



Entity shall consider the said Bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract.

30.2 Based on the following grounds, the Procuring Entity reserves the right to reject any and all bids, declare a Failure of Bidding at any time prior to the contract award, or not to award the contract, without thereby incurring any liability, and make no assurance that a contract shall be entered into as a result of the bidding:

- (a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) If the Procuring Entity's BAC is found to have failed in following the prescribed bidding procedures; or
- (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP as follows:
 - (i) If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity;
 - (ii) If the project is no longer necessary as determined by the head of the procuring entity; and
 - (iii) If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

30.3. In addition, the Procuring Entity may likewise declare a failure of bidding when:

- (a) No bids are received;
- (b) All prospective bidders are declared ineligible;
- (c) All bids fail to comply with all the bid requirements or fail post-qualification; or
- (d) The bidder with the Lowest Calculated Responsive Bid (LCRB) refuses, without justifiable cause to accept the award of contract, and no award is made.

A. Award of Contract

31. Contract Award

31.1. Subject to ITB Clause 29, the HoPE or its duly authorized representative shall award the contract to the Bidder whose bid has been determined to be the LCRB.

31.2. Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Bidder in writing that its bid has been accepted, through a Notice of Award duly received by the Bidder or its representative personally or sent by registered mail or electronically, receipt of which must be confirmed in writing within two (2) days by the Bidder with the LCRB and submitted personally or sent by registered mail or electronically to the Procuring Entity.

31.3. Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:



- (a) Submission of the following documents within ten (10) calendar days from receipt of the Notice of Award:
 - (i) Valid JVA, if applicable; or
 - (ii) In the case of procurement by a Philippine Foreign Service Office or Post, the PhilGEPS Registration Number of the winning foreign Bidder;
- (b) Posting of the performance security in accordance with ITB Clause 33;
- (c) Signing of the contract as provided in ITB Clause 32; and
- (d) Approval by higher authority, if required, as provided in Section 37.3 of the IRR of RA 9184

31.4 At the time of contract award, the Procuring Entity shall not increase or decrease the quantity of goods originally specified in Section VI. Schedule of Requirements.

32. Signing of the Contract

- 32.1 At the same time as the Procuring Entity notifies the successful Bidder that its bid has been accepted, the Procuring Entity shall send the Contract Form to the Bidder, which contract has been provided in the Bidding Documents, incorporating therein all agreements between the parties.
- 32.2 Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall post the required performance security and sign and date the contract and return it to the Procuring Entity.
- 32.3 The Procuring Entity shall enter into contract with the successful Bidder within the same ten (10) calendar day period provided that all the documentary requirements are complied with.
- 32.4 The following documents shall form part of the contract:
 - (a) Contract Agreement;
 - (b) Bidding Documents;
 - (c) Winning bidder's bid, including the Technical and Financial Proposals, and all other documents/statements submitted (*e.g.*, bidder's response to request for clarifications on the bid), including corrections to the bid, if any, resulting from the Procuring Entity's bid evaluation;
 - (d) Performance Security;
 - (e) Credit line in accordance with ITB Clause 5.5, if applicable;
 - (f) Notice of Award of Contract; and
 - (g) Other contract documents that may be required by existing laws and/or specified in the **BDS**.

33. Performance Security

- 33.1. To guarantee the faithful performance by the winning Bidder of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the contract.
- 33.2. The Performance Security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity in an amount not less than the percentage of the total contract price in accordance with the following schedule:



Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Five percent (5%)
(b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	
(c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)

33.3. Failure of the successful Bidder to comply with the above-mentioned requirement shall constitute sufficient ground for the annulment of the award and forfeiture of the bid security, in which event the Procuring Entity shall have a fresh period to initiate and complete the post qualification of the second Lowest Calculated Bid. The procedure shall be repeated until the LCRB is identified and selected for recommendation of contract award. However if no Bidder passed post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement, if necessary

34. Notice to Proceed

Within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority, the Procuring Entity shall issue the Notice to Proceed (NTP) together with a copy or copies of the approved contract to the successful bidder. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful Bidder.

35. Protest Mechanism

Decision of the procuring entity at any stage of the procurement process may be questioned in accordance with Section 55 of the 2016 Revised IRR of Republic Act 9184.



Section III. Bid Data Sheet (BDS)



Bid Data Sheet (BDS)

ITB Clause	
1.1	The Procuring Entity is <i>Philippine International Trading Corporation (PITC)</i> .
1.2	Supply, Delivery, Testing and Commissioning of One (1) Unit Robotics System for UPM-PGH.
2.0	The Funding Source is from UPM-PGH PITC AR No. TL-2016-031, in the amount : 116,634,101.76
5.1	The bidding is restricted to Medical Equipment Manufacturers or First Tier Distributors. <i>“First Tier Distributor” shall mean a company directly appointed by the principal manufacturer of the equipment with ongoing business relationship over the last five (5) years, regardless of the type of equipment/products carried for the principal manufacturer.</i>
5.2	None of the circumstances mentioned in the ITB Clause exists in this Project.
5.4	A prospective Bidder must have completed a Single contract of similar nature within last five (5) years amounting to at least fifty percent (50%) of the ABC of the item being bid. Similar contract shall mean “Medical Equipment”.
7	<i>No further instructions.</i>
8.1	Subcontracting not allowed.
8.2	Not applicable
9.1	The Procuring Entity will hold a Pre-bid Conference for this Project on 27 July 2018, 3:00 PM, Friday at the 5/F Conference Room, NDC Building, 116 Tordesillas Street, Salcedo Village, Makati City
10.1	Prospective Bidders may request for clarifications on any part of the Bidding Documents. Such a request must be in writing and submitted to the Procuring Entity at the following address at least ten (10) days before the deadline for the submission and receipt of bids: CHAIR Bids and Awards Committee I Philippine International Trading Corporation (PITC) 5th Flr, NDC Building, 116 Tordesillas St., Salcedo Village, 1227 Makati City Email: chairbac1@pitc.gov.ph and pitcbac1@gmail.com Telefax: 892-2149



