



Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 30-2008

24 September 2008

ENGR. ANTHONY LINDBERGH C. DULAY
University Engineer
DON MARIANO MARCOS MEMORIAL STATE UNIVERSITY
Municipality of Bacnotan, La Union

Re : Procuring Entity's Engineer

Dear Engr. Dulay:

This refers to your letter dated 23 July 2008, which we received by facsimile, inquiring on the propriety of interpretation of provision of the Philippine Bidding Documents (PBD) and the Generic Procurement Manuals (GPM) on Infrastructure Projects adopted by the Don Mariano Marcos Memorial State University Bids and Awards Committee (UBAC), particularly, with respect to the following issues:

1. Whether the phrase "Procuring Entity's engineer" mentioned in the GPM on Infrastructure Projects refers to any authorized representative of the procuring entity who may not be an engineer; and
2. If yes, whether the University Engineer is free from any accountability and responsibility on any structural failure on the infrastructure project.

Interpretation of the phrase "Procuring Entity's engineer"

Per your representation, we note that the issue arose in light of your letter dated 2 June 2008 addressed to the UBAC calling their attention to the propriety of using the phrase "Procuring Entity's Representative (PER) instead of "Procuring Entity's engineer" (PEE) in its bidding documents, which you interpreted as a deviation from the legal intent of Republic Act No. 9184 (R.A. 9184). In response to said letter, the UBAC argued that they did not commit any deviation or violation of R.A. 9184 considering that the term "Procuring Entity's engineer" does not refer to the Engineer per se, but may refer to the procuring entity's authorized representative.

It appears that the problem lies in the seeming incongruence between the provisions of the PBD and the GPM on Infrastructure Projects. The PBD, under Clause 1.23 thereof, defines PER as the Head of the Procuring Entity or his duly authorized representative, identified in the Special Conditions of the Contract, who shall be responsible for supervising the execution of the Works and administering the contract. The GPM, on the other hand, mentions the PEE as the personnel in charge of

performing contract implementation-related functions, such as inspecting and testing of project materials and computing and recording of dayworks.¹ A more detailed review and comparison of the functions and responsibilities of the PER and the PEE reveals that the former is lodged with a more general and comprehensive function and authority than the latter.

In this regard, we are of the view that the term PEE in the GPM does not refer to just any authorized representative of the procuring entity. The term PER, however, allows the designation of personnel other than the PEE. Although it is logical to designate an engineer to administer and supervise the implementation of infrastructure projects, neither the GPM nor the PBD impose upon the discretion of the Head of the Procuring Entity to identify his representative. In addition, we cannot subscribe to the interpretation that only an engineer should be designated as PER in contracts for infrastructure projects considering that not every agency has its own engineer. At any rate, Clause 22.2 of the PBD allows the PER to delegate any of his duties and responsibilities to other people, except to the Arbiter, which may pertain to the delegation to the PEE of the performance of the duties mentioned in the GPM.

Accountability of the University Engineer

This issue pertains more to the application and interpretation of general laws rather than procurement rules. As such, we deem it appropriate to limit the discussion insofar as it relates to the procurement rules.

As provided in Section 62.2.3 of the Implementing Rules and Regulations Part A (IRR-A) of R.A. 9184, in cases where structural defects and/or failures arise during the warranty period, the person/parties liable are the contractor, consultant(s), PER/project manager/construction managers and supervisors, third parties, and/or users. It will be observed that the University Engineer or the PEE is not included in the enumeration.

It may be inferred from the foregoing that the University Engineer or the PEE does not automatically become accountable from any structural defect/failure of an infrastructure project of the procuring entity, unless the University Engineer or the PEE is the PER, project manager, construction manager, or construction supervisor, and it is found that the structural defects/failures are due to his/her willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project.

We trust that the foregoing discussion provides sufficient guidance on the issues raised.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

¹ Generic Procurement Manual, Volume III, pp. 81-84



DON MARIANO MARCOS MEMORIAL STATE UNIVERSITY

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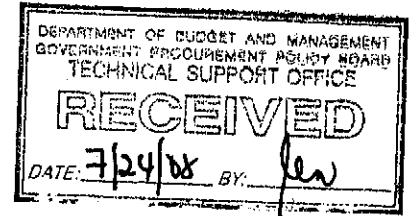
*Dennis,
Pls. draft reply.*

OFFICE OF THE ENGINEER III

*Dr.
M/L/S*

July 23, 2008

Atty. RUBY U. ALVAREZ
Executive Director III
GPPB - TSO



Madame :

May I have the honor to seek clarification from your office regarding matters concerning Republic Act 9184 and its Implementing Rules and Regulations particularly in the procurement of infrastructure which I believe can be best interpreted by your office. Attached herewith is my letter to our BAC Chairman and the subsequent reply to said letter for your perusal.

Is the BAC correct in their interpretation that the Procuring Entity's Engineer may refer to any authorized representative of the Procuring Entity who is not an engineer? If so, am I, as the University Engineer holding the only plantilla position of engineer in our university free of any accountability and responsibility should any structural failure come to fore?

Your clarification on our dilemma is very much sought.

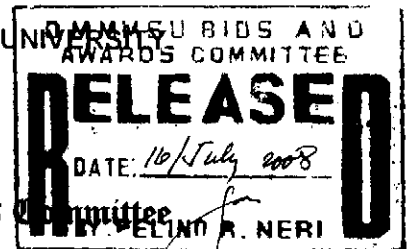
Respectfully yours,

ANTONY LINDBERGH C. DULAY
University Engineer

*Eunice,
Pls. handle. Sign in
my behalf.
[signature] 7/24/08*



DOCTOR MARIANO MARCOS MEMORIAL STATE UNIVERSITY
Bacnotan, La Union
Tel. /Fax No. (072) 888-5352
Website Address: www.up.edu.ph
E-mail Address: ubac@up.edu.ph



Office of the University Bids and Awards Committee

July 9, 2008

ENGR. ANTONY LINDBERGH C. DULAY
UBAC TWG Member
Engineer III

Dear Engr. DULAY:

Thank you for your concern of the UBAC particularly on the implementation of RA9184. The UBAC had been using the Bid Documents, particularly Section VI of the General Conditions of the contract wherein the Procuring Entity's Engineer was replaced with Procuring Entity's Representative.

Your contention, that substitution of the phrase "Procuring Entity's Engineer" into "Procuring Entity's Representative" is a deviation of the Law and therefore changed the legal intent of RA9184 is only according to your own opinion and interpretation. Please be informed that in the definition of terms, the word Procuring Entity's Engineer is not the Engineer per se, but it may refer to its authorized representative. Therefore, the UBAC did not commit any deviations or violation of RA 9184.

Furthermore, the University has an existing office, which takes charge of the infrastructure projects - the Infrastructure Development Office, headed by the chief who happens to be an architect. In the implementation of the projects, all issues which need to be clarified shall pass this office including all communications thereto. (Please refer to the attached University Organizational Structure and Designations of University Personnel).

We hope that this explanation would merit your attention.

