

**GOVERNMENT PROCUREMENT POLICY BOARD**  
**RESOLUTION NO. 003-2005**

**APPROVING AND ADOPTING THE CHANGES IN THE  
PHILIPPINE BIDDING DOCUMENTS FOR PROCUREMENT OF  
GOODS, CIVIL WORKS AND CONSULTING SERVICES**

**WHEREAS**, the Government Procurement Policy Board (GPPB), through GPPB Resolution No. 010-2004, approved and issued the first draft of the Philippine Bidding Documents (PBDs) for Goods, Civil Works and Consulting Services, as harmonized with the Asian Development Bank (ADB), Japan Bank for International Cooperation (JBIC), and World Bank procurement rules, during its 6<sup>th</sup> meeting held on August 20, 2004;

**WHEREAS**, in line with the continuing efforts of the Government of the Philippines (GOP) and development partners to harmonize procurement guidelines, World Bank submitted its proposal to adopt the provisions set for GOP funded projects embodied in Republic Act. No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) to be applied to World Bank funded projects and to reflect these changes in the PBDs Edition II;

**WHEREAS**, the Inter-Agency Technical Working Group (IATWG) of the GPPB, tasked to evaluate and continuously enhance the PBDs, reviewed the abovementioned proposed changes in its 1<sup>st</sup> TWG meeting on January 20, 2005, and recommends that these proposals, including its own submission, be presented to the GPPB for approval;

**WHEREAS**, these proposed changes were presented and submitted to the Members of the Board for approval during the 1<sup>st</sup> meeting of the GPPB for the year 2005, held on January 24, 2005 at Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City;

**WHEREAS**, during the said GPPB meeting, the Members of the Board discussed, considered and duly approved the changes in the PBDs, attached hereto as Annex "A" to be incorporated in Edition II of the documents.

**NOW, THEREFORE**, for and in consideration of the foregoing, WE, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested in US by law, hereby **RESOLVE** to approve and adopt the changes in the PHILIPPINE BIDDING DOCUMENTS for PROCUREMENT OF GOODS, CIVIL WORKS AND CONSULTING SERVICES, attached hereto as Annex "A".

This resolution shall take effect immediately.

**APPROVED** this 24<sup>th</sup> day of January, 2005 at Pasig City, Philippines

# GOVERNMENT PROCUREMENT POLICY BOARD

RESOLUTION NO. 003-2005

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**LAURA B. PASCUA**

Undersecretary  
Department of Budget and Management

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**ROMULO L. NERI**

Director General  
National Economic and Development  
Authority

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

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**DEPARTMENT OF NATIONAL  
DEFENSE**

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**DEPARTMENT OF EDUCATION**

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**DEPARTMENT OF HEALTH**

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**DEPARTMENT OF INTERIOR AND  
LOCAL GOVERNMENT**

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**DEPARTMENT OF ENERGY**

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

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**DEPARTMENT OF FINANCE**

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

**GOVERNMENT PROCUREMENT POLICY BOARD**  
RESOLUTION NO. 003-2005

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**DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS**

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**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

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**JOSE MARTIN C. SYQUIA**  
Board Secretary, GPPB  
Executive Director, GPPB-TSO

**MATRIX OF CHANGES IN THE PHILIPPINE BIDDING DOCUMENTS (PBDs)  
(As of January 20, 2005)**

**I. GOODS**

CLAUSE	OLD PROVISION	NEW PROVISION
First paragraph of Invitation to Apply for Eligibility and to Bid	<p><i>If the Funding Source is ADB, JBIC or WB, state the following (If the Funding Source is wholly GOP, delete this provision):</i></p> <p>This invitation to Bid follows the general procurement notice for this project that appeared in <i>Development Business</i>, issue no. [insert number] of [insert date]</p>	Deleted
BDS 12.1	<p><b>Eligibility Check</b></p> <p><i>Select one, delete the other:</i></p> <p>The Funding Source is the GOP; there will be an eligibility check prior to Bid opening.</p> <p>Or</p> <p>The Funding Source is The World Bank; there will be a limited eligibility check undertaken on documents contained in the Technical Proposal. The documents listed in Clause 12.2 are to be included in a Bidder's Technical Proposal. Technical Proposals that omit the following documents will be rejected at Bid opening and the opened technical proposal along with the unopened Price Proposal will be returned to the Bidders representative at Bid opening</p> <ul style="list-style-type: none"> <li>a) Evidence of financial, technical and production capability 12.2 (vi)</li> <li>b) Audited Financial Statements (<b>ITB 12.2 (vii)</b>)</li> <li>c) NFCC or Credit Line, Certificate or cash deposit certificate; (<b>ITB 13.1 (viii)</b>)</li> <li>d) Bid Security; (<b>ITB 13.1 (i)</b>)</li> <li>e) Authority of the Signatory; (<b>ITB 13.1 (ii)</b>)</li> </ul> <p><i>Or</i></p> <p>The Funding Source is The Japan Bank for International Cooperation; there will not be an eligibility check prior to Bid opening. The documents listed in <b>ITB</b> Clause 12.2 are to be included in a Bidder's Technical Proposal.</p> <p><i>Or</i></p> <p>The Funding Source is The Asian Development Bank; there will not be an eligibility check prior to Bid opening. The documents listed in <b>ITB</b> Clause 12.2 are to be included in a Bidder's Technical</p>	<p><b>Eligibility Check</b></p> <p>Select one, delete the other:</p> <p>The Funding Source is the GOP; there will be an eligibility check which shall be immediately followed by Bid Opening.</p> <p>Or</p> <p>If the Funding Source is ADB, JBIC, and WB, there is no eligibility check.</p>

	Proposal	
BDS 13.1	<p><b>Documents Comprising the Bid</b></p> <p><i>If the Funding Source is GOP, delete all reference to this clause from the <b>BDS</b>. If the Funding Source is not the GOP state the following:</i></p> <p>“All documents described in <b>ITB</b> Clause 12 shall be included in the Technical Proposal”.</p>	<p><b>Documents Comprising the Bid</b></p> <p><i>If the Funding Source is GOP, delete all reference to this clause from the <b>BDS</b>.</i></p> <p><i>If the Funding Source is ADB or JBIC, state the following:</i></p> <p>All documents described in <b>ITB</b> Clause 12 shall be included in the Technical Proposal.</p> <p><i>If the Funding Source is the WB, state the following:</i></p> <p>During Bid opening Technical Proposals that lack any of the following documents shall be rejected and returned to the Bidder together with its unopened Price Proposal:</p> <ul style="list-style-type: none"> <li>a) Evidence of financial, technical and production capability</li> <li>b) Audited Financial Statements;</li> <li>c) NFCC or Credit Line Certificate or Cash Deposit Certificate;</li> <li>d) Bid Security; and</li> <li>e) Authority of the Signatory.</li> </ul>
BDS 27.7	No corresponding BDS 27.7	<p><b>Opening and Preliminary Examination of Bids</b></p> <p><i>If the Funding Source is ADB, JBIC, or WB, Clause 27.7 of the ITB shall read as follows:</i></p> <p>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, 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.</p>
ITB 33.6 deleted became ITB 33.3	The PROCURING ENTITY’s evaluation of a Bid will exclude and not take into account the following:	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

	<p>(a) in the case of GOODS manufactured in the PROCURING ENTITY's country or GOODS of foreign origin already located in the PROCURING ENTITY's country, sales and other similar taxes, which will be payable on the GOODS if a contract is awarded to the Bidder, unless the <b>BDS</b> indicates that the Funding Source is the GOP in which case taxes and duties payable will be included in the evaluation;</p> <p>(b) in the case of GOODS of foreign origin offered from abroad, customs duties and other similar import taxes which will be payable on the GOODS if the contract is awarded to the Bidder unless the <b>BDS</b> indicates that the Funding Source is the GOP in which case taxes and duties payable will be included in the evaluation.</p>	<p>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.</p>
ITB 37.1	<p><b>PROCURING ENTITY's Right to Vary Quantities at Time of Award</b></p> <p>The PROCURING ENTITY reserves the right at the time of contract award to increase or decrease, by the percentage indicated in the <b>BDS</b>, the quantity of GOODS and services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions.</p>	<p><b>Prohibition Against Variation of Bid Quantities at Time of Award</b></p> <p>At the time of contract award, the PROCURING ENTITY shall not increase or decrease the quantity of goods originally specified in the Schedule of Requirements.</p>
BDS 37.1	<p><b>PROCURING ENTITY's Right to Vary Quantities at Time of Award</b></p> <p><i>Retain one of the following, deleting the rest.</i></p> <p>The Funding Source is the GOP, the PROCURING ENTITY's right to vary quantities at time of award is nil.</p> <p><i>Or</i></p> <p>The Funding Source is the World Bank, the PROCURING ENTITY's right to vary quantities at time of award is fifteen percent (15%)</p> <p><i>Or</i></p> <p>The Funding Source is the Asian Development Bank, the PROCURING ENTITY's right to vary quantities at time of award is fifteen percent (15%)</p> <p><i>Or</i></p> <p>The Funding Source is the Japan Bank for</p>	<p>BDS 37.1 deleted.</p>