12.1

**(a) ELIGIBILITY DOCUMENTS –
Class “A” Documents:**

**(a.1.) ELIGIBILITY DOCUMENTS FOR LOCAL BIDDERS (FIRST TIER
DISTRIBUTOR)**

- (i) Registration Certificate from the Securities and Exchange Commission (SEC) for corporations, Department of Trade and Industry (DTI) for sole proprietorship, or from Cooperative Development Authority (CDA) for cooperatives.
- (ii) Valid and current Business/Mayor's Permit for issued by the city or municipality where the principal place of business of the prospective bidder is located OR the equivalent document for Exclusive Economic Zones or Areas;

In cases of recently expired Mayor's/ Business permits, said permit shall be submitted together with the official receipt for as proof that the bidder has applied for renewal within the period prescribed by the concerned local government unit, provided that the renewed permit shall be submitted as a post-qualification requirement;

- (iii) Valid and Current Tax Clearance issued by Accounts Receivable Monitoring Division per Executive Order 398, Series of 2005, as finally reviewed and approved by the BIR;
- (iv) Copy of Audited Financial Statements for 2017 and 2016 (in comparative form or separate reports):
 - (a) Independent Auditor's Report;
 - (b) Balance Sheet (Statement of Financial Position); and
 - (c) Income Statement (Statement of Comprehensive Income).

Each of the above statements must have stamped “received” by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions.

OR

Submission of valid and current Certificate of PHILGEPS Registration (Platinum Membership*) in lieu of (Items (i), (ii), (iii) and (iv)) Eligibility Documents

*Note: Bidder must ensure that all Class “A” Eligibility Documents are valid and current at the time of submission of Certificate of PHILGEPS Registration (Platinum Membership).

- (v) Statement of the prospective bidder's all ongoing government and private contracts (including contracts awarded but not started), if any whether similar or not in nature and complexity to the contract to be bid. (Annex I);
- (vi) Statement of Single Largest Completed Contract of similar nature within the last five (5) years from date of submission and receipt of bids equivalent to at least fifty (50%) of the total ABC of the item being bid (Annex I-A).

Similar contract shall mean “Medical Equipment”.



Any of the following documents must be submitted/attached corresponding to the listed completed largest contracts per Annex I-A:

- (a) Copy of End User's Acceptance; or
- (b) Copy of Official Receipt/s
- (c) Copy of Sales Invoice with Collection Receipt

(vii) Duly signed Certificate of Net Financial Contracting Capacity (NFCC) per **Annex II**, in accordance with ITB Clause 5.5 OR Committed Line of Credit

a) Should the bidder opt to submit NFCC, computation must be equal to the ABC of the project. The detailed computation using the required formula must be shown as provided for in **Annex II**.

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

Notes:

1. The values of the bidder's current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR.
2. The value of all outstanding or uncompleted contracts refers to those listed in Annex I.
3. The detailed computation must be shown using the required formula provided above.
4. The NFCC computation must at least be equal to the ABC of the project.

OR

b) Should the bidder opt to submit a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC of the project issued by a Local Universal or Local Commercial Bank. The amount of the committed Line of Credit **MUST BE MACHINE VALIDATED**. (See sample Bank Form per **Annex II-A**).

(a.2.) ELIGIBILITY DOCUMENTS FOR FOREIGN MANUFACTURERS

Pursuant to Clause 11 of the Instruction to Bidders, the bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. If the eligibility requirements or BAC are in foreign language other than English, it must be accompanied by a translation of documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines. The English translation shall govern, for purposes of interpretation of the bid.

**Class “A” Documents:****a.2.1 For Foreign Manufacturers**

- (i) Valid and current certificate/license/authority to conduct business issued by the regulatory authority in the country where the company is based.
- (ii) Valid and Current Tax Clearance issued by Accounts Receivable Monitoring Division per Executive Order 398, Series of 2005, as finally reviewed and approved by the BIR.
- (iii) Corporate Financial Statement or Annual Report for 2017 or 2016.

OR

Submission of valid and current **PHILGEPS Certificate of Registration and Membership (Platinum Registration*) together with Annex A.**

*Note: Bidder must ensure that all Class “A” Eligibility Documents are valid and current at the time of submission of PhilGEPS Certificate of Registration and Membership (Platinum Registration). In case any of the submitted Eligibility Documents are not valid and current at the time of submission of Platinum Registration, bidders are required to submit the valid and current documents including:

In case the bidder opt to submit their Class “A” Documents, the Certificate of PhilGEPS Registration (Platinum Membership) shall remain as a post-qualification requirement to be submitted in accordance with Section 34.2 of the 2016 Revised IRR of RA 9184 (GPPB Circular 07-2017 dated 31 July 2017).

- (iv) Statement of the prospective bidder’s all ongoing government and private contracts (including contracts awarded but not yet started), if any whether similar or not in nature and complexity to the contract to be bid (**Annex-I**);
- (v) Statement of Single Largest Completed Contract of similar nature within the last five (5) years from date of submission and receipt of bids equivalent to at least fifty percent (50%) of the total ABC (**Annex I-A**)

Similar in nature shall mean “Medical equipment”.