Very truly yours,

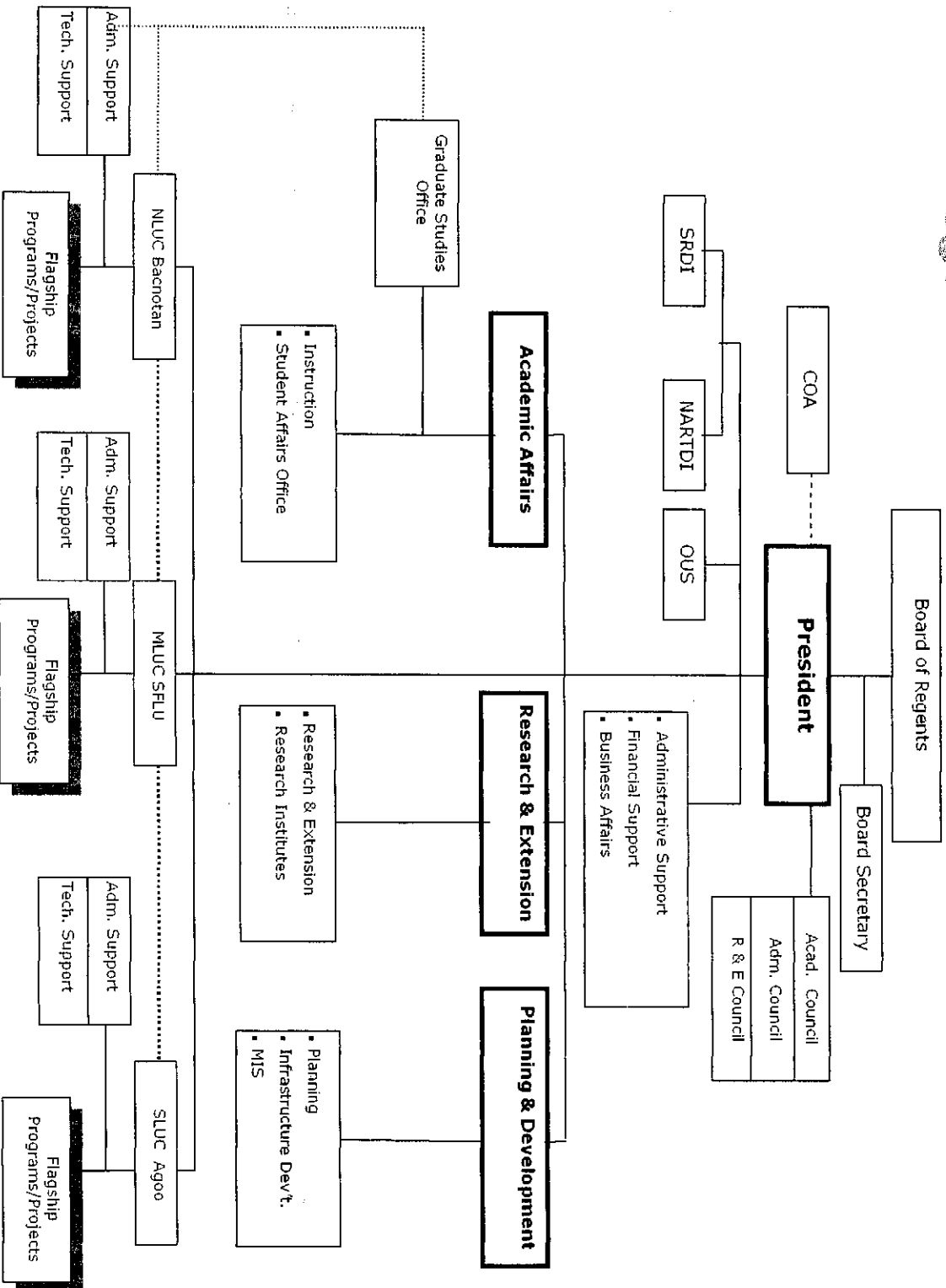

AURORA E. CASUGA
Chairman, UBAC


ADRIANO T. ESGUERRA
Co-Chairman, UBAC


PABLO L. MASIANG
Member, UBAC



RATIONALIZED ORGANIZATIONAL STRUCTURE
DON MARIANO MARCOS MEMORIAL STATE UNIVERSITY
(Resolution No. 2005 - 22, April 28, 2005)



**MICRO ORGANIZATIONAL STRUCTURE FOR
PLANNING AND DEVELOPMENT UNIT**

Head, Planning and Development Unit

**ICT Systems Development
Task Force**

**Management Information
System**

- Data Banking & Networking
- Systems Development

Quality Assurance

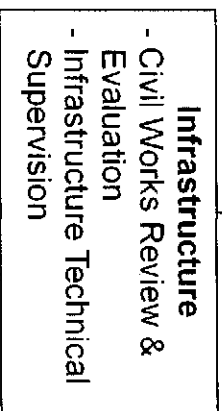
- Monitoring & Evaluation
- Normative Financing
- SUC Leveling
- Institutional Accreditation (IOAME)

Planning and Services

Infrastructure

- Civil Works Review & Evaluation
- Infrastructure Technical Supervision

**Institutional Planning
and Linkages**





DON MARIANO MARCOS MEMORIAL STATE UNIVERSITY

LA UNION, PHILIPPINES

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OFFICE OF THE PRESIDENT

SPECIAL ORDER

No. 2007-24

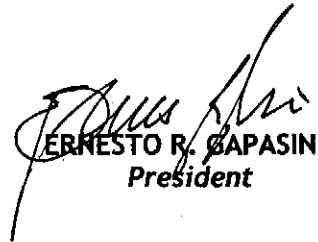
SUBJECT : DESIGNATION OF UNIVERSITY OFFICIALS

DATE : May 22, 2007

1. Pursuant to Office Order No. 2007-001 dated January 3, 2007, the following University Personnel are hereby designated for a term not to exceed three (3) years. The effectivity of the designation is June 1, 2007.

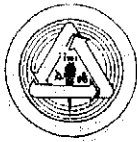
DESIGNATION	INCOMING	OUTGOING
Vice President for Academic Affairs	DR. AMELIA O. BACUÑGAN	DR. AMELIA O. BACUÑGAN
Vice President for Planning & Development	DR. ELVI C. BUGAOAN	DR. ELVI C. BUGAOAN
Vice President for Research and Extension	DR. FLORENTINA S. Dumlao	DR. FLORENTINA S. Dumlao
University/Board Secretary	DR. JAIME I. MANUEL, JR.	DR. JAIME I. MANUEL, JR.
Dean, Graduate Studies	DR. SALVACION C. LOYOLA	DR. AMELIA O. BACUÑGAN
Director, Student Affairs and Services	DR. JOSE A. SANCHEZ	DR. JOSE A. SANCHEZ
Director, Instruction	DR. MARCELA T. CALLISCOSIN	DR. MARCELA T. CALLISCOSIN
Director, Research and Extension	DR. ADRIANO T. ESGUERRA	DR. ADRIANO T. ESGUERRA
Director, Institutional Planning and Linkages	DR. FELINO R. NERI	DR. FELINO R. NERI
Director, Management Information System	DR. ANTONIO O. OGBINAR	DR. ANTONIO O. OGBINAR
Director, Business Affairs	MS. AURORA E. CASUGA ✓	MS. AURORA E. CASUGA
Chief, Infrastructure Development	ARCH. ARISTON P. YAÑEZ	ARCH. ARISTON P. YAÑEZ
University Coordinator Student Admission & Records/Registrar	DR. ROSITA P. ABUBO	DR. ROSITA P. ABUBO
University Coordinator Auxiliary Services	PROF. PEPITO V. HUFALAR	PROF. PEPITO V. HUFALAR
University Coordinator Quality Assurance	DR. ANGELITA J. PRADO	DR. ANGELITA J. PRADO
University Coordinator Sports Development	PROF. JUANITO C. CORPUZ	

2. The above named officials shall discharge the duties and functions inherent to the position they are designated to as specified or as may be specified in policy issuances of the University.
3. They shall be entitled to corresponding equivalent teaching load credits as defined under existing University guidelines, and shall be on vacation and sick leave.
4. All OUTGOING OFFICIALS are hereby advised to turn over before June 1, 2007 all their money, property, records, other accountabilities, and accomplished clearances to the INCOMING OFFICIALS.
5. This Order can be rescinded or revoked by the President for reasons which in his judgment will redound to the good of the service.
6. This Order shall be subjected to confirmation by the Board of Regents.
7. Issued in the interest of public service.


ERNESTO R. GAPASIN
President

Distribution:

*H*eads of Operating Units
*O*fficials Concerned
*U*niversity HRMO
*R*esident Auditor
*R*ecords
*F*ile



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OFFICE OF THE ENGINEER III

June 2, 2008

The UBAC
This University

Attention: UBAC Secretariat

Honorable Committee:

As a designated member of the Technical Working Group (TWG) for the new set of the Bids and Awards Committee of the University, it is my duty to inform the committee of a major deviation in the content of the bidding documents being issued to prospective bidder which is not in conformity with the provisions stated under R.A. 9184 otherwise known as the "Government Procurement Reform Act" and must be corrected before any award can be made.