	International Cooperation, the PROCURING ENTITY's right to vary quantities at time of award is nil.	
SCC 12	<p>Payment (GCC Clause 19)</p> <p>GCC 19 For GOODS supplied from within the Philippines or by domestic Suppliers:</p> <p>The method and conditions of payment to be made to the Supplier through the Government's current disbursement procedure within sixty (60) days of submission of documents under this Contract shall be as follows:</p> <p>If the Funding Source is GOP delete item (i) from payments for domestic and foreign Suppliers and increase the payment due under (ii) to eighty percent (80%). If the Funding Source is ADB, JBIC &amp; WB, retain the provisions.</p>	Third paragraph deleted.
SCC 6 (GCC 11)	<p><b>Settlement of disputes</b></p> <p><b>GCC 11.4</b></p> <p>In the case of a dispute between the PROCURING ENTITY and the Supplier, the dispute shall be referred to adjudication or arbitration in accordance with Republic Act 876 ("R.A. 876"), otherwise known as the "Arbitration Law of the Philippines."</p> <p><i>Note: if the Funding is ADB delete the above paragraph and insert the following:</i></p> <p>All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p>	<p><b>Settlement of disputes</b></p> <p><b>GCC 11.4</b></p> <p>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."</p> <p><i>Note: if the Funding is ADB delete the above paragraph and insert the following:</i></p> <p>All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p>
GCC 27	<p><b>Transportation</b></p> <p>27.1. Where the Supplier is required under Contract to deliver the GOODS CIF, CIP or DDP, transport of the GOODS to the port of destination or such other named place of destination in the Philippines, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.</p>	<p><b>Transportation</b></p> <p>27.1 Where the Supplier is required under Contract to deliver the GOODS CIF, CIP or DDP, transport of the GOODS to the port of destination or such other named place of destination in the Philippines, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.</p>

	<p>27.2. Where the Supplier is required under the Contract to transport the GOODS to a specified place of destination within the Philippines, defined as the Project Site, transport to such place of destination in the Philippines, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.</p> <p>27.3. Where the Supplier is required under Contract to deliver the GOODS CIF, CIP or DDP, no restriction shall be placed on the choice of carrier unless specified in the SCC.</p>	<p>27.2 Where the Supplier is required under the Contract to transport the GOODS to a specified place of destination within the Philippines, defined as the Project Site, transport to such place of destination in the Philippines, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.</p> <p>27.3 Where the Supplier is required under Contract to deliver the GOODS CIF, CIP or DDP, GOODS are to be transported on carriers of Philippine registry. In the event that no carrier of Philippine registry is available, GOODS may be shipped by a carrier which is not of Philippine registry provided that the Supplier obtains and presents to the PROCURING ENTITY certification to this effect from the nearest Philippine consulate to the port of dispatch. In the event that carriers of Philippine registry are available but their schedule delays the Supplier in its performance of the 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 38.</p> <p>27.4 The PROCURING ENTITY accepts no liability for the damage of GOODS during transit other than those prescribed by INCOTERMS for DDP Deliveries. In the case of GOODS supplied from within the Philippines or supplied by domestic Suppliers risk and title will not be deemed to have passed to the PROCURING ENTITY until their receipt and final acceptance at the final destination.</p>
<p>SCC 15</p>	<p><b><i>SCC 15. Transportation (GCC Clause 27.3)</i></b></p> <p><b>GCC 27.3</b></p> <p><i>If the Funding Source is GOP insert the following:</i></p> <p>GOODS are to be transported on carriers of Philippine registry. In the event that no carrier of Philippine registry is available, GOODS may be shipped by a carrier which is not of Philippine registry provided that the Supplier obtains and</p>	<p>Corresponding SCC clause (SCC 15) deleted</p>

	<p>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 the 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 36.</p> <p><i>If the Funding Source is not the GOP state:</i></p> <p>There is no restriction placed on the choice of carrier.</p> <p><i>Retain this clause for all funding agencies</i></p> <p>The PROCURING ENTITY accepts no liability for the damage of GOODS during transit other than those prescribed by INCOTERMS for DDP Deliveries. In the case of GOODS supplied from within the Philippines or supplied by domestic Suppliers risk and title will not be deemed to have passed to the PROCURING ENTITY until their receipt and final acceptance at the final destination.</p>	
GCC 32	<p><b>Termination for Default</b></p> <p>32.1. The PROCURING ENTITY, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:</p> <ul style="list-style-type: none"> <li>i. if the Supplier fails to deliver any or all of the GOODS within the period(s) specified in the Contract, or within any extension thereof granted by the PROCURING ENTITY pursuant to GCC Clause 5;</li> <li>ii. if the Supplier fails to perform any other obligation(s) under the Contract; or</li> <li>iii. if the Supplier, in the judgment of the PROCURING ENTITY, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.</li> </ul> <p>32.2. For the purpose of this clause:</p>	<p><b>Termination for Default</b></p> <p>32.1 Unless specified in the SCC, the Procuring Entity shall terminate a contract for default when any of the following conditions attends its implementation:</p> <ul style="list-style-type: none"> <li>(i) Outside of <i>force majeure</i>, the Supplier fails to deliver or perform any or all of the GOODS within the period(s) specified in the contract, or within any extension thereof granted by the PROCURING ENTITY pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contact price;</li> <li>(ii) As a result of <i>force majeure</i>, the Supplier is unable to deliver or perform any or all of the GOODS, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the PROCURING ENTITY stating that the circumstance of <i>force majeure</i> is deemed to have</li> </ul>

	<p>(a) “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public 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.</p> <p>(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 Borrower, and includes collusive practice among Bidders (prior to or after Bid submission) designed to establish Bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.</p> <p>(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;</p> <p>(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.</p> <p>32.3. In the event the PROCURING ENTITY terminates the Contract in whole or in part, pursuant to GCC Clause 0, the PROCURING ENTITY may procure, upon such terms and in such manner as it deems appropriate, GOODS or Services similar to those undelivered, and the Supplier shall be liable to the PROCURING ENTITY for any excess costs for such similar GOODS or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.</p> <p>32.4. In case the delay in the delivery of the GOODS exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the</p>	<p>ceased; or</p> <p>(iii)The Supplier fails to perform any other obligation under the Contract.</p> <p>32.2. For the purpose of this clause:</p> <p>(a) “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public 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.</p> <p>(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 Borrower, and includes collusive practice among Bidders (prior to or after Bid submission) designed to establish Bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.</p> <p>( 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;</p> <p>(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.</p> <p>32.3 In the event the PROCURING ENTITY terminates the Contract in whole or in part, pursuant to GCC Clause 0, the PROCURING ENTITY may procure, upon such terms and in such manner as it deems appropriate, GOODS or Services similar to those undelivered, and the</p>
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	<p>PROCURING ENTITY may terminate the contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.</p>	<p>Supplier shall be liable to the PROCURING ENTITY for any excess costs for such similar GOODS or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.</p> <p>32.4. In case the delay in the delivery of the GOODS exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the PROCURING ENTITY may terminate the contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.</p>
GCC 33	<p><b>Termination for Insolvency</b></p> <p>33.1. The PROCURING ENTITY may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the PROCURING ENTITY.</p>	<p><b>Termination for Insolvency</b></p> <p>33.1 Unless specified in the SCC, the PROCURING ENTITY shall terminate the contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the PROCURING ENTITY and/or the Supplier.</p>
GCC 34	<p><b>Termination for Convenience</b></p> <p>34.1. The PROCURING ENTITY, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the PROCURING ENTITY's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.</p> <p>34.2. The GOODS that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the PROCURING ENTITY at the Contract terms and prices. For the remaining GOODS, the PROCURING ENTITY may elect:</p>	<p><b>Termination for Convenience</b></p> <p>34.1 Unless specified in the SCC, the PROCURING ENTITY may terminate the Contract, in whole or in part, at any time for its convenience. The Head of the PROCURING ENTITY may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.</p> <p>34.2. The goods that have been performed or are ready for delivery within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the PROCURING ENTITY at the</p>