Any of the following documents must be submitted/attached corresponding to listed completed single largest contract/s in Annex I-A:

- 1) Copy of Certificate of Acceptance issued by the end user; OR
 - 2) Copy of Official Receipt/s or an equivalent document for foreign manufacturer/supplier not doing business in the Philippines.
- (vi) Duly signed Certificate of Net Financial Contracting Capacity (NFCC) per Annex II, in accordance with ITB Clause 5.5 OR Committed Line of Credit
 - a) Should the bidder opt to submit NFCC, computation must be equal to the ABC of the project. The detailed computation using the required formula must be shown as provided for in **Annex II.**

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



Notes:

5. The values of the bidder's current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR.
6. The value of all outstanding or uncompleted contracts refers to those listed in Annex I.
7. The detailed computation must be shown using the required formula provided above.
8. The NFCC computation must at least be equal to the ABC of the project.

Class "B" Document: (For Joint Venture)

The participating entities entering a Joint Venture Agreement (JVA) are to be treated as a single entity and shall be jointly and severally responsible or liable for the obligations and liabilities incurred by any partner to the JV pertinent to the project requirements.

Hence, any Blacklisting Order and/or overdue deliveries intended for end-user or PITC shall apply to the JVA as the JV is deemed as one bidder.

a) For Joint Ventures, Bidder to submit either:

- (i) Copy of the JOINT VENTURE AGREEMENT (JVA) in case the joint venture is already in existence, or
- (ii) Copy of Protocol/Undertaking of Agreement to Enter into Joint Venture signed by all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.
(Annex III)

In case the joint venture is not yet in existence, the submission of a valid JVA shall be within ten (10) calendar days from receipt by the bidder of the notice from the BAC that the bidder is the Lowest Calculated and Responsive Bid [Sec 37.1.4 (a) (i) of the 2016 Revised IRR of RA 9184]

The JVA or the Protocol/Undertaking of Agreement to Enter into Joint Venture (Annex III) must include/specify the company/partner and the name of the office designated as authorized representative of the Joint Venture.

b) Local JV Partner

- (i) Registration Certificate from the Securities and Exchange Commission (SEC) for corporations or from Department of Trade and Industry (DTI) for sole proprietorship, or from Cooperative Development Authority (CDA) for cooperatives;
- (ii) Valid and current Business/Mayor's Permit issued by the city or municipality where the principal place of business of the prospective bidder is located OR the equivalent document for Exclusive Economic Zones or Areas;

In cases of recently expired Mayor's/ Business permits, said permit shall be submitted together with the official receipt as proof that the bidder has applied for renewal within the period prescribed by the concerned local government unit, provided that the renewed permit shall be submitted as a post-qualification requirement

- (iii) Valid and Current Tax Clearance issued by Accounts Receivable Monitoring Division per Executive Order 398, Series of 2005, as finally reviewed and approved by the BIR.



(iv) Copy of each of the following Audited Financial Statements for 2017 and 2016 (in comparative form or separate reports):

- a) Independent Auditor’s Report;
- b) Balance Sheet (Statement of Financial Position); and
- a) Income Statement (Statement of Comprehensive Income)

Each of the above statements **must have stamped “received”** by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions.

Foreign JV Partner

- (i) Valid and current certificate/license/authority to conduct/operate business issued by the regulatory authority in the country where the bidder is based. (If not in English, must be translated to English pursuant to Clause 11 of the Instructions to Bidders);
- (ii) Valid and Current Tax Clearance issued by Accounts Receivable Monitoring Division per Executive Order 398, Series of 2005, as finally reviewed and approved by the BIR.
- (iii) Corporate Financial Statement or Annual Report for 2017 or 2016.

OR

Submission of valid and current **Certificate of PHILGEPS Registration (Platinum Membership*)** together with Annex A.

***Note:** Bidder must ensure that all Class “A” Eligibility Documents are valid and current at the time of submission of **Certificate of PHILGEPS Registration (Platinum Membership)** In case any of the submitted Eligibility Documents are not valid and current at the time of submission of Platinum Registration, bidders are required to submit the valid and current documents including:

In case the JV Partners opt to submit their Class “A” Documents, the **Certificate of PHILGEPS Registration (Platinum Membership)** shall remain as a post-qualification requirement to be submitted in accordance with Section 34.2 of the 2016 Revised IRR of RA 9184. *“GPPB Circular 07-2017 dated 31 July 2017”.*

For other required Class “A” Eligibility Documents, submission by any of the partner(s) constitutes collective compliance.

b) TECHNICAL DOCUMENTS

- (i) **Bid security must be issued in favor of the PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC) in any of the following forms:**
 - a) Bid Securing Declaration per **Annex IV**;
 - b) Cash or Cashier’s/ Manager’s Check equivalent to at least 2% of the ABC;
 - c) Bank Guarantee/ Bank draft or Irrevocable LC equivalent to at least 2% of the ABC; **OR**
 - d) Surety bond callable upon demand equivalent to at least 5% of the ABC

Description	Qty.	Total ABC (₱) (VAT Inclusive)	Bid Security:	
			2%	5%
Robotics System	1 unit	116,634,101.76	2,332,682.03	5,831,705.08

**Notes:**

- a) The Cashier's/Manager's Check shall be issued by a Local Universal or Commercial Bank.
- b) The Bank Draft/Guarantee or Irrevocable Letter of Credit shall be issued by a Local Universal or Local Commercial Bank.
- c) Should bidder opt to submit a Surety Bond as Bid Security, the surety bond must conform with the following:
 1. Issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such bond. Together with the surety bond, a copy of a valid Certification from Insurance Commission must be submitted by the bidder which must state that the surety or insurance company is specifically authorized to issue surety bonds.
 2. Callable upon demand
 3. **Must specify the grounds for forfeiture of bid security as stated in Section II, ITB Clause 18.5, to wit:**

IF A BIDDER:

- i. withdraws its bid during the period of bid validity specified in ITB Clause 17;
- ii. does not accept the correction of errors pursuant to ITB Clause(b);
- iii. has a finding against the veracity of any of the documents submitted as stated in ITB Clause 29.2; or
- iv. submission of eligibility requirements containing false information or falsified documents;
- v. submits bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding;
- vi. allowing the use of one's name, or using the name of another for purposes of public bidding;
- vii. withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the Lowest Calculated and Responsive Bid;
- viii. refusal or failure to post the required performance security within the prescribed time;
- ix. refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification;
- x. any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
- xi. failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful; or
- xii. all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reason.