In particular, Section VI specifically the General Conditions of the Contract incorporated in the bidding documents issued to bidders by the university, which is attached herewith for your verification and cross checking, the specific phrase "**PROCURING ENTITY'S ENGINEER**" was replaced with the general phrase "**PROCURING ENTITY'S REPRESENTATIVE**". It should be noted that the **PROCURING ENTITY'S ENGINEER** is not a designation but a permanent Plantilla Position of the University.

Deviations such as the substitution of the phrase "**PROCURING ENTITY'S ENGINEER**" into "**PROCURING ENTITY'S REPRESENTATIVE**" changed the legal intent of the law, the R.A. 9184.

Furthermore, R.A. 9184 also laid out specific guidelines to be followed / observed in the proper implementation of infrastructure projects which should form part of the contract to be agreed upon by the procuring entity and the winning bidder as mandated by law. Attached are excerpts of said guidelines stated under Section 42 – IRRA Annex E of R.A. 9184 and our Bid Documents being issued to our bidders for cross checking and verification.

For your perusal and appropriate action.

Very truly yours,


ANTONY LINDBERG C. DILAY
UBAC TWG (Procuring Entity's Engineer)

SECTION VI General Conditions of Contract

Notes on the General Conditions of Contract

The details in the GCC and SCC, and submission thereof, along with other required documents listed therein, expressing all the rights and obligations of the parties, should be complete.

The GCC herein shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the SCC.

1. Definitions

- 1.1. For purposes of this Clause, boldface type is used to identify defined terms.
- 1.2. The **Arbiter** is the person appointed jointly by the DMMMSU and the Contractor to resolve disputes in the first instance, as provided for in GCC Clause 20.
- 1.3. **Bill of Quantities** refers to a list of the specific items of the Work and their corresponding unit prices, lump sums, and/or provisional sums.
- 1.4. The **Completion Date** is the date of completion of the Works as certified by the DMMMSU's Representative in accordance with GCC Clause 48.
- 1.5. The **Contract** is the contract between the DMMMSU and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Clause 2.3.
- 1.6. The **Contract Price** is the price stated in the Letter of Acceptance and thereafter to be paid by the DMMMSU to the Contractor for the execution of the Works in accordance with this Contract.
- 1.7. **Contract Time Extension** is the allowable period for the Contractor to complete the Works in addition to the original Completion Date stated in this Contract.
- 1.8. The **Contractor** is the juridical entity whose proposal has been accepted by the DMMMSU and to whom the Contract to execute the Work was awarded.
- 1.9. The **Contractor's Bid** is the signed offer or proposal submitted by the Contractor to the DMMMSU in response to the Bidding Documents.
- 1.10. **Days** are calendar days; months are calendar months.
- 1.11. **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- 1.12. A **Defect** is any part of the Works not completed in accordance with the Contract.
- 1.13. The **Defects Liability Certificate** is the certificate issued by DMMMSU's Representative upon correction of defects by the Contractor.
- 1.14. The **Defects Liability Period** is the one year period between project completion and final acceptance within which the Contractor assumes the responsibility to undertake the repair of any damage to the Works at his own expense.
- 1.15. **Drawings** are graphical presentations of the Works. They include all supplementary details, shop drawings, calculations, and other information provided or approved for the execution of this Contract.
- 1.16. **Equipment** refers to all facilities, supplies, appliances, materials or things required for the execution and completion of the Work provided by the Contractor and which shall not form or are not intended to form part of the Permanent Works.
- 1.17. The **Intended Completion Date** refers to the date specified in the SCC when the Contractor is expected to have completed the Works. The Intended Completion Date may be revised only by the DMMMSU's Representative by issuing an extension of time or an acceleration order.

- 1.18. **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- 1.19. The **Notice to Proceed** is a written notice issued by the DMMMSU or the DMMMSU's Representative to the Contractor requiring the latter to begin the commencement of the work not later than a specified or determined date.
- 1.20. **Permanent Works** all permanent structures and all other project features and facilities required to be constructed and completed in accordance with this Contract which shall be delivered to the DMMMSU and such structures at the Site after the removal of all Temporary Works.
- 1.21. **Plant** refers to the machinery, apparatus, and the like intended to form an integral part of the Permanent Works.
- 1.22. The **DMMMSU** is the party who employs the Contractor to carry out the Works stated in the SCC.
- 1.23. The **DMMMSU's Representative** refers to the Head of the DMMMSU or his duly authorized representative identified in the SCC, who shall be responsible for supervising the execution of the Works and administering the Contract.
- 1.24. The **Site** is the place provided by the DMMMSU where the Works shall be executed and any other place or places which may be designated in the SCC, or notified to the Contractor by the DMMMSU's Representative as a part of the Site.
- 1.25. **Site Investigation Reports** are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- 1.26. **Slippage** is a delay in work execution occurring when actual accomplishment falls below the target as measured by the difference between the scheduled and actual accomplishment of the Work by the Contractor as established from the work schedule. This is actually described as a percentage of the whole Works.
- 1.27. **Specifications** means the description of Works to be done and the qualities of materials to be used, the equipment to be installed and the mode of construction.
- 1.28. The **Start Date**, as specified in the SCC, is the date when the Contractor is obliged to commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- 1.29. A **Subcontractor** is any person or organization to whom a part of the Works has been subcontracted by the Contractor, as allowed by the DMMMSU, but not any assignee of such person.
- 1.30. **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Permanent Works.
- 1.31. **Work(s)** refer to the Permanent Works and Temporary Works to be executed by the Contractor in accordance with this Contract, including (i) the furnishing of all labor, materials, equipment and others incidental necessary or convenient to the complete execution of the Works; (ii) the passing of any tests before acceptance by the DMMMSU's Representative; (iii) and the carrying out of all duties and obligations of the Contractor imposed by this Contract as described in the SCC.

2. Interpretation

- 2.1. In interpreting the Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of this Contract unless specifically defined. The DMMMSU's Representative will provide instructions clarifying queries about the Conditions of Contract.
- 2.2. If sectional completion is specified in the SCC, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3. The documents forming this Contract shall be interpreted in the following order of priority:
- (a) Contract Agreement;
 - (b) Instructions to Bidders;
 - (c) Addenda to the Bidding Documents;
 - (d) Specifications;
 - (e) Drawings;
 - (f) Special Conditions of Contract;
 - (g) General Conditions of Contract; and
 - (h) Any other document listed in the SCC as forming part of this Contract.

3. **Governing Language and Law**

- 3.1. This Contract has been executed in the English language, which shall be the binding and controlling language for matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to this Contract which are exchanged by the parties shall be written in English.
- 3.2. This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines

4. **Communications**

- 4.1. Communications between parties that are referred to in the Conditions shall be effective only when in writing. Notice shall be effective only when it is received by the concerned party.

5. **Possession of Site**

- 5.1. On the date specified in the SCC, the DMMMSU shall grant the Contractor possession of so much of the Site as may be required to enable it to proceed with the execution of the Works. If the Contractor suffers delay or incurs cost from failure on the part of the DMMMSU to give possession in accordance with the terms of this clause, the DMMMSU's Representative shall give the Contractor a Contract Time Extension and certify such sum as fairly covers the cost incurred, which sum shall be paid by DMMMSU.
- 5.2. If possession of a portion is not given by the date stated in the SCC Clause 5.1, the DMMMSU will be deemed to have delayed the start of the relevant activities. The resulting adjustments in contract time to address such delay shall be in accordance with GCC Clause 46.
- 5.3. The Contractor shall bear all costs and charges for special or temporary right-of-way required by it in connection with access to the Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by it for purposes of the Works.
- 5.4. The Contractor shall allow the DMMMSU's Representative and any person authorized by the DMMMSU's Representative access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.