	<ul style="list-style-type: none"> <li>i. to have any portion completed and delivered at the Contract terms and prices; and/or</li> <li>ii. to cancel the remainder and pay to the Supplier an agreed amount for partially completed GOODS and Services and for materials and parts previously procured by the Supplier.</li> </ul>	<p>contract terms and prices. For goods not yet performed or ready for delivery, the PROCURING ENTITY may elect:</p> <ul style="list-style-type: none"> <li>i. to have any portion delivered or performed and paid at the contract terms and prices; and/or</li> <li>ii. to cancel the remainder and pay to the Supplier an agreed amount for partially completed or performed goods and for materials and parts previously procured by the Supplier .</li> </ul> <p>If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the PROCURING ENTITY which cannot be sold in open market, it shall be allowed to recover partially from the contract, on a <i>quantum meruit</i> basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the PROCURING ENTITY before recovery may be made.</p>
GCC 35	No existing provision	<p><b>Termination for Unlawful Acts</b></p> <p>35.1. Unless specified in the SCC, the PROCURING ENTITY may terminate the contract in case it is determined <i>prima facie</i> that the Supplier has engaged, before or during the implementation of the Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>a) Corrupt, fraudulent, collusive and coercive practices;</li> <li>b) Drawing up or using forged documents;</li> <li>c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and</li> <li>d) Any other act analogous to the foregoing.</li> </ul>
GCC 36	No existing provision	<p><b>Procedures for Termination of Contracts</b></p> <p>The following provisions shall govern the procedures for termination of the Contract:</p> <ul style="list-style-type: none"> <li>i. Upon receipt of a written report of acts</li> </ul>

		<p>or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;</p> <p>ii. Upon recommendation by the Implementing Unit, the Head of the PROCURING ENTITY shall terminate contracts only by a written notice to the Supplier conveying the termination of the contract. The notice shall state:</p> <ul style="list-style-type: none"> <li>a) that the contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;</li> <li>b) the extent of termination, whether in whole or in part;</li> <li>c) an instruction to the Supplier to show cause as to why the contract should not be terminated; and</li> <li>d) special instructions of the PROCURING ENTITY, if any.</li> </ul> <p>The Notice to Terminate shall be accompanied by a copy of the Verified Report;</p> <p>iii. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the PROCURING ENTITY a verified position paper stating why the contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the PROCURING ENTITY shall issue an order terminating the contract;</p> <p>iv. The PROCURING ENTITY may, at anytime before receipt of the Supplier's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt</p>
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		<p>of the notice;</p> <p>v. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the PROCURING ENTITY shall decide whether or not to terminate the contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and</p> <p>vi. The Head of the PROCURING ENTITY may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the PROCURING ENTITY.</p>
SCC 17 (added)	No existing clause	<p><b>SCC 17. Termination for Default (GCC Clause 32.1)</b></p> <p><b>GCC 32.1</b></p> <p><i>If the Funding Source is GOP, retain GCC Clause 32.1.</i></p> <p><i>If the Funding Source is ADB, JBIC, or WB, replace GCC Clause 32.1 with the following provision:</i></p> <p>The PROCURING ENTITY, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:</p> <p>a) if the Supplier fails to deliver any or all of the GOODS within the period(s) specified in the Contract, or within any extension thereof granted by the PROCURING ENTITY pursuant to GCC Clause 5;</p> <p>b) if the Supplier fails to perform any other obligation(s) under the Contract; or</p> <p>c) if the Supplier, in the judgment of the PROCURING ENTITY, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.</p>

<p>SCC 18 (added)</p>	<p>No existing clause</p>	<p><b>SCC 18. Termination for Insolvency (GCC Clause 33.1)</b></p> <p><i>If the Funding Source is the GOP, retain GCC Clause 33.1.</i></p> <p><i>If the Funding Source is ADB, JBIC, or WB, replace GCC Clause 33.1 with the following provision:</i></p> <p>33.1. The PROCURING ENTITY may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the PROCURING ENTITY.</p>
<p>SCC 19</p>	<p>No existing clause</p>	<p>SCC 19. Termination for Convenience (GCC Clause 34.1)</p> <p><i>If the Funding Source is the GOP, retain GCC Clause 34.1.</i></p> <p><i>If the Funding Source is ADB, JBIC, or WB, replace GCC Clause 34.1 with the following provisions:</i></p> <p>34.1. The PROCURING ENTITY, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the PROCURING ENTITY's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.</p> <p>34.2 The GOODS that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the PROCURING ENTITY at the Contract terms and prices. For the remaining GOODS, the PROCURING ENTITY may elect:</p> <ul style="list-style-type: none"> <li>a) to have any portion completed and delivered at the Contract terms and prices; and/or</li> <li>b) to cancel the remainder and pay to the Supplier an agreed amount for</li> </ul>

		partially completed GOODS and Services and for materials and parts previously procured by the Supplier.
SCC 20 (added)	No existing clause	<p><b>SCC 20. Termination for Unlawful Acts (GCC Clause 35)</b></p> <p><i>If the Funding Source is GOP, retain GCC Clause 35.</i></p> <p><i>If the Funding Source is ADB, JBIC, or WB, delete GCC Clause 35.</i></p>

## II. CIVIL WORKS

CLAUSE	OLD PROVISION	NEW PROVISION
First paragraph of Invitation to Apply for Eligibility and to Bid	<p><i>Select one of the two following paragraphs deleting the other depending on the Funding Source:</i></p> <p><b><i>If the Funding Source is ADB, JBIC or WB:</i></b></p> <p>The GOP [has received/has applied for/intends to apply for] a [loan/credit/Grant] from the [Asian Development Bank/ The World Bank/ The Japan Bank for International Cooperation] toward the cost of [insert name of project], and it intends to apply part or the whole of the proceeds of this [loan/credit], together with the GOP counterpart funds, to payments under the contract for [insert name/no. of contract].</p> <p><b><i>Or, if the Funding Source is wholly GOP:</i></b></p> <p>The [insert name of PROCURING ENTITY], through the [insert source of funding and year] intends to apply the sum of [insert the approved budget for contract] being the Approved Budget for Contract (ABC) to payments under the contract for [insert name/no. of contract]. Bids received in excess of the ABC shall be automatically rejected at Bid opening.</p>	Provision deleted.
BDS 5.1	Original provision deleted.	<p><i>If the Funding Source is GOP, eligibility check will be undertaken based on the submitted Eligibility documents under ITB Clause 5.2.</i></p> <p><i>If the Funding Source is ADB or JBIC, pre-qualification shall be conducted instead of eligibility check.</i></p> <p><i>If the Funding Source is WB, there is no eligibility check.</i></p>
BDS 11 (added)	No such provision exists.	<i>If the Funding Source is GOP, maintain ITB Clause 11 and delete reference to this clause.</i>