IF THE SUCCESSFUL BIDDER:

- xiii. fails to sign the contract in accordance with ITB Clause 32; or
 - xiv. fails to furnish performance security in accordance with ITB Clause 33
- (ii) Duly signed and completed Technical Bid Form. Bidder must use, accomplish and submit the Technical Bid Form attached as **Annex V**



- (iii) Duly signed/conformed Terms of Reference attached as **Annex V-A**
- (iv) Accomplished and signed Bidder's Statement of Reference of Technical Specification/s attached as **Annex V-A1**
- (v) Product Brochure and/or Technical Data Sheet for each of the brand/model of the equipment being offered showing compliance to the technical specifications:
- A. Surgeon Console
 - B. Patient Side System
 - C. Vision Cart System
 - D. Camera System Kit
 - E. Training Instrument Starter Kit
 - F. Clinical Instruments Kit

Note: If not in English, must be subject to requirement per Clause 11 of the Instructions to Bidders

- (vi) **For Manufacturers: Certification that the bidder/manufacturer has been in the business of manufacturing robotic equipment for at least ten (10) years and also indicating/include the following statements: (Annex V-B)**

- We ensure availability of supplies, parts and accessories of the item/equipment being offered for at least three (3) years after expiration of **the initial warranty period**;
- Guarantee /support to Warranty to be issued by the bidder/(first tier distributor);
- That service engineers are factory trained on service and repair;
- We/(First tier distributor) certify that at least one service engineer is available locally to provide quick on-site support;

OR

For First Tier Distributors:

- 1) Copy of Valid and Current Certificate of Distributorship (as First Tier Distributor) issued by the manufacturer indicating the business partnership for at least five (5) years.
 - 2) Certification from the manufacturer (**per Annex V-B**).
- (vii) Certificate of Product Registration or Certificate of Exemption from the Food and Drug Administration of the Department of Health for the following:
- A. Surgeon Console
 - B. Patient Side System
 - C. Vision Cart System
- (viii) Valid and current ISO Certification in the name of the manufacturer of the equipment being offered issued by an independent certifying agency. The ISO Certification must cover the manufacture/design or production of the item subject to this Bid Project
- A. Surgeon Console
 - B. Patient Side System
 - C. Vision Cart System

Note: If not in English, must be subject to requirement per Clause 11 of the Instructions to Bidders



	<p>(ix) List of Authorized Service Center/s in the Philippines (with available spare parts, indicating address, telephone & fax numbers, email address and contact person).</p> <p>In the event of closure of business, termination of franchisee/ service center, the supplier shall notify the UPM-PGH and PITC accordingly of the new service centers with telephone numbers and address who can provide the needed parts, supplies and service;</p> <p>(x) FOR FOREIGN MANUFACTURER: To submit the following:</p> <p>a) Valid and Current Written Appointment of the Philippine-Based company (as local representative of foreign Manufacturer of First Tier Distributor) issued by the foreign Manufacturer of First Tier Distributor.</p> <p>The written appointment must include the detailed scope of responsibility of the representative company.</p> <p>In case the foreign manufacturer allow payment to be received on their behalf by their local representative company, the Written Appointment shall include an express provision authorizing said local representative company to receive/accept such payment.</p> <p>b) Secretary's Certificate of the Philippine company indicating the name and specimen signature of the authorized representative/s of the Philippine company who shall transact with PITC (as Philippine Based representative company) including address, telephone number, fax number and email address.</p> <p>(xi) Certificate of Performance Evaluation (Annex VI) with a rating of at least Very Satisfactory, issued by the Single Largest Completed Contract Client of the bidder per Annex I-A;</p> <p>(xii) Proof of Authority of the bidder's authorized representative/s:</p> <p>(a) FOR SOLE PROPRIETORSHIP (IF OWNER OPTS TO APPOINT A REPRESENTATIVE): Duly notarized Special Power of Attorney.</p> <p>(b) FOR CORPORATIONS, COOPERATIVE OR THE MEMBERS OF THE JOINT VENTURE: Duly notarized Secretary's Certificate evidencing the authority of the designated representative/s.</p> <p>IN THE CASE OF UNINCORPORATED JOINT VENTURE: Each member shall submit a separate Special Power of Attorney and/or Secretary's Certificate evidencing the authority of the designated representative/s.</p> <p>(xiii) Omnibus Sworn Statements using the form prescribed (Annex VII).</p> <p>(a) Authority of the designated representative</p> <p>(b) Non-inclusion in blacklist or under suspension status</p> <p>(c) Authenticity of Submitted Documents</p> <p>(d) Authority to validate Submitted Documents</p> <p>(e) Disclosure of Relations</p> <p>(f) Compliance with existing labor laws and standards</p> <p>(g) Bidders Responsibilities</p> <p>(h) Did not pay any form of consideration</p>
13.1	<p>Completed and signed Financial Bid Form. Bidder must use, accomplish and submit Financial Bid Form (Annex VIII).</p> <p>The ABC is inclusive of VAT. Any proposal with a financial component exceeding the ABC shall not be accepted.</p>