6. **The Contractor's Obligations**

- 6.1. The Contractor shall carry out the Works properly and in accordance with this Contract. The Contractor shall provide all supervision, labor, Materials, Plant and Contractor's Equipment, which may be required. All Materials and Plant on Site shall be deemed to be the property of the DMMMSU.
- 6.2. The Contractor shall commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program of Work submitted by the Contractor, as updated with the approval of the DMMMSU's Representative, and complete them by the Intended Completion Date.
- 6.3. The Contractor shall be responsible for the safety of all activities on the Site.
- 6.4. The Contractor shall carry out all instructions of the DMMMSU's Representative that comply with the applicable laws where the Site is located.
- 6.5. The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the supervision of the Works. The DMMMSU will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are equal to or better than those of the personnel listed in the Schedule.
- 6.6. If the DMMMSU's Representative asks the Contractor to remove a member of the Contractor's staff or work force for justifiable cause, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the Work in this Contract.
- 6.7. During Contract implementation, the Contractor and his subcontractors shall abide at all times by all labor laws including child labor related enactments, and other relevant rules.
- 6.8. The Contractor shall submit to the DMMMSU for consent the name and particulars of the person authorized to receive instructions on behalf of the Contractor.
- 6.9. The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the DMMMSU between the dates given in the schedule of other contractors particularly when they shall require access

to the Site. The Contractor shall also provide facilities and services for them during this period. The DMMMSU may modify the schedule of other contractors, and shall notify the Contractor of any such modification herein.

- 6.10. Should anything of historical or other interest or of significant value be unexpectedly discovered on the Site, it shall be the property of the DMMMSU. The Contractor shall notify the DMMMSU's Representative of such discovery and carry out the DMMMSU's Representative's instructions in dealing with them.

7. **Performance Security**

- 7.1. The Performance Security shall be submitted to the DMMMSU not later than the date specified in the SCC and shall be issued in an amount and form as specified in the SCC, and denominated in the currency in which the contract price is payable. The Performance Security shall be valid for the period specified in the SCC.
- 7.2. The Contractor, by entering into the Contract with the DMMMSU, acknowledges the right of the DMMMSU to institute action pursuant to Act 3688 against any subcontractor be they an individual, firm, partnership, corporation or association supplying the Contractor with labor, materials and/or equipment for the performance of this Contract.

8. **Sub-Contracting**

- 8.1. Unless otherwise indicated in the SCC, the Contractor cannot subcontract more than fifty percent (50%) of the value of the Works. Subcontracting of any portion of the Works does not relieve the Contractor of any liability or obligation under this Contract. The Contractor will be responsible for the acts, defaults and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Contractor's own acts, defaults, or negligence, or those of its agents, servants or workmen.
- 8.2. All subcontracting arrangements as disclosed and identified during the eligibility check shall not be changed during the implementation of this Contract.

9. **Liquidated Damages**

- 9.1. The Contractor shall pay liquidated damages to the DMMMSU at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The DMMMSU may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, the DMMMSU shall rescind this Contract, without prejudice to other courses of action and remedies open to it.
- 9.2. If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer of the DMMMSU shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Clause 39.1

10. **Site Investigation Reports**

- 10.1. The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the SCC, supplemented by any information obtained by the Contractor.

11. **The DMMMSU, Licenses and Permits**

- 11.1. The DMMMSU shall, if requested by the Contractor, assist him in applying for permits, licenses or approvals, which are required for the Works.

12. **Contractor's Risk and Warranty Security**

- 12.1. The Contractor shall assume full responsibility for the Works from the time project construction commenced up to final acceptance by the DMMMSU and shall be held responsible for any damage or destruction of the Works, except those occasioned by *force majeure*. The Contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the Works, Equipment, installation, and the like to be affected by his construction work.
- 12.2. The defects liability period for infrastructure projects shall be one year from project completion up to final acceptance by the DMMMSU. During this period, the Contractor shall undertake the repair works, at his own expense, of any damage to the Works on account of the use of materials of inferior quality within ninety (90) days from the time the Head of the DMMMSU has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the DMMMSU shall undertake such repair works and shall be entitled to the reimbursement of expenses incurred therein upon demand.

In case the Contractor fails to comply with the preceding paragraph, it shall suffer perpetual disqualification from participating in any public bidding and its property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of the DMMMSU in the Contractor's favor shall be offset to recover the costs.

- 12.3. After final acceptance of the Works by the DMMMSU, 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 *force majeure* and those caused by other parties:
- (a) **Permanent Structures:** Fifteen (15) years
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), concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, harbors, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures;
 - (b) **Semi-Permanent Structures:** Five (5) years
Buildings of types 1 (wooden), 2 (wood with 1 hour fire resistance), and 3 (masonry and steel 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
 - (c) **Other Structures:** Two (2) years
Bailey and wooden bridges, shallow wells, spring developments, and other similar structures.
- 12.4. The Contractor shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS or surety bond callable on demand, in accordance with the following schedule:

Form of Warranty	Minimum Amount in Percentage (%) of Total Contract Price
1. Cash deposit, cash bond or letter of credit	Five Percent (5%)
2. Bank guarantee	Ten Percent (10%)
3. Surety bond	Thirty Percent (30%)

- 12.5. The warranty security shall be stated in Philippine Pesos and shall remain effective during the applicable warranty period provided in GCC Clause 12.3.
- 12.6. In case of structural defects/failure occurring during the applicable warranty period provided in GCC Clause 12.3, the DMMMSU shall undertake the necessary restoration or reconstruction works and shall be entitled to full reimbursement by the parties found to be liable, of expenses incurred therein upon demand, without prejudice to the filing of appropriate administrative, civil, and/or criminal charges against the responsible persons, as well as the forfeiture of the warranty security posted in favor of the DMMMSU.

For purposes of this clause, the term "structural defects" shall mean major faults/flaws/deficiencies in one or more key structural elements of the Works which may lead to structural failure of the completed element or structure. The term "structural failures" is defined as an occurrence where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public.

13. DMMMSU's Risk

- 13.1. From the Start Date until the Certificate of Final Acceptance has been issued, the following are risks of the DMMMSU:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to:
 - (a.1) any type of use or occupation of the Site authorized by the DMMMSU after the effective acceptance of the works; or
 - (a.2) negligence, breach of statutory duty, or interference with any legal right by the DMMMSU or by any person employed by or contracted to him except the Contractor.
 - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault in the DMMMSU or in the DMMMSU's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

14. Insurance

- 14.1. The Contractor shall, under his name and at his own expense, obtain and maintain, for the duration of this Contract, the following insurance coverage:

- (a) Contractor's All Risk Insurance;
- (b) Transportation to the project Site of Equipment, Machinery, and Supplies owned by the Contractor
- (c) Personal injury or death of Contractor's employees; and
- (d) Comprehensive insurance for third party liability to Contractor's direct or indirect act or omission and any damage to third persons.

14.2. The Contractor shall provide evidence to the DMMMSU's Representative that the insurances required under the Contract have been effected and shall, within a reasonable time, provide copies of the insurance policies to the DMMMSU's Representative. Such evidence and such policies shall be provided to the DMMMSU's Representative.

14.3. The Contractor shall notify the insurers of changes in the nature, extent, or program for the execution of the Work and ensure the adequacy of the insurances at all times in accordance with the terms of this Contract and shall produce to the DMMMSU's Representative the insurance policies in force including the receipts for payment of the current premiums.

The above insurance policies shall be obtained from any reputable insurance company approved by the DMMMSU's Representative.

14.4. If the Contractor fails to obtain and keep in force the insurances referred to herein or any other insurance which he may be required to obtain under the terms of this Contract, the DMMMSU may obtain and keep in force any such insurances and pay such premiums as may be necessary for the purpose. From time to time the DMMMSU may deduct the amount it shall pay for said premiums including twenty five percent (25%) therein from any monies due or which may become due, to the Contractor, without prejudice to the DMMMSU exercising its right to impose other sanctions against the Contractor pursuant to the provisions of this Contract.

14.5. In the event the Contractor fails to observe the above safeguards, the DMMMSU may, at the Contractor's expense, take whatever measure is deemed necessary for its protection and that of the Contractor's personnel and third parties, and/or order the interruption of dangerous Works. In addition, the DMMMSU may refuse to make the payments under GCC Clause 39 until the Contractor complies with this Clause.

14.6. The Contractor shall immediately replace the insurance policy obtained as required in this Contract without need of the DMMMSU's demand, with a new policy issued by a new insurance company acceptable to the DMMMSU on any of the following grounds:

- (a) The issuer of the insurance policy to be replaced has:
 - (a.1) become bankrupt;
 - (a.2) been placed under receivership or under a management committee;
 - (a.3) been sued for suspension of payment; or
 - (a.4) been suspended by the Insurance Commission and its license to engage in business or its authority to issue insurance policies cancelled; or
- (b) Where reasonable grounds exist that the insurer may not be able, fully and promptly, to fulfill its obligation under the insurance policy.