		<p><i>If the Funding Source is ADB or JBIC, state the following and delete the others:</i></p> <p>The figures for each of the partners of a JV shall be added together to determine the Bidder's compliance with the minimum qualifying criteria of <b>ITB</b> Clause 5.5, however, for a JV to qualify, each of its partners must meet at least twenty five percent (25%) of minimum criteria. Failure to comply with this requirement will result in rejection of the JV's Bid. Subcontractors' experience and resources will not be taken into account in determining the Bidder's compliance with the qualifying criteria.</p> <p><i>If the Funding Source is the WB, state the following and delete the others:</i></p> <p>All Bids submitted will be opened at the Bid opening ceremony. Determination of a Bidder's qualifications and eligibility will form part of the PROCURING ENTITY's evaluation process and post-qualification.</p> <p>During Bid opening Technical Proposals that lack any of the following documents shall be rejected and returned to the Bidder together with its unopened Price Proposal:</p> <ul style="list-style-type: none"> <li>a) Evidence of financial, technical and production capability</li> <li>b) Audited Financial Statements;</li> <li>c) NFCC or Credit Line Certificate or Cash Deposit Certificate;</li> <li>d) Bid Security; and</li> <li>e) Authority of the Signatory.</li> </ul>
BDS 15.1 and 15.2	<p><b>Amount and Form of the Bid Security</b></p> <p><i>Select one of the following, deleting the others, note that the Bid Security amount should always be fixed at 2.5% of the ABC other than for the GOP:</i></p> <p>The Funding Source is the GOP, the Bid Security shall be in the following forms and amount:</p> <p>Cash, certified check, cashier's check, bank draft or irrevocable letter of credit <i>[Insert 1% of ABC]</i></p> <p>Bank Guarantee <i>[Insert 1.5% of ABC]</i></p> <p>Surety Bond <i>[Insert 2.5% of ABC]</i></p> <p>Foreign Government Guarantee <i>[Insert 100% of</i></p>	<p><b>Amount and Form of the Bid Security</b></p> <p>Select one of the following, deleting the others:</p> <p>If the Funding Source is <u>GOP or WB</u>:</p> <p>The Bid Security shall be in the following forms and amount:</p> <p>Cash, certified check, cashier's check, bank draft or irrevocable letter of credit <i>[Insert 1% of ABC]</i></p> <p>Bank Guarantee <i>[Insert 1.5% of ABC]</i></p> <p>Surety Bond <i>[Insert 2.5% of ABC]</i></p> <p>Foreign Government Guarantee <i>[Insert 100% of ABC]</i></p> <p>Note: The PROCURING ENTITY may choose</p>

	<p><i>ABC]</i></p> <p><i>Note: The PROCURING ENTITY may choose the acceptable Bid Security from the above-mentioned forms.</i></p> <p><i>Or</i></p> <p>The Funding Source is the World Bank, the Bid security shall be in the following amount <i>[Insert 2.5% of ABC]</i>.</p> <p><i>Or</i></p> <p>The Funding Source is the Asian Development Bank; the Bid security shall be in the following amount <i>[Insert 2.5% of ABC]</i>. Surety Bonds are not an acceptable form of security.</p> <p><i>Or</i></p> <p>The Funding Source is the Japan Bank for International Cooperation; the Bid security shall be in the following amount <i>[Insert 2.5% of ABC]</i>. Surety Bonds are not an acceptable form of security.</p>	<p>the acceptable Bid Security from the above-mentioned forms.</p> <p>If the Funding Source is ADB:</p> <p>The Bid security shall be in the following amount <i>[Insert 2.5% of ABC]</i>. Surety Bonds are not an acceptable form of security.</p> <p>If the Funding Source is JBIC:</p> <p>The Bid security shall be in the following amount <i>[Insert 2.5% of ABC]</i>. Surety Bonds are not an acceptable form of security.</p> <p>Note: The Bid Security amount should always be fixed at 2.5% of the ABC other than for the GOP.</p>
GCC 12.2 (added)	No such provision exists.	<p>12.2. After final acceptance of the project by the PROCURING ENTITY, the Contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by <i>force majeure</i> and those caused by other parties:</p> <p>a) Permanent Structures: Fifteen (15) years</p> <p>Buildings of types 4 (steel, iron, concrete, or masonry construction with walls, ceilings, and permanent partitions of incombustible fire resistance) and 5 (steel, iron, concrete, or masonry construction), steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures;</p> <p>b) Semi -Permanent Structures: Five (5) years</p> <p>Buildings of types 1 (wooden), 2</p>

		<p>(wood with 1 hour fire resistance), and 3 (masonry and wood construction), concrete roads, asphalt roads, river control, drainage, irrigation and drainage canals, municipal ports and river landing, deep wells, rock causeway, pedestrian overpass, and other similar structures; and</p> <p>c) Other Structures: Two (2) years</p> <p>Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.</p>
GCC 15	<p><b><i>Default by Contractor</i></b></p> <p>15.1 If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the PROCURING ENTITY or fails to proceed expeditiously and without delay or is, despite a written complaint, in breach of the Contract, the PROCURING ENTITY may give notice referring to this Clause and stating the default.</p> <p>15.2 If the Contractor has not taken all practicable steps to remedy the default within fourteen (14) days after the Contractor's receipt of the PROCURING ENTITY's notice, the PROCURING ENTITY may, by a second notice given within a further twenty one (21) days, rescind the Contract. The Contractor shall then demobilize from the Site leaving behind Materials and Plant</p> <p>15.3 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the PROCURING ENTITY if the Contract is rescinded because of the Contractor's default.</p>	<p><b><i>Termination for Default of Contractor</i></b></p> <p>15.1 The PROCURING ENTITY shall terminate a contract for default when any of the following conditions attend its implementation:</p> <p>a) Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870, regardless of whether or not previous warnings and notices have been issued for the Contractor to improve his performance;</p> <p>b) Due to its own fault, the Contractor incurs in delay in the completion of the work after the contract has expired; or</p> <p>c) The Contractor:</p> <p>(i) abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;</p> <p>(ii) does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approved work plan and equipment deployment schedule as required for the project;</p> <p>(iii) does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;</p> <p>(iv) neglects or refuses to remove</p>

		<p>materials or to perform a new work that has been rejected as defective or unsuitable; or</p> <p>(v) sub-lets any part of the contract works without approval by the Procuring Entity.</p> <p>15.2 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the PROCURING ENTITY if the Contract is rescinded because of the Contractor's default.</p>
GCC 16	<p><b><i>Default by PROCURING ENTITY</i></b></p> <p>16.1 If the PROCURING ENTITY fails to pay in accordance with the Contract, or is, despite a written complaint, in breach of the Contract, the Contractor may give notice referring to this Clause and stating the default. If the default is not remedied within seven (7) days after the PROCURING ENTITY's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.</p> <p>16.2 If the default is not remedied within twenty eight (28) days after the PROCURING ENTITY's receipt of the Contractor's notice, the Contractor may, by a second notice given within a further twenty one (21) days, terminate the Contract. The Contractor shall then demobilize from the Site.</p>	<p><b><i>Termination for Default of PROCURING ENTITY</i></b></p> <p>16.1 Unless otherwise indicated in the SCC, the Contractor may terminate its contract with the Procuring Entity if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:</p> <p>a) Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract; or</p> <p>b) The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.</p>
GCC 17	Old GCC Clause 17 deleted.	<p><b>17. Termination for Other Causes</b></p> <p>17.1 The PROCURING ENTITY may terminate the Contract, in whole or in part, at any time for its convenience. The Head of the PROCURING ENTITY may terminate a contract for the convenience of the PROCURING ENTITY if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government</p>

		<p>policies.</p> <p>17.2 The PROCURING ENTITY or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.</p> <p>17.3 Fundamental breaches of Contract shall include, but shall not be limited to, the following:</p> <ul style="list-style-type: none"> <li>a) the Contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the PROCURING ENTITY's Engineer;</li> <li>b) the PROCURING ENTITY's Engineer instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty eight (28) days;</li> <li>c) the PROCURING ENTITY shall terminate the contract if the Contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the PROCURING ENTITY and/or the Contractor. In the case of the Contractor's insolvency, any Contractor's Equipment which the PROCURING ENTITY instructs in the notice is to be used until the completion of the Works;</li> <li>d) a payment certified by the PROCURING ENTITY's Engineer is not paid by the PROCURING ENTITY to the Contractor within eighty four (84) days from the date of the PROCURING ENTITY's Engineer's certificate;</li> <li>e) the PROCURING ENTITY's Engineer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the PROCURING ENTITY's</li> </ul>
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		<p>Engineer;</p> <p>f) the Contractor does not maintain a Security, which is required;</p> <p>g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC; and</p> <p>h) in case it is determined <i>prima facie</i> by the PROCURING ENTITY that the Contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following: (a) corrupt, fraudulent, collusive and coercive practices; (b) drawing up or using forged documents; (c) using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and (d) any other act analogous to the foregoing.</p> <p>17.4 For the purpose of GCC Clause 17.3.h corrupt and fraudulent practices are defined as follows:</p> <p>i. “corrupt practice” means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it 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.</p> <p>ii. “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or</p>
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		<p>the execution of a contract to the detriment of the borrower, 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 borrower of the benefits of free and open competition.</p> <p>iii. “collusive practice” 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.</p> <p>iv. “coercive practice” 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.</p> <p>17.5 The Funding Source, Borrower or PROCURING ENTITY, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with corrupt or fraudulent practices.</p> <p>17.6 When either party to the Contract gives notice of a breach of Contract to the PROCURING ENTITY’s Engineer for a cause other than those listed under Clause 17.2 h above, the PROCURING ENTITY’s Engineer shall decide whether the breach is fundamental or not.</p> <p>17.7 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.</p>
GCC 18 (added)	No such provision exists.	<p>Procedures for Termination of Contracts</p> <p>18.1. The following provisions shall govern the procedures for the termination of the</p>