13.1 (b)	No further instruction.												
13.1 (c)	No further instruction.												
13.2 (a)	The ABC is P 116,634,101.76 inclusive of VAT. Any bid exceeding the ABC shall not be accepted												
13.2 (b)	No further instruction.												
15.4(a)(i v)	No further instruction.												
15.4(b)(i)	No further instruction.												
16.1(b)(i)	No further instruction.												
16.1 (b)	The Bid Prices for Goods supplied from outside the Philippines shall be quoted in the Philippine Pesos.												
16.3	No further instruction.												
17.1	The bids will be valid for one hundred twenty (120) calendar days from the date of opening of bids.												
18.1	<p>Bid security must be issued in favor of the PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC) in any of the following forms:</p> <ul style="list-style-type: none"> 1) Bid Securing Declaration per Annex IV; 2) Cash or Cashier's/ Manager's Check equivalent to at least 2% of the ABC; 3) Bank Guarantee/ Bank draft or Irrevocable LC equivalent to at least 2% of the ABC; OR 4) Surety bond callable upon demand equivalent to at least 5% of the ABC <table border="1" style="margin-left: 40px;"> <thead> <tr> <th rowspan="2">Description</th> <th rowspan="2">Qty.</th> <th rowspan="2">Total ABC (P) (VAT Inclusive)</th> <th colspan="2">Bid Security:</th> </tr> <tr> <th>2%</th> <th>5%</th> </tr> </thead> <tbody> <tr> <td>Robotics System</td> <td>1 unit</td> <td>116,634,101.76</td> <td>2,332,682.03</td> <td>5,831,705.08</td> </tr> </tbody> </table>	Description	Qty.	Total ABC (P) (VAT Inclusive)	Bid Security:		2%	5%	Robotics System	1 unit	116,634,101.76	2,332,682.03	5,831,705.08
Description	Qty.				Total ABC (P) (VAT Inclusive)	Bid Security:							
		2%	5%										
Robotics System	1 unit	116,634,101.76	2,332,682.03	5,831,705.08									
18.2	The bid security shall be valid for one hundred twenty (120) calendar days from the date of opening of bids.												
20.1	No further instructions.												
20.3	<p>Each Bidder shall submit the following in one (1) big envelope duly labeled containing two sets of envelopes;</p> <p>First envelope must contain three (3) copies of Eligibility and Technical documents duly marked as "Original Copy", "Duplicate Copy" and "Triplicate Copy".</p> <p>Second envelope must contain three (3) copies of Financial documents duly marked as "Original Copy", "Duplicate Copy" and "Triplicate Copy".</p> <p>All envelopes and folders must be labeled as specified below</p>												



20.4	<p>All envelopes shall:</p> <ul style="list-style-type: none"> (a) contain the name of the contract to be bid in capital letters; (b) bear the name and address of the Bidder in capital letters; (c) be addressed to the Procuring Entity’s BAC in accordance with ITB Clause 1.1; (d) bear the specific identification of this bidding process indicated in the ITB Clause 1.2; and (e) bear a warning “DO NOT OPEN BEFORE...” the date and time for the opening of bids, in accordance with ITB Clause 21. 																					
	<table border="1" style="width: 100%;"> <tr> <td style="width: 15%;">TO</td> <td style="width: 5%;">:</td> <td>THE BIDS AND AWARDS COMMITTEE I PHILIPPINE INTERNATIONAL TRADING CORPORATION</td> </tr> <tr> <td>FROM</td> <td>:</td> <td>_____</td> </tr> <tr> <td></td> <td></td> <td><i>(Name of Bidder in Capital Letters)</i></td> </tr> <tr> <td>ADDRESS:</td> <td>:</td> <td>_____</td> </tr> <tr> <td></td> <td></td> <td><i>(Address of Bidder in Capital Letters)</i></td> </tr> <tr> <td>PROJECT:</td> <td>:</td> <td>SUPPLY, DELIVERY, TESTING AND COMMISSIONING OF ONE (1) UNIT ROBOTICS SYSTEM FOR THE UNIVERSITY OF THE PHILIPPINES (MANILA) – PHILIPPINE GENERAL HOSPITAL (UPM-PGH)</td> </tr> <tr> <td colspan="3"> <p>BID REF NO: GPG-B1-2018-369 2nd REBID (Previous Bid Reference Nos. GPG-B1-2017-028 and GPG-B1-2018-284 Rebid) (In Capital Letters, Indicate the Phrase):</p> <p>“DO NOT OPEN BEFORE: 27 August 2018, 3:00 PM (Monday)”</p> </td> </tr> </table>	TO	:	THE BIDS AND AWARDS COMMITTEE I PHILIPPINE INTERNATIONAL TRADING CORPORATION	FROM	:	_____			<i>(Name of Bidder in Capital Letters)</i>	ADDRESS:	:	_____			<i>(Address of Bidder in Capital Letters)</i>	PROJECT:	:	SUPPLY, DELIVERY, TESTING AND COMMISSIONING OF ONE (1) UNIT ROBOTICS SYSTEM FOR THE UNIVERSITY OF THE PHILIPPINES (MANILA) – PHILIPPINE GENERAL HOSPITAL (UPM-PGH)	<p>BID REF NO: GPG-B1-2018-369 2nd REBID (Previous Bid Reference Nos. GPG-B1-2017-028 and GPG-B1-2018-284 Rebid) (In Capital Letters, Indicate the Phrase):</p> <p>“DO NOT OPEN BEFORE: 27 August 2018, 3:00 PM (Monday)”</p>		
TO	:	THE BIDS AND AWARDS COMMITTEE I PHILIPPINE INTERNATIONAL TRADING CORPORATION																				
FROM	:	_____																				
		<i>(Name of Bidder in Capital Letters)</i>																				
ADDRESS:	:	_____																				
		<i>(Address of Bidder in Capital Letters)</i>																				
PROJECT:	:	SUPPLY, DELIVERY, TESTING AND COMMISSIONING OF ONE (1) UNIT ROBOTICS SYSTEM FOR THE UNIVERSITY OF THE PHILIPPINES (MANILA) – PHILIPPINE GENERAL HOSPITAL (UPM-PGH)																				
<p>BID REF NO: GPG-B1-2018-369 2nd REBID (Previous Bid Reference Nos. GPG-B1-2017-028 and GPG-B1-2018-284 Rebid) (In Capital Letters, Indicate the Phrase):</p> <p>“DO NOT OPEN BEFORE: 27 August 2018, 3:00 PM (Monday)”</p>																						
21	<p>The address for submission of bids is <i>Philippine International Trading Corporation, Ground Floor, NDC Building, 116 Tordesillas St., Salcedo Village, Makati City.</i> The deadline for submission of bids : 27 August 2018, 3:00 PM (Monday)</p>																					
24.1	<p>The place of bid opening is <i>Philippine International Trading Corporation, 5th Floor Conference Room, NDC Building, 116 Tordesillas St., Salcedo Village, Makati City.</i> The date and time of bid opening is on 27 August 2018, 3:00 PM (Monday)</p>																					
24.2	<p><i>No further instructions.</i></p>																					
27.1	<p><i>No further instructions.</i></p>																					
28.3	<p><i>No further instructions.</i></p>																					
28.3 (b)	<p>Bid modification is not allowed.</p>																					
28.4	<p><i>No further instructions.</i></p>																					
29.2, 29.2(a), 29.2(b), and 29.2(d)	<p>Post Qualification: Within a non-extendible period of five (5) calendar days from receipt by the supplier of the Notice from the BAC that the supplier has the Single/Lowest Calculated Bid (S/LCB), the Supplier shall submit and/or present the following requirements for post qualification:</p> <p>1. FOR LOCAL MANUFACTURER/FIRST TIER DISTRIBUTOR:</p> <ul style="list-style-type: none"> 1.1) Present original copy and submit certified true copy of the following: <ul style="list-style-type: none"> 1.1.1) Latest Income Tax Returns per Revenue Regulations 3-2005; <i>Tax returns filed through the Electronic Filing and Payments System (EFPS). The latest income and business tax returns are those within the last six months preceding the date of bid submission (including copy of VAT returns and corresponding payments for the last 6 months):</i> 1.1.2) PO’s or Contracts for all Ongoing Contracts as listed per submitted Annex I 1.1.3) PO or contract relative to Single Largest Completed Contract per submitted Annex I-A 																					



