

## *Section II.*

# ***INSTRUCTIONS TO BIDDERS***

### **Notes on the Instructions to Bidders**

This section of the Bidding Documents provides the information necessary for Bidders to prepare responsive Bids, in accordance with the requirements of the PROCURING ENTITY. It also provides information on the eligibility check, Bid submission, opening, evaluation, and award of contract.

Section II contains provisions that are to be used unchanged. Section III consists of provisions that supplement, amend, or specify, in detail, information or requirements included in Section II which are specific to each procurement.

Matters governing performance of the Supplier, payments, or those affecting the risks, rights, and obligations of the parties under the contract are not normally included in this section, but rather under Section IV. General Conditions of Contract, and/or Section V. Special Conditions of Contract. If duplication of a subject is inevitable in the other sections of the document prepared by the PROCURING ENTITY, care must be exercised to avoid contradictions between clauses dealing with the same matter.

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## General

### 1. Scope of Bid

- 1.1. The PROCURING ENTITY named in the **BDS** (hereinafter referred to as the "PROCURING ENTITY") wishes to receive Bids for supply and delivery of the goods as described in Section VII. Technical Specifications (hereinafter referred to as the "goods") 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 28.

### 2. Source of Funds

- 2.1. The PROCURING ENTITY has a budget or has applied for or received funds from the funding source named in the **BDS**. It intends to apply part of the funds received for the project, as defined in the **BDS** to cover eligible payments under the contract.

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

- 3.1. Unless otherwise specified in the BDS, the Procuring entity as well as the bidders & suppliers shall observe the highest standard of ethics during the procurement and execution of the contract. In pursuance of this policy, the PROCURING ENTITY:
  - (a) defines, for purposes of this provision, the terms set forth below as follows:

"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.
  - (b) "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.
  - c. "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.
  - d. "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;
  - e. "obstructive practice" is deliberately destroying, falsifying, altering or concealing evidence material to an administrative proceedings or

investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

- 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 (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;
- (b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- (c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
- (d) Cooperatives duly registered with the Cooperatives Development Authority (CDA).
- (e) Unless otherwise provided in the BDS, persons/entities forming themselves into a JV, i.e., a group of two or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%).

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

- (a) When a treaty or international or Executive Agreement as provided in Section 4 of R.A. 9184 and its IRR allow foreign bidders to participate;
- (b) Citizens, corporations, or associations of the country, included in the list issued by the GPPB, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations, or associations of the Philippines;

- (c) When the Goods sought to be procured are not available from local suppliers; or
  - (d) When there is a need to prevent situations that defeat competition or restrain trade.
- 5.3. Government corporate entities may be eligible to participate only if they can establish that they (a) are legally & financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the GOP or the Procuring Entity.
- 5.4. Unless otherwise provided in the BDS, the Bidder must have completed at least one contract similar to the project the value of which, adjusted to current prices using the National Statistics Office consumer price index, must be at least equivalent to a percentage of the ABC stated in the BDS.

For this purpose, contracts similar to the project shall be those described in the BDS, and completed within the relevant period stated in the Invitation to Bid and ITB.

- 5.5. The Bidder must submit a computation of its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial Bank to extend a credit line in its favor if awarded the contract for this Project (CLC).

The NFCC, computed using the following formula, must be at least equal to the ABC to be bid:

NFCC = [(Current assets minus current liabilities) (15)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts; including awarded contracts yet to be started coinciding with the contract for this Project.

The CLC must be at least equal to ten percent (10%) of the ABC for this project. If issued by a foreign bank, it shall be confirmed or authenticated by a Universal or Commercial bank. In the case of local government units (LGUs), the Bidder may also submit CLC from other banks certified by the *Bangko Central ng Pilipinas* (BSP) as authorized to issue such financial instrument.