		<p>Contract:</p> <p>(i) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;</p> <p>(ii) Upon recommendation by the Implementing Unit, the Head of the PROCURING ENTITY shall terminate contracts only by a written notice to the Supplier conveying the termination of the contract. The notice shall state:</p> <p>a) that the contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;</p> <p>b) the extent of termination, whether in whole or in part;</p> <p>c) an instruction to the Supplier to show cause as to why the contract should not be terminated; and</p> <p>d) special instructions of the PROCURING ENTITY, if any.</p> <p>The Notice to Terminate shall be accompanied by a copy of the Verified Report;</p> <p>(iii) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the PROCURING ENTITY a verified position paper stating why the contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the PROCURING ENTITY shall issue an order terminating the contract;</p> <p>(iv) The PROCURING ENTITY may, at anytime before receipt of the Supplier's verified position paper to</p>
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		<p>withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;</p> <p>(v) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the PROCURING ENTITY shall decide whether or not to terminate the contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and</p> <p>(vi) The Head of the PROCURING ENTITY may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the PROCURING ENTITY.</p>
GCC 19.2	<p>19.2 Any and all disputes arising from the implementation of a contract covered by the Act and this IRR-A shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": <i>Provided, however,</i> That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR-A: <i>Provided, further,</i> That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.</p>	<p>19.2 Any and all disputes arising from the implementation of a contract covered by the Act and this IRR-A shall be submitted to arbitration in the Philippines according to the provisions of Republic Act 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": <i>Provided, however,</i> That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR-A: <i>Provided, further,</i> That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.</p>
SCC 19.2	<p><b>Arbitration procedures</b> will be in accordance with the provisions of Republic Act 876 (R.A. 876), otherwise known as the "Arbitration Law":</p>	<p><b>Arbitration procedures</b> will be in accordance with the provisions of Republic Act 9285 (R.A. 9285), otherwise known as the "Alternative</p>

	<p><i>Note: If the Funding is ADB and JBIC, delete the above paragraph and insert the following:</i></p> <p><b>Arbitration procedures</b> between a Filipino contractor and the PROCURING ENTITY will be in accordance with the provisions of Republic Act 876 (R.A. 876), otherwise known as the "Arbitration Law":</p> <p>All disputes arising in connection with the present Contract between a foreign contractor and the PROCURING ENTITY shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p>	<p>Dispute Resolution Act of 2004":</p> <p><i>Note: If the Funding is ADB and JBIC, delete the above paragraph and insert the following:</i></p> <p><b>Arbitration procedures</b> between a Filipino contractor and the PROCURING ENTITY will be in accordance with the provisions of Republic Act 9285 (R.A. 9285), otherwise known as the "Alternative Dispute Resolution Act of 2004":</p> <p>All disputes arising in connection with the present Contract between a foreign contractor and the PROCURING ENTITY shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p>
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### III. CONSULTING SERVICES

CLAUSE	OLD PROVISION	NEW PROVISION
First paragraph of the Invitation to Apply for Eligibility and to Bid	<p><i>If the Funding Source is WB, state the following (If the Funding Source is wholly GOP, delete this provision):</i></p> <p>This Invitation for Bids follows the General Procurement Notice for this project that appeared in <i>Development Business</i>, issue no. <i>[insert number]</i> of <i>[insert date]</i></p>	Deleted.
ITC 8.1	8.1. If so indicated in the <b>PDS</b> , the Consultants must provide a Bid security in the form and amount indicated in the <b>PDS</b> . If a Bid Security is required, it shall form part of the supporting document of a Consultant's Technical Proposal.	8.1 The Consultants must provide a Bid security in the form and amount indicated in the <b>PDS</b> , which shall form part of the supporting document of a Consultant's Technical Proposal.
PDS 1.1	<p>The name of the PROCURING ENTITY is: <i>[Insert name of PROCURING ENTITY]</i></p> <p>The method of selection is:</p> <p><i>Select one of the following:</i></p> <p>Quality Cost Based Evaluation/Selection (QCBE/QCBS)            Quality Based Evaluation/Selection (QBE/QBS)            Selection Under a Fixed Budget            Least Cost Selection</p> <p><i>Note: For the World Bank, all of the above may be used. GOP permits the use of QCBE and</i></p>	<p>The name of the PROCURING ENTITY is: <i>[Insert name of PROCURING ENTITY]</i></p> <p>The method of selection is:</p> <p><i>Select one of the following:</i></p> <p>Quality Cost Based Evaluation/Selection (QCBE/QCBS)            Quality Based Evaluation/Selection (QBE/QBS)            Selection Under a Fixed Budget            Least Cost Selection</p> <p><i>Note: For the World Bank, all of the above may be used. GOP permits the use of QCBE and</i></p>

	<p><i>QBE, users should note that the GOP version of QBS is what the World Bank refers to as selection under a fixed budget. A <b>précis</b> of each is set out below:</i></p>	<p><i>QBE, users should note that the GOP version of QBS is what the World Bank refers to as selection under a fixed budget. A <b>summary</b> of each is set out below:</i></p>
<p>PDS 8.1</p>	<p><i>Select one deleting the other.</i></p> <p>A Bid Security is not required.</p> <p><i>Or</i></p> <p>A Bid security is required, in any of the following forms prescribed by the PROCURING ENTITY, from which the Consultant may choose:</p> <p>Cash, certified check, cashier’s check, bank draft or irrevocable letter of credit <u>[insert amount (1% of the ABC)]</u>;</p> <p>Bank Guarantee <u>[insert amount (1 1/2 % of the ABC)]</u>;</p> <p>Surety Bond <u>[insert amount (2 ½% of the ABC)]</u>; or</p> <p>Foreign Government Guarantee <u>[insert amount (100% of the ABC)]</u>.</p> <p><i>Note: The PROCURING ENTITY may choose the acceptable bid security from the above-mentioned forms.</i></p> <p>The Bid Security shall be valid to <u>[insert date]</u>.</p> <p>Any Proposal not accompanied by an acceptable Bid Security shall be rejected by the PROCURING ENTITY as non-responsive.</p> <p>Unsuccessful Consultant’s Bid Securities shall be discharged or returned only after the successful Consultant has signed the Contract and posted the performance security, but not later than expiration of the period of Proposal Validity prescribed by the PROCURING ENTITY pursuant to <b>ITC</b> Clause 9.1.</p> <p>The successful Consultant’s Bid Security shall be discharged upon the Consultant signing the contract and furnishing the Performance Security, pursuant to <b>SCC</b> Clause 0 for GCC 41.1</p> <p>The Bid Security may be forfeited:</p> <p>a) if a Consultant withdraws its proposal during the period of Proposal Validity; or</p>	<p>In any of the following forms prescribed by the PROCURING ENTITY, from which the Consultant may choose:</p> <p>Cash, certified check, cashier’s check, bank draft or irrevocable letter of credit <u>[insert amount (1% of the ABC)]</u>;</p> <p>Bank Guarantee <u>[insert amount (1 1/2 % of the ABC)]</u>;</p> <p>Surety Bond <u>[insert amount (2 ½% of the ABC)]</u>; or</p> <p>Foreign Government Guarantee <u>[insert amount (100% of the ABC)]</u>.</p> <p><i>Note: The PROCURING ENTITY may choose the acceptable bid security from the above-mentioned forms.</i></p> <p>The Bid Security shall be valid to <u>[insert date]</u>.</p> <p>Any Proposal not accompanied by an acceptable Bid Security shall be rejected by the PROCURING ENTITY as non-responsive.</p> <p>Unsuccessful Consultant’s Bid Securities shall be discharged or returned only after the successful Consultant has signed the Contract and posted the performance security, but not later than expiration of the period of Proposal Validity prescribed by the PROCURING ENTITY pursuant to <b>ITC</b> Clause.9.1.</p> <p>The successful Consultant’s Bid Security shall be discharged upon the Consultant signing the contract and furnishing the Performance Security, pursuant to <b>SCC</b> Clause 0 for GCC 41.1</p> <p>The Bid Security may be forfeited:</p> <p>a) if a Consultant withdraws its proposal during the period of Proposal Validity; or</p> <p>b) in the case of a successful proposal, if the Consultant fails:</p> <p>i. to sign the contract that represents an unconditional acceptance of its Technical Proposal; or</p>