	<p><i>(In case of Joint Venture between local companies, both partners must present/submit above items 1.1.1, 1.1.2. In case of foreign partner, 1.1.1 is not applicable.)</i></p> <p>1.2) Submit original copy of the following:</p> <ul style="list-style-type: none"> 1.2.1) Company Profile (per Annex IX). Company printed brochure may be included. 1.2.2) Vicinity map/location of the business 1.2.3) Undertaking to Pursue Countertrade (Annex X). <p><i>(In case of Joint Venture, both partners must present/submit items 1.2.1 and 1.2.2)</i></p> <p>1.3) Present original copy of the following:</p> <ul style="list-style-type: none"> 1.3.1) Valid and current Certificate of PhilGEPS Registration 1.3.2) PO's or Contracts for all Ongoing Contracts as listed per submitted Annex I; 1.3.3) End-User's Acceptance or Official Receipt (duplicate or triplicate copy) relative to Single Largest Completed Contract per submitted Annex I-A. <p><i>In case of Joint Venture between local companies, partners must present/submit items 1.3.1, 1.3.2 and 1.3.3. In case of foreign partner, 1.3.1 and 1.3.2 are not applicable.</i></p> <p>2. FOR FOREIGN MANUFACTURER:</p> <p>2.1) Registration certificate of the local representation from the Securities and Exchange Commission (SEC) for corporation, Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives.</p> <p>2.2) Valid and current Business/Mayor's Permit of the local representation for issued by the city or municipality where the principal place of business of the prospective bidder is located OR the equivalent document for Exclusive Economic Zones or Areas;</p> <p>In cases of recently expired Mayor's/ Business permits, said permit shall be submitted together with the official receipt for as proof that the bidder has applied for renewal within the period prescribed by the concerned local government unit, provided that the renewed permit shall be submitted as a post-qualification requirement;</p> <p>Failure to submit any of the post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award. Should there be a finding against the veracity of any of the documents submitted, the Bid Security shall be forfeited in accordance with Sec. 69 of the IRR of RA 9184.</p>
<p>32.4 (g)</p>	<p><i>No further instructions.</i></p>



Section IV. General Conditions of Contract (GCC)



General Conditions of Contract (GCC)

TABLE OF CONTENTS

	Page No.
1. Definitions	46
2. Corrupt, Fraudulent, Collusive, and Coercive Practices	46
3. Inspection and Audit by the Funding Source	49
4. Governing Law and Language	49
5. Notices	49
6. Scope of Contract	49
7. Subcontracting	49
8. Procuring Entity's Responsibilities	50
9. Prices	50
10. Payment	50
11. Advance Payment	51
12. Taxes and Duties	51
13. Performance Security	51
14. Use of Contract Documents and Information	52
15. Standards	52
16. Inspection and Tests	52
17. Warranty	53
18. Delays in Supplier's Performance	54
19. Liquidated Damages	54
20. Settlement of Disputes	54
21. Liability of the Supplier	55
22. Force Majeure	55
23. Termination for Default	55
24. Termination for Insolvency	56
25. Termination for Convenience	57
26. Termination for Unlawful Acts	57
27. Procedures for Termination of Contracts	57
28. Assignment of Rights	58
29. Contract Amendment	58
30. Application	58