15. Termination for Default of Contractor

15.1. The DMMMSU shall terminate this Contract for default when any of the following conditions attend its implementation:

15.2. 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;

15.3. Due to its own fault and after this Contract time has expired, the Contractor incurs delay in the completion of the Work after this Contract has expired; or

15.4. The Contractor:

- (a) abandons the contract Works, refuses or fails to comply with a valid instruction of the DMMMSU or fails to proceed expeditiously and without delay despite a written notice by the DMMMSU;
- (b) 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 Program of Work and equipment deployment schedule as required for the project;
- (c) does not execute the Works in accordance with this Contract or persistently or flagrantly neglects to carry out its obligations under this Contract;
- (d) neglects or refuses to remove materials or to perform a new Work that has been rejected as defective or unsuitable; or
- (e) sub-lets any part of this Contract without approval by the DMMMSU.

15.5. All materials on the Site, Plant, Equipment, and Works shall be deemed to be the property of the DMMMSU if the Contract is rescinded because of the Contractor's default.

16. **Termination for Default of DMMSU**

- 16.1. The Contractor may terminate this Contract with the DMMSU 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:
- (a) Failure of the DMMSU to deliver, within a reasonable time, supplies, materials, and equipment and other items it is obligated to furnish under the terms of this Contract; or
 - (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.

17. **Termination for Other Causes**

- 17.1. The DMMSU may terminate this Contract, in whole or in part, at any time for its convenience. The Head of the DMMSU may terminate this Contract for the convenience of the DMMSU if he has determined the existing 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.
- 17.2. The DMMSU or the Contractor may terminate this Contract if the other party causes a fundamental breach of the Contract.
- 17.3. Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) The Contractor stops work for twenty eight (28) days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the DMMSU's Representative;
 - (b) The DMMSU's Representative instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty eight (28) days;
 - (c) The DMMSU shall terminate this 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 DMMSU and/or the Contractor. In the case of the Contractor's insolvency, any Contractor's Equipment which the DMMSU instruct in the notice is to be used until the completion of the Works;
 - (d) A payment certified by the DMMSU's Representative is not paid by the DMMSU to the Contractor within eighty four (84) days from the date of the DMMSU's Representative's certificate;
 - (e) The DMMSU's Representative 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 DMMSU's Representative;
 - (f) The Contractor does not maintain a Security, which is required;
 - (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 GCC Clause 9; and
 - (h) In case it is determined prima facie by the DMMSU 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:
 - (h.1) corrupt, fraudulent, collusive and coercive practices as defined in ITB Clause 2.1(a);
 - (h.2) drawing up or using forged documents;
 - (h.3) using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
 - (h.4) any other act analogous to the foregoing.
- 17.4. The Funding Source or the DMMSU, 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, fraudulent, or coercive practices.
- 17.5. When persons from either party to this Contract gives notice of a fundamental breach to the DMMSU's Representative in order to terminate the existing contract for a cause other than those listed under GCC Clause 17.3, the DMMSU's Representative shall decide whether the breach is fundamental or not.
- 17.6. If this Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

18. **Procedures for Termination of Contracts**

- 18.1. The following provisions shall govern the procedures for the termination of this Contract:
- (a) 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) days, conduct an investigation and submit a report to the DMMSU's Representative.



calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;

- (b) Upon recommendation by the Implementing Unit, the Head of the DMMMSU shall terminate this Contract only by a written notice to the Contractor conveying the termination of this Contract. The notice shall state:
- (b.1) that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - (b.2) the extent of termination, whether in whole or in part;
 - (b.3) an instruction to the Contractor to show cause as to why this Contract should not be terminated; and
 - (b.4) special instructions of the DMMMSU, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report.

- (c) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the Head of the DMMMSU a verified position paper stating why the contract should not be terminated. If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the DMMMSU shall issue an order terminating the contract.
- (d) The DMMMSU may, at anytime before receipt of the Bidder'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 Contractor's receipt of the notice;
- (e) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the DMMMSU shall decide whether or not to terminate this Contract. It shall serve a written notice to the Contractor of its decision and, unless otherwise provided in the said notice, this Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and
- (f) The Head of the DMMMSU 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 DMMMSU.

19. Force Majeure, Release From Performance

- 19.1. For purposes of this Contract the terms "*force majeure*" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or *force majeure* shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions, and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor.
- 19.2. If this Contract is discontinued by an outbreak of war or by any other event entirely outside the control of either the DMMMSU or the Contractor, the DMMMSU's Representative shall certify that this Contract has been discontinued. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any Work carried out afterwards to which a commitment was made.
- 19.3. If the event continues for a period of eighty four (84) days, either party may then give notice of termination, which shall take effect twenty eight (28) days after the giving of the notice.
- 19.4. After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the materials and Plant reasonably delivered to the Site, adjusted by the following:
- (a) any sum to which the Contractor is entitled under GCC Clause 27.1;
 - (b) the cost of his suspension and demobilization;
 - (c) any sum to which the DMMMSU is entitled.
- 19.5. The net balance due shall be paid or repaid within a reasonable time period from the time of the notice of termination.

20. Resolution of Disputes

- 20.1. If the Contractor believes that a decision taken by the DMMMSU's Representative was either outside the authority given to the DMMMSU's Representative by this Contract or that the decision was wrongly taken, the decision shall be referred to the Arbiter indicated in the SCC within fourteen (14) days of the notification of the DMMMSU's Representative's decision.

- 20.2. Any and all disputes arising from the implementation of this Contract covered by the R.A. 9184 and its 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"; *Provided, however*, 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 this Contract that will be executed pursuant to the provisions of the law and its IRR-A; *Provided, further*, That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. Additional instructions on resolution of disputes, if any, shall be indicated in the SCC.
21. **Suspension of Loan, Credit, Grant, or Appropriation**
- 21.1. In the event that the Funding Source suspends the Loan, Credit, Grant, or Appropriation to the DMMMSU, in which part of the payments to the Contractor are being made:
- (a) The DMMMSU is obligated to notify the Contractor of such suspension within seven (7) days of having received the suspension notice
 - (b) If the Contractor has not received sums due it for work already done within forty five (45) days from the time the Contractor's claim for payment has been certified by the DMMMSU's Representative, the Contractor may immediately issue a suspension of work notice in accordance with SCC Clause 14.
22. **DMMMSU's Representative's Decisions**
- 22.1. Except where otherwise specifically stated, the DMMMSU's Representative will decide contractual matters between the DMMMSU and the Contractor in the role representing the DMMMSU.
- 22.2. The DMMMSU's Representative may delegate any of his duties and responsibilities to other people, except to the Arbitrator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
23. **Approval of Drawings and Temporary Works by the DMMMSU's Representative**
- 23.1. All Drawings prepared by the Contractor for the execution of the Temporary Works, are subject to prior approval by the DMMMSU's Representative before its use.
- 23.2. The Contractor shall be responsible for design of Temporary Works.
- 23.3. The DMMMSU's Representative's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 23.4. The Contractor shall obtain approval of third parties to the design of the Temporary Works, when required by the DMMMSU.
24. **Acceleration and Delays Ordered by the DMMMSU's Representative**
- 24.1. When the DMMMSU wants the Contractor to finish before the Intended Completion Date, the DMMMSU's Representative will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the DMMMSU accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the DMMMSU and the Contractor.
- 24.2. If the Contractor's Financial Proposals for an acceleration are accepted by the DMMMSU, they are incorporated in the Contract Price and treated as a Variation.
25. **Extension of the Intended Completion Date**
- 25.1. The DMMMSU's Representative shall extend the Intended Completion Date if a Variation is issued which makes it impossible for the Intended Completion Date to be achieved by the Contractor without taking steps to accelerate the remaining work, which would cause the Contractor to incur additional costs. Unless specified in the SCC, no payment shall be made for any event which may warrant the extension of the Intended Completion Date.
- 25.2. The DMMMSU's Representative shall decide whether and by how much to extend the Intended Completion Date within twenty one (21) days of the Contractor asking the DMMMSU's Representative for a decision thereon after fully submitting all supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
26. **Right to Vary**
- 26.1. The DMMMSU's Representative with the prior approval of the DMMMSU may instruct Variations up to a maximum cumulative amount of ten percent (10%) of the original contract cost.