	<p>b) in the case of a successful proposal, if the Consultant fails:</p> <ul style="list-style-type: none"> <li>i. to sign the contract that represents an unconditional acceptance of its Technical Proposal; or</li> <li>ii. to provide clarification during post qualification within the prescribed period of seven (7) days; or</li> <li>iii. to furnish Performance Security in accordance with <b>SCC</b> Clause 0 for GCC 41.1</li> </ul>	<ul style="list-style-type: none"> <li>ii. to provide clarification during post qualification within the prescribed period of seven (7) days; or</li> <li>iii. to furnish Performance Security in accordance with <b>SCC</b> Clause 0 for GCC 41.1</li> </ul>
GCC 41.1	<p>41.1 If indicated in the <b>SCC</b>, the Consultant shall furnish the Performance Security in the form and amount indicated in the <b>SCC</b>.</p>	<p>41.1 Within ten (10) days of receipt of the notification of Contract award, the Consultants shall furnish to the <b>PROCURING ENTITY</b> the Performance Security in the form and amount indicated in the <b>SCC</b>. The proceeds of the Performance Security shall be payable to the <b>PROCURING ENTITY</b> as compensation for any loss resulting from the Consultant's failure to complete its obligations under the Contract.</p>
SCC 21 (GCC 41.1)	<p><b>GCC Clause 41 Performance Security</b></p> <p>If the Funding Source is not the GOP state:</p> <p>GCC 41.1 No Performance Security is required.</p> <p>If the Funding Source is the GOP, delete the above and retain the following:</p> <p>GCC 41.1 Within ten (10) days of receipt of the notification of Contract award, the Consultants shall furnish to the <b>PROCURING ENTITY</b> the Performance Security. The proceeds of the Performance Security shall be payable to the <b>PROCURING ENTITY</b> as compensation for any loss resulting from the Consultant's failure to complete its obligations under the Contract.</p> <p>GCC 41.1 At the Consultants' option the Performance Security is to be in any of the following form:</p> <ul style="list-style-type: none"> <li>i. Cash, certified check,</li> </ul>	<p><b>GCC Clause 41 Performance Security</b></p> <p>GCC 41.1. At the Consultants' option the Performance Security is to be in any of the following form:</p> <ul style="list-style-type: none"> <li>i. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit in the amount of five percent (5%) of the Contract Price.</li> <li>ii. Bank guarantee in the form prescribed in Section _____ in the amount of ten percent (10%) of the Contract Price.</li> <li>iii. Surety bond in the amount of thirty percent (30%) of the Contract Price.</li> <li>iv. Foreign government guarantee, in the amount of one hundred percent (100%) of Contract Price.</li> </ul> <p>Note: The <b>PROCURING ENTITY</b> may choose the acceptable Performance Security from the above-mentioned forms.</p> <p>GCC 41.1 The Performance Security shall be</p>

	<p>cashier's check, manager's check, bank draft or irrevocable letter of credit in the amount of five percent (5%) of the Contract Price.</p> <p>ii. Bank guarantee in the form prescribed in Section _____ in the amount of ten percent (10%) of the Contract Price.</p> <p>iii. Surety bond in the amount of thirty percent (30%) of the Contract Price.</p> <p>iv. Foreign government guarantee, in the amount of one hundred percent (100%) of Contract Price.</p> <p>Note: The PROCURING ENTITY may choose the acceptable Performance Security from the above-mentioned forms.</p> <p>GCC 41.1 The Performance Security shall be discharged by the PROCURING ENTITY and returned to the Supplier not later than thirty (30) days following the date of the expiration of the contract specified in SCC 15 for GCC 24.1.</p>	<p>discharged by the PROCURING ENTITY and returned to the Supplier not later than thirty (30) days following the date of the expiration of the contract specified in SCC 15 for GCC 24.1.</p>
ITC 23	<p><b>Evaluation of Financial Proposals Based on Fixed Budget Selection (applicable to World Bank projects only)</b></p> <p>23.1. If specified in the PDS, in the case of Fixed-Budget Selection, the PROCURING ENTITY shall select the firm that submitted the highest ranked Technical Proposal within the ABC. Proposals that exceed the ABC shall be rejected. The selected firm is invited for negotiations.</p> <p>23.2. In the case of the Least-Cost Selection, subject to the provisions of ITC Clause 12.1, the PROCURING ENTITY</p>	<p><b>Evaluation of Financial Proposals Based on Fixed Budget Selection (applicable to World Bank projects only)</b></p> <p>23.1 In the case of Fixed-Budget Selection, the PROCURING ENTITY shall select the firm that submitted the highest ranked Technical Proposal within the ABC. Proposals that exceed the ABC shall be rejected. The selected firm is invited for negotiations.</p> <p>23.2 In the case of the Least-Cost Selection, subject to the provisions of ITC Clause 12.1, the PROCURING ENTITY will select the lowest Financial Proposal among those that passed the minimum technical score.</p>

	<p>will select the lowest Financial Proposal among those that passed the minimum technical score. In both cases, the selected firm is invited for negotiations.</p>	<p>In both cases, the selected firm is invited for negotiations</p>
PDS 20.2	<p><i>For GOP funded projects, the Technical Proposals of Consultants shall be evaluated based on the following criteria:</i></p> <p>a) Quality of personnel to be assigned to the project;</p> <p>12.3. Experience and capability of the consultant; and</p> <p>12.4. Plan of approach and methodology.</p> <p><i>For WB funded projects, the Technical Proposals of Consultants shall be evaluated based on the following criteria:</i></p> <p>The number of points to be given under each of the evaluation criteria are:</p> <p>(i) Specific experience of the Consultants related to the assignment [5- 10]  [Insert sub-criteria]  [Insert sub-criteria]  [Insert sub-criteria]</p> <p>(ii) Adequacy of the proposed work plan and methodology in responding to the Terms of Reference [20 - 50]  [Insert sub-criteria]  [Insert sub-criteria]  [Insert sub-criteria]</p> <p>(iii) Qualifications and competence of the key staff for the Assignment [30 - 60]  [Insert sub-criteria]  [Insert sub-criteria]  [Insert sub-criteria]</p> <p>(iv) Suitability of the transfer of knowledge program (training) [0 - 10]  [Insert sub-criteria]  [Insert sub-criteria]  [Insert sub-criteria]</p> <p>(v) Local participation (as reflected by nationals among key staff [0 - 10] presented by foreign and local firms; maximum not to exceed 10 points)</p>	<p><i>For GOP and WB funded projects, the Technical Proposals of Consultants shall be evaluated based on the following criteria:</i></p> <p>a) Quality of personnel to be assigned to the project;</p> <p>b) Experience and capability of the consultant; and</p> <p>c) Plan of approach and methodology.</p> <p>The minimum technical score required to pass [Insert number of points]:</p> <p>The attention of Consultants is drawn to <b>ITC</b> Clause 14.2 – Proposals must adhere to the maximum number of pages outlined in this clause.</p>