## 6. Bidder's Responsibilities

- 6.1. The Bidder or its duly authorized representative shall submit a sworn statement in the form prescribed in Section VIII. Bidding Forms as required in ITB Clause 12.1(b).
- 6.2. The Bidder is responsible for the following:
- (a) Having taken steps to carefully examine all of the Bidding Documents;
  - (b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
  - (c) Having made an estimate of the facilities available and needed for the contract to be bid, if any;
  - (d) Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin as provided by under ITB Clause 10.3.;
  - (e) Ensuring that it is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, LGUs, including foreign

government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB:

- (f) Ensuring that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- (g) Authorizing the Head of the Procuring Entity or its duly authorized representative/s to verify all the documents submitted;
- (h) Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized secretary's Certificate attesting to such fact, if the bidder is a corporation, partnership, cooperative, or joint venture;
- (i) Complying with the disclosure provision under section 47 of R.A 9184 in relation to other provisions of RA 3019; and
- (j) Complying with existing labor laws and standards, in the case of procurement of services.

Failure to observe any of the above responsibilities shall be at the risk of the Bidder concerned.

**6.3** The bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents.

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

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

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

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

**6.8** The Bidder should note that the Procuring Entity will accept bids only from those that have paid the non-refundable fee for the bidding documents at the office indicated in the Invitation to Bid.

## **7. Origin of Goods**

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

## **8. Sub-Contracts**

**8.1.** Unless otherwise indicated in the BDS, the Bidder may sub-contract portions of the Goods to an extent as may be approved by the Procuring Entity and stated in the

BDS. However, subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this project.

- 8.2. Subcontractors must comply with the eligibility criteria and the documentary requirements specified in the BDS. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the goods shall be disallowed.
- 8.3. The Bidder may identify the subcontractor to whom a portion of the Goods will be sub-contracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

### **Contents of Bidding Documents**

#### **9. Pre-bid Conference**

- 9.1. (a) If so specified in the BDS, a pre-bid conference shall be held at the venue and on the date indicated therein, to clarify and address the Bidders' questions on the technical and financial components of this project.  
  
(b) *The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid, or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids, as specified in the BDS.*
- 9.2. 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.
- 9.3. 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. Clarification and Amendment of Bidding Documents**

- 10.1. Bidders who have purchased the Bidding Documents may request for clarification on any part of the Bidding Documents for an interpretation. Such request must be in writing and submitted to the Procuring Entity at the address indicated in the BDS at least ten (10) calendar days before the deadline set for the submission and receipt of bids.
- 10.2. Supplemental/Bid Bulletins may be issued upon the Procuring Entity's initiative for purposes of clarifying any provision of the Bidding Documents not later than seven (7) days before the deadline for the submission and receipt of bids. Any modification to the Bidding Documents shall be identified as an amendment.
- 10.3. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted on the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the procuring entity concerned, if available. It shall be the responsibility of all Bidders who secure the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, bidders who have submitted bids before the

issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with ITB clause 23.

## **Preparation of Bids**

### **11. Language of Bid**

The bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation in English certified by the appropriate embassy or consulate in the Philippines, in which case the English translation shall govern for purposes of interpretation of the bid.

### **12. Documents Comprising the Eligibility Bid: Eligibility & Technical Components**

12.1 Unless otherwise indicated in the BDS, the first envelope shall contain the following eligibility and technical documents:

#### **(a) Eligibility Documents**

##### **Class "A" Documents -**

#### **(i) PhilGEPS Certificate of Registration, with an updated file containing the following Class "A" Documents**

- (i.i) Registration Certificate;
- (i.2) Mayor's /Business Permit or its Equivalent Document;
- (i.3) Tax Clearance;
- (i.4) Audited Financial Statements or any proof of such registration as stated  
In the BDS;

#### **(ii) Statement of all its ongoing and completed government and private contracts within the period stated in the BDS, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following:**

- (ii.1) name of contract;
- (ii.2) date of contract;
- (ii.3) kinds of Goods;
- (ii.4) amount of contract & value of outstanding contracts;
- (ii.5) date of delivery; and
- (ii.6) end user's acceptance or official receipt(s) issued for the contract, if completed.