- 26.2. Variations shall be valued as follows:
- (a) At a lump sum price agreed between the parties;
 - (b) where appropriate, at rates in this Contract;
 - (c) in the absence of appropriate rates, the rates in this Contract shall be used as the basis for valuation, failing which
 - (d) at appropriate new rates, equal to or lower than current industry rates and to be agreed upon by both parties and approved by the Head of the DMMMSU.

27. **Contractors Right to Claim**

- 27.1. If the Contractor incurs cost as a result of any of the events under GCC Clause 13, the Contractor shall be reimbursed the amount of such cost. If as a result of any of the said events, it is necessary to change the Works, any such cost shall be dealt with as a Variation.

28. **Dayworks**

- 28.1. Subject to GCC Clause 42 on Variation Order, and if applicable as indicated in the SCC, the Daywork rates in the Contractor's Bid shall be used for small additional amounts of work only when the DMMMSU'S Representative has given written instructions in advance for additional work to be paid for in that way.
- 28.2. All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the DMMMSU'S Representative. Each completed form shall be verified and signed by the DMMMSU'S Representative within two days of the work being done.
- 28.3. The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

29. **Early Warning**

- 29.1. The Contractor shall warn the DMMMSU'S Representative at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The DMMMSU'S Representative may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 29.2. The Contractor shall cooperate with the DMMMSU'S Representative in making and considering proposals for the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the DMMMSU'S Representative.

30. **Program of Work**

- 30.1. Within the time stated in the SCC, the Contractor shall submit to the DMMMSU'S Representative for approval a Program of Work showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 30.2. An update of the Program of Work shall show the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 30.3. The Contractor shall submit to the DMMMSU'S Representative for approval an updated Program of Work at intervals no longer than the period stated in the SCC. If the Contractor does not submit an updated Program of Work within this period, the DMMMSU'S Representative may withhold the amount stated in the SCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the updated Program of Work has been submitted.
- 30.4. The DMMMSU'S Representative's approval of the Program of Work shall not alter the Contractor's obligations. The Contractor may revise the Program of Work and submit it to the DMMMSU'S Representative again at any time. A revised Program of Work shall show the effect of any approved Variations; and if allowed, any Compensation Event.
- 30.5. When the Program of Work is updated, the Contractor shall provide the DMMMSU'S Representative with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 30.6. All Variations shall be included in updated Program of Work produced by the Contractor.



31. **Management Conferences**

- 31.1. Either the DMMMSU's Representative or the Contractor may require the other to attend a Management Conference. The Management Conference shall review the plans for remaining work and deal with matters raised in accordance with the early warning procedure.
- 31.2. The DMMMSU's Representative shall record the business of Management Conferences and provide copies of the record to those attending the Conference and to the DMMMSU. The responsibility of the parties for actions to be taken shall be decided by the DMMMSU's Representative either at the Management Conference or after the Management Conference and stated in writing to all who attended the Conference.

32. **Bill of Quantities**

- 32.1. The Bill of Quantities shall contain items of work for the construction, installation, testing, and commissioning of work to be done by the Contractor.
- 32.2. The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 32.3. If the final quantity of any work done differs from the quantity in the Bill of Quantities for the particular item and is not more than twenty five percent (25%) of the original quantity, provided the aggregate changes for all items do not exceed ten percent (10%) of the Contract price, the DMMMSU's Representative shall make the necessary adjustments to allow for the changes subject to applicable laws, rules, and regulations.
- 32.4. If requested by the DMMMSU's Representative, the Contractor shall provide the DMMMSU's Representative with a detailed cost breakdown of any rate in the Bill of Quantities.

33. **Instructions, Inspections and Audits**

- 33.1. The DMMMSU's personnel shall at all reasonable times during construction of the Work be entitled to enter and inspect, measure and test the materials and workmanship, and to check the progress of the construction.
- 33.2. If the DMMMSU's Representative instructs the Contractor to carry out a test not specified in the specifications to check whether any work has a defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no defect, the test shall be a Compensation Event.
- 33.3. The Contractor shall permit the Funding Source named in the SCC to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Funding Source if so required by the Funding Source.

34. **Identifying Defects**

- 34.1. The DMMMSU's Representative shall check the Contractor's work and notify the Contractor of any defects that are found. Such checking shall not affect the Contractor's responsibilities. The DMMMSU's Representative may instruct the Contractor to search, uncover defects and test any work that the DMMMSU's Representative considers below standards and defective.

35. **Cost of Repairs**

- 35.1. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

36. **Correction of Defects**

- 36.1. The DMMMSU's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion Date up to final acceptance by the DMMMSU, unless otherwise specified in the SCC. The Defects Liability Period shall be extended for as long as defects remain to be corrected.
- 36.2. Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified in the DMMMSU's Representative's notice.
- 36.3. The Contractor shall correct the defects which he notices himself before the end of the Defects Liability Period.



- 36.4. The DMMMSU shall certify that all defects have been corrected. If the DMMMSU considers that correction of a defect is not essential, he can request the Contractor to submit a quotation for the corresponding reduction in the Contract Price. If the DMMMSU accepts the quotation, the corresponding change in the SCC is a Variation.

37. **Uncorrected Defects**

- 37.1. The DMMMSU shall give the Contractor at least fourteen (14) days notice of his intention to use a third party to correct a Defect. If the Contractor does not correct the Defect himself within the period, the DMMMSU may have the Defect corrected by the third party. The cost of the correction will be deducted from the Contract Price.
- 37.2. The use of a third party to correct defects that are uncorrected by the Contractor will in no way relieve the Contractor of its liabilities and warranties under the Contract.

38. **Advance Payment**

- 38.1. The DMMMSU shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount not to exceed fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most two, installments according to a schedule specified in the SCC.
- 38.2. The advance payment shall be made only upon the submission to and acceptance by the DMMMSU of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the DMMMSU.
- 38.3. The advance payment shall be repaid by the Contractor by deducting a percentage equal to that used for the advance payment from periodic progress payments to be made to the Contractor.
- 38.4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

39. **Progress Payments**

- 39.1. The Contractor may submit a request for payment for Work accomplished. Such request for payment shall be verified and certified by the DMMMSU's Representative. Except as otherwise stipulated in the SCC, materials and equipment delivered on the site but not completely put in place shall not be included for payment.
- 39.2. The DMMMSU shall have the right to deduct from the Contractor's progress billing such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the project.
- 39.3. Payments shall be adjusted by deducting therefrom the amounts for advance payments and retention. The DMMMSU shall pay the Contractor the amounts certified by the DMMMSU's Representative within twenty eight (28) days from the date each certificate was issued. Unless otherwise indicated in the SCC, no payment of interest for delayed payments and adjustments shall be made by the DMMMSU.
- 39.4. Items of the Works for which a price of "0" (zero) has been entered will not be paid for by the DMMMSU and shall be deemed covered by other rates and prices in the Contract.

40. **Payment Certificates**

- 40.1. The Contractor shall submit to the DMMMSU's Representative monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 40.2. The DMMMSU's Representative shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 40.3. The value of Work executed shall:
- (a) be determined by the DMMMSU's Representative;
 - (b) comprise the value of the quantities of the items in the Bill of Quantities completed; and
 - (c) include the valuations of approved variations.
- 40.4. The DMMMSU's Representative may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.



41. **Retention**

- 41.1. The DMMMSU shall retain from each payment due to the Contractor an amount equal to a percentage thereof and the rate as specified in SCC Clause 41.2.
- 41.2. Progress payments are subject to retention of ten percent (10%), unless otherwise specified in the SCC, referred to as the "retention money." Such retention shall be based on the total amount due to the Contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of Works to be determined by the DMMMSU, are completed. If, after fifty percent (50%) completion, the Work is satisfactory, done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall again be imposed using the rate specified therefor.
- 41.3. The total "retention money" shall be due for release upon final acceptance of the Works. The Contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to the DMMMSU, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the percentage retained shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the DMMMSU shall be valid for a duration to be determined by the concerned implementing office/agency or DMMMSU and will answer for the purpose for which the retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.
- 41.4. On completion of the whole Works, the Contractor may substitute retention money with an "on demand" Bank guarantee in a form acceptable to the DMMMSU.