	<p>[Insert sub-criteria] [Insert sub-criteria] [Insert sub-criteria] Total Points: 100</p> <p>The number of points to be given under each evaluation sub-criteria for qualifications of staff are:</p> <p>Points</p> <p>(i) General qualifications [20 - 30]</p> <p>(ii) Adequacy for the project [50 - 60]</p> <p>(iii) Experience in region &amp; language [10 - 20]</p> <p>Total Points: 100</p> <p>The minimum technical score required to pass [Insert number of points]:</p> <p>The attention of Consultants is drawn to <b>ITC</b> Clause 14.2 – Proposals must adhere to the maximum number of pages outlined in this clause.</p>	
PDS 21.1 (added)	No existing provision	<p>The opening of Financial Proposals shall be on [insert date and time] at [insert place].</p> <p>Financial Proposals [shall/shall not] be opened in public.</p> <p><i>If the Funding Source is WB, ABC is not applicable except for Fixed Budget contract method.</i></p> <p><i>Insert here any additional instructions regarding proposal opening.</i></p>
PDS 22.4	<p>The weights given to the Technical and Financial Proposals are:</p> <p>T_____ [Normally between 0.5 and 0.9]; for GOP funded projects, from 0.60 and to 0.85; for WB funded projects, Normally between 0.7 and 0.9], and</p> <p>P_____ [Normally between 0.1 and 0.5]; for GOP funded projects, from 0.15 and to 0.40; for WB funded projects, Normally between 0.1 and 0.3]</p> <p>Provided that that the total weights given to the Technical and Financial Proposals shall add up to 1.0.</p>	<p>The weights given to the Technical and Financial Proposals are:</p> <p>T_____ [Normally between 0.5 and 0.9]; for GOP funded projects, from 0.60 and to 0.85; and</p> <p>P_____ [Normally between 0.1 and 0.5]; for GOP funded projects, from 0.15 and to 0.40;</p> <p>Provided that the total weights given to the Technical and Financial Proposals shall add up to 1.0.</p>
PDS 23.1	<p>Select one deleting the other.</p> <p><i>If the Funding Source is World Bank.</i></p>	No need for PDS 23.1. WB already agreed to GOP rules.

	<p>The method of selection of consultant is the Fixed-Budget Selection.</p> <p><i>If the Funding Source is GOP.</i></p> <p>Not applicable.</p>	
PDS 26.1	<p><i>Select one, deleting the rest.</i></p> <p>The Funding Source is the GOP; the PROCURING ENTITY shall conduct post qualification using non-discretionary pass or fail criteria and be based upon an examination of the documentary evidence of the Consultant's qualifications.</p> <p><i>Insert here the document(s) required to complete post qualification.</i></p> <p><i>Or</i></p> <p>The Funding Source is the World Bank, state: Not applicable</p>	Deleted.
GCC 10.1	<p>10.1 Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by prior written agreement between the Parties, and as indicated in the SCC and shall not be effective until the prior written consent of the Funding Source has been obtained. Pursuant to GCC Clause 14 hereof, however, each Party shall give due consideration to any proposal for modification made by the other Party.</p>	<p>10.1 Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made and effective upon prior written agreement between the Parties, unless otherwise specified in the SCC. Pursuant to GCC Clause 14 hereof, however, each Party shall give due consideration to any proposal for modification made by the other Party.</p>
GCC 47.2 (f)	<p>GCC 47.2</p> <p>x x x</p> <p>f) provide to the Consultant, Sub-Consultants and Personnel any such other assistance as may be specified in the SCC.</p>	Deleted.
SCC 10 (GCC 18)	<b>SCC 10 GCC Clause 18 Payment (18.2)</b>	Deleted.
SCC 11	<b>SCC 11 GCC Clause 19 Currency of Payment</b>	Deleted.
SCC 22 (GCC 47)	<b>SCC 22. GCC Clause 47 Exemptions and Facilities (47.1)</b>	Deleted.
SCC 26	<b>SCC 26. GCC Clause 52.4 Remuneration</b>	<b>SCC 26. GCC Clause 52.4 Remuneration</b>

	<b>and Reimbursable Expenditures</b>	<b>and Reimbursable Expenditures</b>
	<p data-bbox="397 271 919 360">GCC 52.4 The reimbursable expenditures in foreign currency shall be the following:</p> <p data-bbox="445 398 919 667">a) a per diem allowance for each of the foreign or local Personnel for every day in which such Personnel shall be absent from his home office and shall be outside the country of the Government for the purpose of the Services at the daily rate specified in Appendix __;</p> <p data-bbox="445 705 855 734">b) the following transportation costs:</p> <p data-bbox="496 768 919 1099">(i) the cost of international transportation of the foreign Personnel and, as specified below, eligible dependents of the foreign Personnel, by the most appropriate means of transport and the most direct practicable route to and from the Consultants' home office; in the case of air travel, this shall be by less than first class;</p> <p data-bbox="496 1133 919 1832">(ii) the cost of transportation to and from the Government's country of eligible dependents who shall be the spouse and not more than two (2) unmarried dependent children under eighteen (18) years of age of those of the foreign Personnel assigned to resident duty in the Government's country for the purpose of the Services for periods of six (6) consecutive months or longer, provided that the stay of such dependents in the Government's country shall have been for not less than three (3) consecutive months, duration. If the assignment period for resident staff of the foreign Personnel shall be thirty (30) months or more, one extra economy class air trip for their eligible dependents for every twenty-four (24)-month assignment shall be reimbursed;</p> <p data-bbox="496 1865 919 2016">(iv) for the air travel of each of the foreign Personnel, and each eligible dependent, the cost of excess baggage up to twenty (20) kilograms per person, or the</p>	<p data-bbox="978 271 1474 360">GCC 52.4 The reimbursable expenditures in foreign currency shall be the following:</p> <p data-bbox="1000 398 1474 667">a) a per diem allowance for each of the foreign or local Personnel for every day in which such Personnel shall be absent from his home office and shall be outside the country of the Government for the purpose of the Services at the daily rate specified in Appendix __;</p> <p data-bbox="1000 705 1426 734">b) the following transportation costs:</p> <p data-bbox="1023 768 1474 1070">(i) the cost of international transportation of the foreign Personnel and, as specified below, eligible dependents of the foreign Personnel, by the most appropriate means of transport and the most direct practicable route to and from the Consultants' home office; in the case of air travel, this shall be by less than first class;</p> <p data-bbox="1023 1104 1474 1803">(ii) the cost of transportation to and from the Government's country of eligible dependents who shall be the spouse and not more than two (2) unmarried dependent children under eighteen (18) years of age of those of the foreign Personnel assigned to resident duty in the Government's country for the purpose of the Services for periods of six (6) consecutive months or longer, provided that the stay of such dependents in the Government's country shall have been for not less than three (3) consecutive months, duration. If the assignment period for resident staff of the foreign Personnel shall be thirty (30) months or more, one extra economy class air trip for their eligible dependents for every twenty-four (24)-month assignment shall be reimbursed;</p> <p data-bbox="1000 1836 1474 2016">(iii) for the air travel of each of the foreign Personnel, and each eligible dependent, the cost of excess baggage up to twenty (20) kilograms per person, or the equivalent in cost of unaccompanied baggage or air freight;</p>