2. Definitions

1.1. In this Contract, the following terms shall be interpreted as indicated:

- (a) "The Contract" means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) "The Goods" means all of the supplies, equipment, machinery, spare parts, other materials and/or general support services which the Supplier is required to provide to the Procuring Entity under the Contract.
- (d) "The Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- (e) "GCC" means the General Conditions of Contract contained in this Section.
- (f) "SCC" means the Special Conditions of Contract.
- (g) "The Procuring Entity" means the organization purchasing the Goods, as named in the **SCC**.
- (h) "The Procuring Entity's country" is the Philippines.
- (i) "The Supplier" means the individual contractor, manufacturer distributor, or firm supplying/manufacturing the Goods and Services under this Contract and named in the **SCC**.
- (j) The "Funding Source" means the organization named in the **SCC**.
- (k) "The Project Site," where applicable, means the place or places named in the **SCC**.
- (l) "Day" means calendar day.
- (m) The "Effective Date" of the contract will be the date of signing the contract, however the Supplier shall commence performance of its obligations only upon receipt of the Notice to Proceed and copy of the approved contract.
- (n) "Verified Report" refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

2. Corrupt, Fraudulent, Collusive, and Coercive Practices

2.1. Unless otherwise provided in the **SCC**, the Procuring Entity as well as the bidders, contractors, or suppliers shall observe the highest standard of ethics during the



procurement and execution of this Contract. In pursuance of this policy, the Procuring Entity:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019.
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
 - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or
 - (bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

2.2 Further the Funding Source, Borrower or Procuring Entity, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available



under the applicable law on individuals and organizations deemed to be involved with any of the practices mentioned in GCC Clause 2.1 (a).

3. Inspection and Audit by the Funding Source

The Supplier shall permit the Funding Source to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Funding Source, if so required by the Funding Source.

4. Governing Law and Language

4.1. This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines.

4.2. This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to this Contract exchanged by the parties shall be written in English.

5. Notices

5.1. Any notice, request, or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request, or consent shall be deemed to have been given or made when received by the concerned party, either in person or through an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the SCC, which shall be effective when delivered and duly received or on the notice's effective date, whichever is later.

5.2. A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the provisions listed in the SCC for GCC Clause 5.1.

6. Scope of Contract

6.1. The GOODS and Related Services to be provided shall be as specified in Section VI. Bidding Forms of this Bidding Documents.

6.2. This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. Any additional requirements for the completion of this Contract shall be provided in the SCC.

7. Subcontracting

7.1. Subcontracting of any portion of the Goods, if allowed in the BDS, does not relieve the Supplier of any liability or obligation under this Contract. The Supplier will be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Supplier's own acts, defaults, or negligence, or those of its agents, servants or workmen.

7.2. If subcontracting is allowed, the Supplier may identify its subcontractor during contract implementation. Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract. In either case,



subcontractors must submit the documentary requirements under ITB Clause 12 and comply with eligibility criteria specified in the **BDS**. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.

8. Procuring Entity's Responsibilities

- 8.1. Whenever the performance of the obligations in this Contract requires that the Supplier obtain permits, approvals, import, and other licenses from local public authorities, the Procuring Entity shall, if so needed by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.
- 8.2. The Procuring Entity shall pay all costs involved in the performance of its responsibilities in accordance with **GCC** Clause 6.

9. Prices

- 9.1. For given scope of work in this Contract as awarded, all bid prices are considered fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 of R.A. 9184 and its IRR or except as provided in this Clause.
- 9.2. Prices charged by the Supplier for Goods delivered and/or services performed under this Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any change in price resulting from a Change Order issued in accordance with **GCC** Clause 29.

10. Payment

- 10.1. Payments shall be made only upon a certification by the Head of the Procuring Entity to the effect that the Goods have been rendered or delivered in accordance with the terms of this Contract and have been duly inspected and accepted. Except with the prior approval of the President no payment shall be made for services not yet rendered or for supplies and materials not yet delivered under this Contract. One percent (1%) of the amount of each payment shall be retained by the Procuring Entity to cover the Supplier's warranty obligations under this Contract as described in GCC Clause 17.
- 10.2. The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and/or Services performed, and by documents submitted pursuant to the **SCC** provision for GCC Clause 6.2, and upon fulfillment of other obligations stipulated in this Contract.
- 10.3. Pursuant to GCC Clause 10.2, payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier. Payments shall be in accordance with the schedule stated in the **SCC**.
- 10.4. Unless otherwise specified in the **SCC**, the currency in which payment is made to the Supplier under this Contract shall be in Philippine Pesos.



10.5. Unless otherwise provided in the **SCC**, payments using Letter of Credit (LC), in accordance with the Guidelines issued by the GPPB, is allowed. For this purpose, the amount of provisional sum is indicated in the **SCC**. All charges for the opening of the LC and/or incidental expenses thereto shall be for the account of the Supplier.

11. Advance Payment

11.1. Advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the Contract amount, unless otherwise directed by the President or in cases allowed under Annex "D" of RA 9184.

11.2. All progress payments shall first be charged against the advance payment until the latter has been fully exhausted.