42. **Variation Orders**

- 42.1. Variation Orders may be issued by the DMMMSU to cover any increase/decrease in quantities including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the Contractor and the DMMMSU after award of the contract, provided that the cumulative amount of the Variation Order does not exceed ten percent (10%) of the original project cost. The addition/deletion to Works should be within the general scope of the project as bid and awarded. A Variation Order may either be in the form of a Change Order or Extra Work Order.
- 42.2. A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original Work items in the contract.
- 42.3. An Extra Work Order may be issued by the implementing official to cover the introduction of new work necessary for the completion, improvement or protection of the project which were not included as items of Work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work or character provided for in the contract.
- 42.4. Any cumulative Variation Order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the Head of the DMMMSU may authorize the Variation Order beyond ten percent (10%) to a not more than twenty percent (20%) subject to the guidelines to be determined by the GPPB; *Provided however*, That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).
- 42.5. In claiming for any Variation Order, the Contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within twenty-eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Variation Orders are as follows:
 - (a) If the Head of the DMMMSU believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the Contractor, the plans therefor, his computations as to the quantities of the additional works involved per item indicating the specifications, stations where such works are needed, the date of his inspections and investigations thereon, and the book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the DMMMSU's Representative.
 - (b) The DMMMSU's Representative, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff of the DMMMSU to conduct an on-the-spot investigation to verify

the need for the Work to be prosecuted. A report of such verification shall be submitted directly to the DMMMSU's Representative.

- (c) The DMMMSU's Representative, after being satisfied that such Change Order or Extra Work Order is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the Head of DMMMSU for consideration.
- (d) If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office of the procuring entity empowered to review and evaluate Change Orders or Extra Work Orders recommends approval thereof, the DMMMSU's Representative, believing the Change Order or Extra Work Order to be in order, shall approve the same.
- (e) The timeframe for the processing of Variation Orders from the preparation up to the approval by the Head of the DMMMSU concerned shall not exceed thirty (30) calendar days.

43. **Contract Completion**

- 43.1. Once the project reaches an accomplishment of ninety five (95%) of the total contract amount, the DMMMSU will create an inspectorate team to make preliminary inspection and submit a punch-list to the Contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining Work, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the claim of the DMMMSU for liquidated damages.

44. **Suspension of Work**

- 44.1. The DMMMSU shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the Contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the DMMMSU or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The Contractor shall immediately comply with such order to suspend the work wholly or partly.
- 44.2. The Contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the Contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:
 - (a) There exist right-of-way problems which prohibit the Contractor from performing work in accordance with the approved construction schedule.
 - (b) Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
 - (c) Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
 - (d) There is failure on the part of the DMMMSU to deliver government-furnished materials and equipment as stipulated in the contract.
 - (e) Delay in the payment of Contractor's claim for progress billing beyond forty-five (45) calendar days from the time the Contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the Contractor.
- 44.3. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the Contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the Contractor by adjusting the contract time accordingly.

45. **Payment on Termination**

- 45.1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the DMMMSU's Representative shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the DMMMSU exceeds any payment due to the Contractor, the difference shall be a debt payable to the DMMMSU.
- 45.2. If the Contract is terminated for the DMMMSU's convenience or because of a fundamental breach of Contract by the DMMMSU, the DMMMSU's Representative shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 45.3. The net balance due shall be paid or repaid within twenty eight (28) days from the notice of termination.

- 45.4. If the Contractor has terminated the Contract under GCC Clauses 16 or 17, the PROCURING ENTITY shall promptly return the Performance Security to the Contractor.

46. **Extension of Contract Time**

- 46.1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the DMMMSU shall determine the amount of such extension; provided that the DMMMSU is not bound to take into account any claim for an extension of time unless the Contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the DMMMSU notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the Contractor of any claim. Upon receipt of full and detailed particulars, the DMMMSU shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the DMMMSU's opinion, the findings of facts justify an extension.
- 46.2. No extension of contract time shall be granted the Contractor due to (a) ordinary unfavorable weather conditions and (b) inexcusable failure or negligence of Contractor to provide the required equipment, supplies or materials.
- 46.3. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
- 46.4. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.
- 46.5. Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days pre-determined by the DMMMSU in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection, and/or for equivalent period of delay due to major calamities such as exceptionally destructive typhoon, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the DMMMSU, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralyzation of construction activities, and other meritorious causes as determined by the DMMMSU's Representative and approved by the Head of the DMMMSU. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the Contractor may be considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DTI, DOL, DILG and DND, among others. The written consent of bondsmen must be attached to any request of the Contractor for extension of contract time and submitted to the DMMMSU for consideration and the validity of the Performance Security shall be correspondingly extended.

47. **Price Adjustment**

- 47.1. Except for extraordinary circumstances as determined by NEDA and approved by the GPPB, no price adjustment shall be allowed unless otherwise specified in the SCC.

48. **Completion**

- 48.1. The Contractor shall request the DMMMSU's Representative to issue a certificate of Completion of the Works, and the DMMMSU's Representative will do so upon deciding that the work is completed.

49. **Taking Over**

- 49.1. The DMMMSU shall take over the Site and the Works within seven (7) days from the date the DMMMSU's Representative issues a certificate of Completion.

50. **Operating and Maintenance Manuals**

- 50.1. If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.
- 50.2. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC, or they do not receive the DMMMSU's Representative's approval, the DMMMSU's Representative shall withhold the amount stated in the SCC from payments due to the Contractor.

SECTION VII

Special Conditions of Contract

Notes on the Special Conditions of Contract

Similar to the SECTION V Bid Data Sheet, the clauses in this Section are intended to assist the DMMMSU in providing contract-specific information in relation to corresponding clauses in the GCC.

The provisions of this Section complement the GCC, specifying contractual requirements linked to the special circumstances of the DMMMSU, the DMMMSU's country, the sector, and the Works procured. In preparing this Section, the following aspects should be checked:

- (a) Information that complements provisions of Section III must be incorporated.
- (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the specific project, must also be incorporated.

However, no special condition which defeats or negates the general intent and purpose of the provisions of Section III should be incorporated herein.

Special Conditions of Contract

The Intended Completion Date is September 10, 2008.

The DMMMSU is Don Mariano Marcos Memorial State University

The DMMMSU's Representative is Ms. Aurora E. Casuga

The Site is located at DMMMSU-MLUC, City of San Fernando, La Union

The Start Date is June 10, 2008

The Works consist of ... (See attached Scope of Works)

The DMMMSU shall give possession of all parts of the Site to the Contractor June 10, 2008.

At the Contractor's option the performance security is to be in any of the following form:

- (e) Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit in the amount of [insert five percent (5%) of the contract price].
- (f) Bank guarantee in the amount of [insert ten percent (10%) of the contract price].
- (g) Surety bond in the amount of [thirty percent (30%) of the contract price].
- (h) Foreign government guarantee in the amount of [insert one hundred percent (100%) of contract price].

The performance security shall be discharged by the DMMMSU and returned to the Contractor not later than thirty (30) days following the date of the expiration of this Contract.

NOTE: The DMMMSU may choose the acceptable performance security from the above-mentioned forms.

Liquidated damages is equivalent to an amount to be determined in accordance with the following formula until the work is completed and accepted or taken over by the DMMMSU:

$$TLD = VUUP \times [(1 + OCC)^n - 1] \times K$$

$$VUUP = TCP - VCUP$$

WHERE:

TLD = Total Liquidated Damages, In Pesos

VUUP = value of the uncompleted and unusable portions of the contract work, as of the expiry date of the contract, in pesos

TCP = Total Contract Price, In Pesos

VCUP = value of the completed and usable portion of the contract work, as of the expiry date of the contract, in pesos

OCC = prevailing opportunity cost of capital for government projects set by NEDA, which is currently pegged at 15%

n = total number of years that the contract work is delayed after the expiry date of the contract

K = adjustment factor to cover additional losses
= $1 + C + (i \times n)$

WHERE:

C = cost of construction supervision as a percentage, not exceeding 10%, of construction cost

i = annual inflation rate as defined by NEDA

The Head of the DMMMSU may also impose additional liquidated damages on the contractor provided such is prescribed in the Instructions to Bidders.