	<p>equivalent in cost of unaccompanied baggage or air freight; and</p> <p>(v) miscellaneous travel expenses such as the cost of transportation to and from airports, airport taxes, passport, visas, travel permits, vaccinations, etc., at a fixed unit price per round trip as specified in Appendix __;</p> <p>c) the cost of communications (other than those arising in the Government's country) reasonably required by the Consultants for the purposes of the Services;</p> <p>d) the cost of printing, reproducing and shipping of the documents, reports, drawings, etc. specified in Appendices __ and __ hereof;</p> <p>e) the cost of acquisition, shipment and handling of the following equipment, instruments, materials and supplies required for the Services: <i>[insert amount]</i>;</p> <p>f) the cost of shipment of personal effects up to <i>[insert amount]</i>;</p> <p>g) the cost of programming and use of, and communication between, the computers for the purposes of the Services at the rate set forth in Appendix __;</p> <p>h) the cost of training of the PROCURING ENTITY's personnel outside the Government's country, as specified in Appendix __;</p> <p>i) the cost of laboratory tests on materials, model tests and other technical services authorized or requested by the PROCURING ENTITY, as specified in Appendix __;</p> <p>j) the foreign currency cost of any subcontract required for the Services and approved in writing by the PROCURING ENTITY;</p> <p>k) The cost of items not covered in the</p>	<p>and</p> <p>(v) miscellaneous travel expenses such as the cost of transportation to and from airports, airport taxes, passport, visas, travel permits, vaccinations, etc., at a fixed unit price per round trip as specified in Appendix __;</p> <p>c) the cost of communications (other than those arising in the Government's country) reasonably required by the Consultants for the purposes of the Services;</p> <p>d) the cost of printing, reproducing and shipping of the documents, reports, drawings, etc. specified in Appendices __ and __ hereof;</p> <p>e) the cost of acquisition, shipment and handling of the following equipment, instruments, materials and supplies required for the Services: <i>[insert amount]</i>;</p> <p>f) the cost of shipment of personal effects up to <i>[insert amount]</i>;</p> <p>g) the cost of programming and use of, and communication between, the computers for the purposes of the Services at the rate set forth in Appendix __;</p> <p>h) the cost of training of the PROCURING ENTITY's personnel outside the Government's country, as specified in Appendix __;</p> <p>i) the cost of laboratory tests on materials, model tests and other technical services authorized or requested by the PROCURING ENTITY, as specified in Appendix __;</p> <p>j) the foreign currency cost of any subcontract required for the Services and approved in writing by the PROCURING ENTITY;</p> <p>k) The cost of items not covered in the foregoing but which may be required by the Consultants for completion of the Services, subject to the prior authorization in writing by the PROCURING ENTITY; and</p>
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	<p>foregoing but which may be required by the Consultants for completion of the Services, subject to the prior authorization in writing by the PROCURING ENTITY; and</p> <p>1) any such additional payments in foreign currency for properly procured items as the Parties may have agreed upon.</p>	<p>1) any such additional payments in foreign currency for properly procured items as the Parties may have agreed upon.</p>
GCC 55.1	<p>55.1. If the Consultant fails to deliver any or all of the Services within the period(s) specified in the Contract, the PROCURING ENTITY shall, without prejudice to its other remedies under the Contract and under the Applicable Law, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the unperformed Services for each day of delay until actual performance, up to a maximum deduction of the percentage specified in the SCC. Once the maximum is reached, the PROCURING ENTITY may consider termination of the Contract pursuant to GCC Clause 27</p>	<p>55.1 If the Consultant fails to deliver any or all of the Services within the period(s) specified in the Contract, the PROCURING ENTITY shall, without prejudice to its other remedies under the Contract and under the Applicable Law, deduct from the Contract Price, as liquidated damages, a sum equivalent to one-tenth of one percent of the price of the unperformed portion of the Services for each day of delay based on the approved Contract schedule up to a maximum deduction of ten percent (10%) of the Contract price. Once the maximum is reached, the PROCURING ENTITY may consider termination of the Contract pursuant to GCC Clause 27</p>
GCC 27	<p><b>Termination, By the PROCURING ENTITY</b></p> <p>27.1 Unless specified in the SCC, the PROCURING ENTITY may terminate this Contract, through a written notice of termination given to the Consultant not less than thirty (30) days after the occurrence of any of the following events (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days):</p> <p>a) The Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 15.2. hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the PROCURING ENTITY may have subsequently approved in writing;</p>	<p><b>Termination, By the PROCURING ENTITY</b></p> <p>27.1. The Procuring Entity shall terminate the Contract when any of the following conditions attends its implementation:</p> <p>a) Outside of <i>force majeure</i>, the Consultant fails to deliver or perform the Outputs and Deliverables within the period(s) specified in the contract, or within any extension thereof granted by the PROCURING ENTITY pursuant to a request made by the Consultant prior to the delay;</p> <p>b) As a result of <i>force majeure</i>, the Consultant is unable to deliver or perform a material portion of the Outputs and Deliverables for a period of not less than sixty (60) calendar days after the Consultant's receipt of the notice from the PROCURING ENTITY stating that the circumstance of <i>force majeure</i> is deemed to have ceased;</p>

	<p>b) The Consultant becomes (or, if the Consultant consists of more than one entity, if any of their Members become) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;</p> <p>c) The Consultant's failure to comply with any final decision reached as a result of arbitration proceedings pursuant to <b>GCC</b> Clause 33.2. hereof;</p> <p>d) The Consultant's misrepresentation, which materially affects the rights, obligations or interests of the <b>PROCURING ENTITY</b>;</p> <p>e) As the direct and proximate result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days;</p> <p>f) The Consultant, in the judgment of the <b>PROCURING ENTITY</b>, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this clause:</p> <p>i. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection 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</p> <p>ii. "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the <b>PROCURING ENTITY</b>, and includes collusive practice among Consultants (prior</p>	<p>c) In whole or in part, at any time for its convenience, the Head of the <b>PROCURING ENTITY</b> may terminate the Contract for the its convenience if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies;</p> <p>d) If the Consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction; in which event, termination will be without compensation to the Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the <b>PROCURING ENTITY</b> and/or the Consultant;</p> <p>e) In case it is determined <i>prima facie</i> that the Consultant has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following: (i) corrupt, fraudulent, collusive and coercive practices; (ii) drawing up or using forged documents; (iii) using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and (iv) any other act analogous to the foregoing. For purposes of this clause:</p> <p>(i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution; entering, on behalf of the Government, into any contract or transaction manifestly and grossly</p>
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	<p>to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the PROCURING ENTITY of the benefits of free and open competition.</p> <p>iii. “collusive practice” 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.</p> <p>iv. “coercive practice” 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.</p>	<p>disadvantageous to the same, whether or not the public officer profited or will profit thereby;</p> <p>(ii) “fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the PROCURING ENTITY, and includes collusive practice among Consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the PROCURING ENTITY of the benefits of free and open competition;</p> <p>(iii) “collusive practice” 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; and</p> <p>(iv) “coercive practice” 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.</p> <p>f) The Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to <b>GCC</b> Clause 15.2. hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the PROCURING ENTITY may have subsequently approved in writing;</p> <p>g) The Consultant’s failure to comply with any final decision reached as a result of arbitration proceedings pursuant to <b>GCC</b> Clause 33.2. hereof; or</p>
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		h) The Consultant fails to perform any other obligation under the Contract.
GCC 28	<p><b><i>Termination, by the Consultant</i></b></p> <p>28.1 The Consultant may terminate this Contract through a written notice given to the PROCURING ENTITY not less than thirty (30) days after the occurrence of any of the following events:</p> <p>(a) The PROCURING ENTITY fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to GCC Clause 33.2. hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue;</p> <p>(b) The PROCURING ENTITY material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the PROCURING ENTITY of the Consultant’s notice specifying such breach;</p> <p>(c) As the direct and proximate result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or</p> <p>(d) The PROCURING ENTITY failure to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 33.2. hereof.</p>	<p><b><i>Termination, By the Consultant</i></b></p> <p>28.1 The Consultant must serve a written notice to the PROCURING ENTITY of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. This Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the PROCURING ENTITY. The Consultant may terminate this Contract through any of the following events:</p> <p>(a) The PROCURING ENTITY is in material breach of its obligations pursuant to the Contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant’s notice specifying such breach; or</p> <p>(b) The PROCURING ENTITY’s failure to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 33.2. hereof.</p>
GCC 29 (added)	No such provision exists.	<p>Procedures for Termination of Contracts</p> <p>29.1. The following provisions shall govern the procedures for the termination of the</p>

		<p>Contract:</p> <p>(i) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;</p> <p>(ii) Upon recommendation by the Implementing Unit, the Head of the PROCURING ENTITY shall terminate contracts only by a written notice to the Supplier conveying the termination of the contract. The notice shall state:</p> <p>a) that the contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;</p> <p>b) the extent of termination, whether in whole or in part;</p> <p>c) an instruction to the Supplier to show cause as to why the contract should not be terminated; and</p> <p>d) special instructions of the PROCURING ENTITY, if any.</p> <p>The Notice to Terminate shall be accompanied by a copy of the Verified Report;</p> <p>(iii) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the PROCURING ENTITY a verified position paper stating why the contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the PROCURING ENTITY shall issue an order terminating the contract;</p> <p>(iv) The PROCURING ENTITY may, at</p>
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		<p>anytime before receipt of the Supplier's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;</p> <p>(v) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the PROCURING ENTITY shall decide whether or not to terminate the contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and</p> <p>(vi) The Head of the PROCURING ENTITY may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the PROCURING ENTITY.</p>
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