:</p> <ul style="list-style-type: none"> (a) performance or supervision of on-site assembly and/or start-up of the supplied GOODS; (b) furnishing of tools required for assembly and/or maintenance of the supplied GOODS; (c) furnishing of a detailed operations and maintenance manuals (English), Electrical & Hydraulic System Schematic Diagrams (English), and Illustrated Parts Breakdown (English) for each appropriate unit of the supplied GOODS; (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 (e) training of the PROCURING ENTITY's personnel, at the Supplier's training facility and/or on-site for operation and maintenance of the supplied GOODS as specified in Section VII. Technical Specifications. <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. The Incidental Services are deemed included in the contract price and no additional cost on the part of the PROCURING ENTITY in relation to the Incidental Services shall be made.</p> <p>Spare Parts -</p> <p>The Supplier is required to provide all of the following materials, notifications, and information pertaining to spare parts assembled, supplied, manufactured or distributed by the Supplier:</p> <ul style="list-style-type: none"> (a) such spare parts as the PROCURING ENTITY may elect to

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	<p>purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under this Contract; and</p> <p>(b) in the event of termination of production of the spare parts:</p> <ol style="list-style-type: none"> 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. <p>(c) The warranty should cover any and all defects encountered during the warranty period of one year. The proponent is required to replace the whole major component assembly with brand new item (engine, fuel injection pump assembly, final drive assembly, transmission, differential, main & auxiliary pumps, hydraulic control valves) in a period of 30 calendar days from notice for any material or manufacturing defect (requiring removal or dismantling of said major component) discovered or encountered before the unit reached its first 500 operating hours for Heavy Equipment (Lot Nr 3).</p> <p>The Supplier shall carry sufficient inventories to assure stock supply of spares for the GOODS during the warranty period covered.</p> <p>Packaging (as applicable) -</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>

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	<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> <p>Insurance -</p> <p>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>Transportation -</p> <p>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>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 20.</p> <p>The PROCURING ENTITY accepts no liability for the damage of GOODS during transit other than those prescribed by INCOTERMS for DDU</p>

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	<p>Deliveries. Title will not be deemed to have passed to the PROCURING ENTITY until their receipt and final acceptance at the final destination.</p> <p>Patent Rights -</p> <p>The Supplier/Proponents shall provide complete listing of contractor, Subcontractor and Third Party Intellectual Properties developed under the contract which should be owned by the DND/AFP.</p> <p>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>
8.1	<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-A.</p>
9.1	<p>Payment shall be made only upon submission of the required auditorial document and issuance of Advise of Payment by the Chief of Staff, AFP or his duly authorized official representative as provided for under Section 12 of DND DO #12 / EO 423.</p> <p>Payment may be made either through Direct Payment, or through an irrevocable L/C.</p> <p>If the payment is made through irrevocable L/C, the PROCURING ENTITY shall open the irrevocable 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 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 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;</p> <p>(f) <u>Expiration Date</u>:</p>

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For all Lots, 165 calendar days from issue date of the L/C;

(g) Payment Scheme/Drawdown Documentary Requirements: Payment 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:

- 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 Initial Inspection by the Procuring Entity's Project Inspection Team (PIT);
- iv. Manufacturer's and/or Supplier's Warranty Certificate as applicable;
- 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. Test / Trials Results (For all Testing/ Trials to be conducted)
- viii. Certificate of Final Acceptance by the AFP Technical Inspection and Acceptance Committee (AFP TIAC);
- ix. AFP Office of Financial Management (AFP OFM) Report;
- x. SAO Acceptance Report;
- xi. Copy of Insurance Policy/ Paid Premium
- xii. Training Certificates
- xiii. Copy of Warranty Security as per SCC Clause 15; and
- xiv. Advice of Payment by the Secretary of National Defense.

(h) Description of Goods:

For all Lots: **(See Section VI: Schedule of Requirements)**

(i) Delivery Terms: DAP:

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	<p>All GOODS to be delivered at: 420th Supply Wing, AFC, Clark Air Base, Pampanga, Philippines</p> <ul style="list-style-type: none"> o Completeness of delivered goods o Inspection free from defects o Test and Inspection <p>(j) <u>Latest Date of Delivery</u>:</p> <p>For all Lots: 135 calendar days from the receipt of the Notice to Proceed (NTP);</p> <p>(k) <u>Shipment</u>: One-time delivery.</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 17 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; and shall be paid within seven (7) working days upon submission of application of L/C. ii. The L/C must be in English; and iii. No boycott or restrictive language;
9.4	No further Instructions
11.1 and 11.3(c)	No further Instructions
11.4	No further instructions.
14.1	<p>The following inspections and tests that shall be conducted prior to acceptance of the goods:</p> <p>(a) Pre-Delivery Inspection for all Lots except Lot Nrs 2, 6, & 31</p> <p>Inspection of the GOODS at the Distributorship premises prior to Delivery Sites to be conducted by at least two (2) technical members of the Pre-Delivery Inspection Team (PDIT). This is applicable for all Lots except Lot Nrs 2, 6, & 31. Inspection must include physical inspection and testing on the OEM installed features, such as telematics and</p>

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	<p>others.</p> <p>(b) Test and Inspection after the GOODS delivered <i>420th Supply Wing, AFC, Clark Air Base, Pampanga, Philippines.</i></p> <p>Inspection must include physical inspection and testing such as no damage, good condition (must be brand new and up to date model) accurate in quantity, and confirming of required features and specifications. The following conditions of delivered items should be ensured:</p> <ul style="list-style-type: none"> • All items Conform to specifications and quantity • All items are free from damages or defects • All components, accessories and etc. are brand new • All features and attachments are functional • All attachments, spares, manuals, and all items in the included ILS are complete <p>(c) Final Test, Inspection and Acceptance for all Lots after the GOODS' arrival, installation and commissioning of the system in the above Delivery Site (1.1k) to be conducted by the AFP Technical Inspection and Acceptance Committee (TIAC) as part the procedures specified in Section VII, Technical Specifications and Section IX, Test Evaluation Checklist. The PROCURING ENTITY shall issue the following documents to the SUPPLIER after the successful completion of the Final Acceptance Test:</p> <ul style="list-style-type: none"> (c.1) Certificate of Final Acceptance by the AFP TIAC; (c.2) AFP OFM Report; (c.3) SAO Acceptance Report; (c.4) Advice of Payment from the Secretary of National Defense. <p>(d) The supplier shall furnish to the inspectors all reasonable access to facilities, assistance, records/ related documents of the GOODS at no charge to the PROCURING ENTITY.</p> <p>(e) The PROCURING ENTITY through the TIAC 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>

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	<p>upon giving a notice pursuant to Clause 5.</p> <p>(f) 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. (Test parameters and number of testing before rejection table on major and minor defects)</p>
15.3	Warranty as indicated in Section VII of this BDS.
15.5 and 15.6	<p>The period of correction of defects in the warranty period is within <i>two (2) weeks upon receipt of notice from the PROCURING ENTITY of any claim arising from the warranty obligation of the supplier.</i></p> <p>The warranty should cover any and all defects encountered during the warranty period of one year. The proponent is required to replace the whole major component assembly with brand new item (engine, fuel injection pump assembly, final drive assembly, transmission, differential, main & auxiliary pumps, hydraulic control valves) in a period of 30 calendar days from notice for any material or manufacturing defect (requiring removal or dismantling of said major component) discovered or encountered before the unit reached its first 500 operating hours for Heavy Equipment (Lot Nr 3).</p>
17.1	<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. 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>
18.4	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."

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