#### **(iii) Statement of single Largest Completed Contract (SLCC) similar to the contract to be bid, and must be at least fifty percent (50%) of the ABC. However, in the case of Expendable Supplies, said SLCC must be at least twenty five percent (25%) of the ABC.**

#### **(iv) NFCC computation or CLC in accordance with ITB Clause 5.5; and**

##### **Class "B" Document:**

#### **(v) If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that**

they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.

(b) Technical Documents –

- (i) Bid security in accordance with ITB Clause 18. If the Procuring Entity requires the bidders to submit the bid

Legal Documents

- (b.2) Department of Trade and Industry (DTI) business name registration or Securities and Exchange Commission (SEC) registration certificate, whichever may be appropriate under existing laws of the Philippines;
- (b.3) Valid and current Mayor's permit/municipal license;
- (b.4) Tax clearance per Executive Order 398, series of 2005 / Taxpayer's Identification Number;
- (b.5) Statement of the prospective Bidder that it is not "blacklisted" or barred from bidding by the Government or any of its agencies, offices, corporations or LGUs, including non-inclusion in the Consolidated Blacklisting Report issued by the GOP;
- (b.6) Other appropriate licenses as may be required by the PROCURING ENTITY concerned as indicated in the BDS;

#### Technical Documents

- (b.7) Statement of the prospective Bidder of all its ongoing and completed government and private contracts within the relevant period, where applicable, 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: within the relevant period, 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;

#### Financial Documents

- (b.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;
- (b.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 the amount shown in the BDS;

- (c) Class "B" Documents –

- (c.1) Valid joint venture agreement pursuant to ITB Clause **Error! Reference source not found.**, in case of a JV;
  - (c.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
  - (c.3) Any other document listed in the BDS.
- 12.2.** If a Bidder has previously secured a Certification from the PROCURING ENTITY to the effect that it has previously submitted the above-enumerated Class "A" Documents, the said Certification may be submitted in lieu of the requirements enumerated in ITB Clause 13.2. 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.7) 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.
- 12.3.** 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.
- 12.4.** 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.

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

- 13.1.** 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) Certificate from the bidder under oath of its compliance with existing labor laws and standard, in case of procurement of services;
- (i) A sworn affidavit of compliance with the Disclosure Provision under Section 47 of R.A. 9184 as described in ITB Clause 4.2; and
- (j) Other documents/materials as stated in the BDS.

14. Documents Comprising the Bid, Financial Proposal

**14.1.** 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 document required in the **BDS**.

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

15. Bid Submission: Technical and Financial Proposals

**15.1.** 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.

**15.2.** 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.

**15.3.** 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.

16. Alternative Bids

**16.1.** Alternative Bids shall be rejected.

17. Bid Prices

**17.1.** 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.

**17.2.** 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.

**17.3.** 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 DDP 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.

**17.4.** 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.

## 18. Bid Currencies

**18.1.** 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.

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

## 19. Documents Establishing the GOODS' Conformity to the Bidding Documents

**19.1.** 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.

**19.2.** 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 substitutions are equivalent or as specified in the technical specifications and/ or Scheduled performance.

## 20. Bid Validity

- 20.1.** 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.
- 20.2.** 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 21 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.

## 21. Bid Security

- 21.1.** Pursuant to ITB Clause 13, 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) foreign government guarantee.

In case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in Section VIII. Sample Forms or another form acceptable to the PROCURING ENTITY. The form must include the complete name of the Bidder.

- 21.2.** 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.
- 21.3.** 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 of the bid. 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.
- 21.4.** Upon signing and execution of the contract, pursuant to ITB Clause 40, 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.
- 21.5.** 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 40;
    - (b.2) to furnish performance security in accordance with ITB Clause 41;  
or
    - (b.3) any other reason stated in the BDS.