11.3. For Goods supplied from abroad, unless otherwise indicated in the **SCC**, the terms of payment shall be as follows:

- (a) On Contract Signature: Fifteen percent (15%) of the Contract Price shall be paid within sixty (60) days from signing of the Contract and upon submission of a claim and a bank guarantee for the equivalent amount valid until the Goods are delivered and in the form provided in Section VIII. Bidding Forms.
- (b) On Delivery: Sixty-five percent (65%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of receipt of the Goods and upon submission of the documents (i) through (vi) specified in the **SCC** provisions on Delivery and Documents.
- (c) On Acceptance: The remaining twenty percent (20%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of submission of the acceptance and inspection certificate for the respective delivery issued by the Procuring Entity's authorized representative. In the event that no inspection or acceptance certificate is issued by the procuring Entity's authorized representative within forty-five (45) days of the date shown on the delivery receipt, the Supplier shall have the right to claim payment of the remaining twenty percent (20%) subject to the Procuring Entity's own verification of the reason(s) for the failure to issue documents (vii) and (viii) as described in the **SCC** provision on Delivery and Documents.

11.4. All progress payments shall first be charged against the advance payment until the latter has been fully exhausted.

12. Taxes and Duties

The Supplier, whether local or foreign, shall be entirely responsible for all the necessary taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract.

13. Performance Security

13.1. Within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity but in no case later than the signing of the contract by both parties, the successful Bidder shall furnish the performance security in any the forms prescribed in the ITB Clause 33.2.



- 13.2. The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.
- 13.3. The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.
- 13.4. The performance security may be released by the Procuring Entity and returned to the Supplier after the issuance of the Certificate of Final Acceptance subject to the following conditions:
 - (a) There are no pending claims against the Supplier or the surety company filed by the Procuring Entity;
 - (b) The Supplier has no pending claims for labor and materials filed against it; and
 - (c) Other terms specified in the **SCC**.
- 13.5. In case of a reduction of the contract value, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

14. Use of Contract Documents and Information

- 14.1. The Supplier shall not, except for purposes of performing the obligations in this Contract, without the Procuring Entity's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 14.2. Any document, other than this Contract itself, enumerated in GCC Clause 14.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under this Contract if so required by the Procuring Entity.

15. Standards

The Goods provided under this Contract shall conform to the standards mentioned in the Section VI. Bidding Forms (Annex VI: Technical Bid Form) and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the institution concerned.

16. Inspection and Tests

- 16.1. The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. The **SCC** and Section VII. Technical Specifications shall specify what inspections and/or tests the Procuring Entity requires and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

- 16.2. If applicable, the inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity. The Supplier shall provide the Procuring Entity with results of such inspection and tests.
- 16.3. The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in this Clause provided that the Procuring Entity shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 16.4. The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Clause 5.
- 16.5. The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, shall release the Supplier from any warranties or other obligations under this Contract.

17. Warranty

- 17.1. The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by the Procuring Entity provides otherwise.
- 17.2. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
- 17.3. In order to assure that manufacturing defects shall be corrected by the Supplier, a warranty shall be required from the Supplier for a minimum period specified in the **SCC**. The obligation for the warranty shall be covered by, at the Supplier's option, either retention money in an amount equivalent to at least one percent (1%) of every progress payment, or a special bank guarantee equivalent to at least one percent (1%) of the Contract Price or other such amount if so specified in the **SCC**. The said amounts shall only be released after the lapse of the warranty period specified in the **SCC**; provided, however, that the Supplies delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.
- 17.4. The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC** and with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to the Procuring Entity.



17.5. If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in GCC Clause 17.4, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract and under the applicable law.

18. Delays in the Supplier's Performance

18.1. Delivery of the Goods and/or performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in Section VI. Schedule of Requirements.

18.2. If at any time during the performance of this Contract, the Supplier or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and/or performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, and upon causes provided for under GCC Clause 21.2, the Procuring Entity shall evaluate the situation and may extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of Contract.

18.3. Except as provided under GCC Clause 22, a delay by the Supplier in the performance of its obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 19, unless an extension of time is agreed upon pursuant to GCC Clause 29 without the application of liquidated damages.

19. Liquidated Damages

Subject to GCC Clauses 18 and 22, if the Supplier fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified in this Contract inclusive of duly granted time extensions if any, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. The maximum deduction shall be ten percent (10%) of the amount of contract. Once the maximum is reached, the Procuring Entity may rescind or terminate the Contract pursuant to GCC Clause 23, without prejudice to other courses of action and remedies open to it.

20. Settlement of Disputes

20.1. If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

20.2. If after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

20.3. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be settled by



arbitration. Arbitration may be commenced prior to or after delivery of the Goods under this Contract.

- 20.4. In the case of a dispute between the Procuring Entity and the Supplier, the dispute shall be resolved in accordance with Republic Act 9285 (“R.A. 9285”), otherwise known as the “Alternative Dispute Resolution Act of 2004.”
- 20.5. Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Supplier any monies due the Supplier.

21. Liability of the Supplier

- 21.1. The Supplier’s liability under this Contract shall be as provided by the laws of the Republic of the Philippines, subject to additional provisions, if any, set forth in the **SCC**
- 21.2. Except in cases of criminal negligence or willful misconduct, and in the case of infringement of patent rights, if applicable, the aggregate liability of the Supplier to the Procuring Entity shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

22. Force Majeure

- 22.1. The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of a *force majeure*.
- 22.2. 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 Supplier 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 Supplier. Such events may include, but not limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 22.3. If a *force majeure* situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the *force majeure*.

23. Termination for Default

- 23.1. The Procuring Entity may terminate this Contract for default when any of the following conditions attends its implementation:
- (a) Outside of *force majeure*, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;