A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned DMMMSU.

To be entitled to such liquidated damages, the DMMMSU does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor whichever is convenient to the

DMMMSU.

In case that the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) or of the specified contract time plus any time extension duly granted to the contractor, the procuring entity concerned may rescind the contract, forfeit the contractor's performance security and takeover the prosecution of the project or award the same to a qualified contractor through negotiated contract.

In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price. In which event the contract shall automatically be taken over by the procuring entity concerned or award the same to a qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause and impose other appropriate sanctions.

The site investigation reports are: *[insert here or state none]*

The Arbitrator is:

[insert name: _____]

[insert address: _____]

Dayworks are applicable at the rate shown in the Contractor's original Bid

Or

No dayworks are applicable to the contract.

The Contractor shall submit the Program of Work to the DMMMSU's Representative within *[insert number]* days of delivery of the Letter of Acceptance

The period between Program of Work updates is *[insert number]* days.

The amount to be withheld for late submission of an updated Program of Work is *[insert amount]*.

The Funding Source is the *Government of the Philippines*

The amount of the advance payment is *[15% of the Contract Price and schedule of payment]*

The date by which operating and maintenance manuals are required is *[date]*.

The date by which "as built" drawings are required is *[date]*.

The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required is *[amount in local currency]*.



SECTION VIII

Specifications

Notes on Specifications

A set of precise and clear specifications is a prerequisite for Bidders to respond realistically and competitively to the requirements of the DMMMSU without qualifying or conditioning their Bids. In the context of international competitive bidding, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, material, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of Bids be ensured, and the subsequent task of Bid evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of specifications from previous similar projects are useful in this respect. The use of metric units is mandatory. Most specifications are normally written specially by the DMMMSU or its representative to suit the Works at hand. There is no standard set of Specifications for universal application in all regions, but there are established principles and practices, which are reflected in these PIDs.

There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular Works Contract. Deletions or addenda should then adapt the General Specifications to the particular Works.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards or other standards, the specifications should state that goods, materials, and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable. The following clause may be inserted in the SCC.

Sample Clause: Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified will be accepted, subject to the DMMMSU's Representative's prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the DMMMSU's Representative at least twenty eight (28) days prior to the date when the Contractor desires the DMMMSU's Representative's consent. In the event the DMMMSU's Representative determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.

These notes are intended only as information for the DMMMSU or the person drafting the Bidding Documents. They should not be included in the final Bidding Documents.

(See Annexed Folder)



GUIDELINES ON CONTRACT IMPLEMENTATION FOR THE PROCUREMENT OF INFRASTRUCTURE PROJECTS

Legal Reference

IRR – A Section 42 and Annex “E” provide the rules on contract implementation and termination.

INSPECTION AND TESTS

What is the scope of the Procuring Entity’s right to inspect the infrastructure project procured?

All materials, plants and workmanship should be of the kind described in the contract and in accordance with the **PROCURING ENTITY’s ENGINEER’s** instructions. To ensure that this, indeed, is the case, these materials, plants, and workmanship will be subjected from time to time, to such test as the **PROCURING ENTITY’s ENGINEER** may require. These tests must be at the place of manufacture, fabrication, and preparation, or on site or at such other place/s as may be specified in the contract, or at all or any, of such places.

The **PROCURING ENTITY’s ENGINEER**, and any person **AUTHORIZED** by him, must, at all reasonable times, have access to the site and to all workshops and places where materials or plant are being manufactured, fabricated or prepared for the works. The contractor, for its part, shall afford every facility for, and every assistance in, obtaining the right to such access.

The **PROCURING ENTITY’s ENGINEER** shall be entitled, during manufacture, fabrication or preparation of materials to be used in the project to inspect and test these materials and the plant/s where these materials are being manufactured, fabricated and/or prepared. If the materials are being manufactured, fabricated or prepared in workshops or places other those of the contractor, the contractor must obtain permission for the **PROCURING ENTITY’s ENGINEER** to carry out inspection and testing in those workshops or places. Such inspection or testing will not release the contractor from any obligation under the contract.

If at the time and place agreed above, the materials or plant are not ready for inspection or testing, the **PROCURING ENTITY’s ENGINEER** may reject these materials or the plant and must notify the contractor of such rejection immediately. He/she must also do so if, as a result of the inspection or testing, he/she determines that the materials or plant are defective or otherwise not in accordance with the contract. The notice must state the **PROCURING ENTITY’s ENGINEER’s** objection and the reason for the objection. The contractor, for its part, must then promptly make good the defect or ensure that rejected materials or plant comply with the contract. If the **PROCURING ENTITY’s ENGINEER** so request, the test of rejected materials or plant shall be made or repeated under the same terms and conditions.

The **PROCURING ENTITY's ENGINEER** will, after consultation with the contractor, determine all the costs incurred in the repetition of the test/s. These costs are recoverable from the contractor by the Procuring Entity, and maybe deducted from any monies due to the contractor. The **PROCURING ENTITY's ENGINEER** must notify the contractor accordingly with a copy being furnished the Procuring Entity.

DAYWORKS

How are day works undertaken and compensated?

If applicable, as indicated in the contract, the day work rates in the contractor's bid shall be used for small additional amounts of work, only when the **PROCURING ENTITY's ENGINEER** has given written instructions in advance for additional work to be paid for in that way.

All work to be paid for our day works shall be recorded by the contractor on forms approved by the **PROCURING ENTITY's ENGINEER**. Each completed form shall be verified and signed by the **PROCURING ENTITY's ENGINEER** within two (2) days of the work being done.

The contractor shall be paid for day works subject to obtaining signed day works forms.

HOW ARE WORKS TO BE MEASURED?

The quantity set out in the Bill of Quantities are the estimated quantities for the works. They should not therefore be taken as the actual and correct quantities of the works to be executed by the contractor in the fulfillment of his obligations under the contract. They can vary to up to ten percent (10%) of the contract price to account for variation orders as provided for in Annex "E" of the IRR – A.

The **PROCURING ENTITY's ENGINEER** must, except if otherwise stated in the Quantities of the Detailed Engineering, measure the value of the works actually in place in accordance with the contract. This measurement will be the basis for the payment that will be made to the contractor in accordance with the statement of work accomplished. The **PROCURING ENTITY's ENGINEER** must, when he/she needs to measure any part of the works, give reasonable notice to the contractor's authorized agent who must:

1. Forthwith attend or send a qualified representative to assist the **PROCURING ENTITY's ENGINEER** in making such measurements, and
2. Supply all particulars required by the **PROCURING ENTITY's ENGINEER**

WHAT ARE THE RESPONSIBILITIES OF THE CONTRACTOR AS FAR AS THE PROJECT SITE IS CONCERNED?

During the execution of the works, the contractor must keep the site reasonably free from all unnecessary obstruction. It must also store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish or temporary works that are no longer required.

Upon the issue of the Taking-Over Certificate, the contractor shall remove from that part of the site to which the certificate relates, all equipment, surplus materials, rubbish and temporary works of every kind. It must leave such part of the site and works clean and in a workmanlike condition to the satisfaction of the **PROCURING ENTITY's ENGINEER**. However, it is entitled to retain until the end of the defects liability period such materials, equipment & temporary works he may need to fulfill his obligations in relation to the project.

AT THE END OF THE PROJECT, WHAT HAPPENS TO MATERIALS AND EQUIPMENT PAID FOR BY THE PROCURING ENTITY?

Unless otherwise provided for in the contract, the contractor must turn-over to the Procuring Entity all excess, used, unused and/or reusable materials paid for in the contract such as formworks, laboratory apparatus and equipment, vehicles, field office, safety gadgets and devices, etc. Vehicles and equipment should be in operating condition when turned over.