## 22. Format and Signing of Bids

- 22.1.** The Bidder shall prepare an original of the Eligibility Documents, Technical Proposal, Financial Proposal as described in ITB Clauses 13.2, 14, and 15, and clearly mark each "ORIGINAL – ELIGIBILITY DOCUMENTS", "ORIGINAL - TECHNICAL PROPOSAL", and "ORIGINAL – FINANCIAL PROPOSAL", respectively. In addition, the Bidder shall submit copies of the Eligibility Documents, Technical Proposal, and Financial Proposal, and clearly mark them "COPY NO. \_\_\_ - ELIGIBILITY DOCUMENTS", "COPY NO. \_\_\_ - TECHNICAL PROPOSAL", and "COPY NO. \_\_\_ – FINANCIAL PROPOSAL". In the event of any discrepancy between the original and the copies, the original shall prevail.
- 22.2.** 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, except for unamended printed literature, shall be initialed by the person or persons signing the Bid.
- 22.3.** Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

## 23. Sealing and Marking of Bids

**23.1.** Unless otherwise indicated in the BDS, Bidders shall enclose their original Eligibility Documents described in ITB Clause 13.2 sealed in a separate envelope marked "ORIGINAL - ELIGIBILITY DOCUMENTS", the original of their Technical Proposal in one sealed envelope marked "ORIGINAL - TECHNICAL PROPOSAL", and the original of their Financial Proposal in another sealed envelope marked "ORIGINAL - FINANCIAL PROPOSAL", sealing them all in an outer envelope marked "ORIGINAL BID". Each copy of the Eligibility Documents, Technical Proposal, and Financial Proposal shall be similarly sealed duly marking the inner envelopes as "COPY NO. \_\_\_ - ELIGIBILITY DOCUMENTS", "COPY NO. \_\_\_ - TECHNICAL PROPOSAL", and "COPY NO. \_\_\_ - FINANCIAL PROPOSAL" and the outer envelope as "COPY NO. \_\_\_", respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

**23.2.** 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

**23.3.** If all envelopes are not sealed and marked as required, the PROCURING ENTITY will assume no responsibility for the misplacement or premature opening of the Bid.

## 24. Deadline for Submission of Bids

**24.1.** 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.

## 25. Late Bids

**25.1.** 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.

## 26. Modification and Withdrawal of Bids

**26.1.** 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.

- 26.2.** 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.
- 26.3.** 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.

## 27. Opening and Preliminary Examination of Bids

- 27.1.** 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.
- 27.2.** 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.
- 27.3.** 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 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.
- 27.4.** 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.
- 27.5.** 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.

**27.6.** 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 IAEB 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."

**27.7.** 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.

**27.8.** 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.

## 28. Process to be Confidential

**28.1.** 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.

## 29. Contacting the PROCURING ENTITY

**29.1.** Subject to ITB Clause 30, 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.

**29.2.** 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.

30. Clarification of Bids

**30.1.** 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.

31. Conversion to a Single Currency

**31.1.** If so allowed in accordance with ITB Clause 18.1, 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.

32. Domestic Preference

**32.1.** 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.

33. Detailed Evaluation and Comparison of Bids

**33.1.** 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 27, in order to determine the Lowest Calculated Bid.

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

**33.3.** 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.

**33.4.** 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.

33.5. 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.

#### 34. **Post-Qualification**

34.1. 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 5.4. In this case the said Bidder's Bid shall be considered and declared the Lowest Calculated and Responsive Bid.

34.2. 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.

34.3. 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.

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

35.1. 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.

35.2. In addition, the PROCURING ENTITY may likewise declare a Failure of Bidding when:

- (a) No prospective bidder submits an LOI or 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.

**36. Award Criteria**

**36.1.** 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.

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

**37.1.** At the time of contract award, the PROCURING ENTITY shall not increase or decrease the quantity of goods originally specified in Section VI. Schedule of requirements.

**38. Notice of Award**

**38.1.** 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.

**38.2.** 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.

**39. Signing of the Contract**

**39.1.** 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.

**39.2.** 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.

**40. Performance Security**

**40.1.** 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.

**40.2.** 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.

**41. Notice to Proceed**

**41.1.** 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.

**41.2.** 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.

**42. Protest Mechanism**

Decisions of the procuring entity at any stage of the procurement process may be questioned in accordance with Section 55 of the IRR of RA 9184.