

# Philippine Bidding Documents Republic of the Philippines



## Maintenance Service Agreement for VMWare System

Project Reference No.  
2019-PB-VMS-021-01

13 March 2019



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## Section I. Invitation to Bid

for the Maintenance Service Agreement for VMWare System  
(Project Reference No. 2019-PB-VMS-021-01)

1. The Power Sector Assets and Liabilities Management (PSALM) Corporation, through its 2019 Corporate Operating Budget intends to apply the total amount of ONE MILLION SEVEN HUNDRED THOUSAND PESOS (PHP1,700,000.00) being the Approved Budget for the Contract (ABC) to payment for the Maintenance Service Agreement for VMWare System. Bids received in excess of the ABC shall be automatically rejected at bid opening.
2. PSALM now invites bids for the Maintenance Service Agreement for VMWare System. Delivery of the Goods is required as indicated in Section VI. Schedule of Requirements of the Bidding Documents. Bidders must have completed, within three (3) years from the date of submission and receipt of bids, a single contract similar to the Project which is equivalent to at least fifty percent (50%) of the ABC. The description of an eligible Bidder is contained in the Bidding Documents, particularly, in Section II. Instructions to Bidders.
3. Bidding will be conducted through open competitive bidding procedures using a non-**discretionary “pass/fail” criterion as specified in the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, otherwise known as the “Government Procurement Reform Act”.**

Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens, pursuant to RA 5183.

4. A complete set of Bidding Documents may be acquired beginning on 13 March 2019 from the address below and upon payment of an applicable fee for the Bidding Documents, pursuant to the latest guidelines issued by the GPPB, in the amount of FIVE THOUSAND PESOS (PHP5,000.00).

It may also be downloaded free of charge from the websites of the Philippine Government Electronic Procurement System (PhilGEPS) (<https://www.philgeps.gov.ph>) and PSALM (<https://www.psalm.gov.ph>), provided that Bidders shall pay the applicable fee for the Bidding Documents not later than the submission of their bids.

5. Interested bidders may obtain further information from PSALM and inspect the Bidding Documents at the address given below, from 9:00 AM to 4:00 PM, Monday to Friday.

6. PSALM will hold a Pre-Bid Conference at 11:00 AM, Thursday, 21 March 2019 at the 24th Floor Vertis North Corporate Center I, Astra cor. Lux Drives, North Ave., Quezon City 1105 which shall be open to prospective bidders.
7. Bids must be duly received by the BAC Secretariat at the address below on or before 11:00 AM, Thursday, 04 April 2019. Bids must be accompanied by a bid security in any of the acceptable forms and in the amount stated in ITB Clause 18.

Bid opening shall be at 11:15 AM, Thursday, 04 April 2019 at the 24th Floor Vertis North Corporate Center I, Astra cor. Lux Drives, North Ave., Quezon City 1105. Bids will be opened in the presence of the bidders or their representatives who choose to attend. Late bids shall not be accepted.

8. Provisionary Tax Clearance is not acceptable.
9. PSALM reserves the right to accept or reject any and all bids, declare a failure of bidding, or not award the contract at any time prior to contract award in accordance with Section 41 of RA 9184 and its IRR, without thereby incurring any liability to the affected bidder or bidders.
10. For further information, please refer to:

THE SECRETARIAT  
Bids and Awards Committee  
Power Sector Assets and Liabilities Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105  
Telephone No.: (02) 902 9094  
e-mail: [BAC2019@psalm.gov.ph](mailto:BAC2019@psalm.gov.ph)  
[BACSec2019@psalm.gov.ph](mailto:BACSec2019@psalm.gov.ph)

MARIA ILYN G. ALBITO  
Chairperson  
BIDS AND AWARDS COMMITTEE

# Section II. Instructions to Bidders

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## A. General

### 1. Scope of Bid

- 1.1. The Procuring Entity named in the BDS invites bids for the supply and delivery of the Goods as described Section VII. Technical Specifications.
- 1.2. The name, identification, and number of lots specific to this bidding are provided in the BDS. The contracting strategy and basis of evaluation of lots is described in ITB Clause 28.

### 2. Source of Funds

The Procuring Entity has a budget or has received funds from the Funding Source named in the BDS, and in the amount indicated in the BDS. It intends to apply part of the funds received for the Project, as defined in the BDS, to cover eligible payments under the contract.

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

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

3.2 Further, the Procuring Entity will seek to impose the maximum civil, administrative, and/or criminal penalties available under applicable laws on individuals and organizations deemed to be involved in any of the practices mentioned in ITB Clause 3.1(a).

3.3 Furthermore, the Funding Source and the Procuring Entity reserve the right to inspect and audit records and accounts of a bidder or supplier in the bidding for and performance of a contract themselves or through independent auditors as reflected in the GCC Clause 3.



## 4. Conflict of Interest

4.1. All Bidders found to have conflicting interests shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (g) below:

- (a) A Bidder has controlling shareholders in common with another Bidder;
- (b) A Bidder receives or has received any direct or indirect subsidy from any other Bidder;
- (c) A Bidder has the same legal representative as that of another Bidder for purposes of this bid;
- (d) A Bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder or influence the decisions of the Procuring Entity regarding this bidding process;
- (e) A Bidder submits more than one bid in this bidding process. However, this does not limit the participation of subcontractors in more than one bid;
- (f) A Bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are the subject of the bid; or
- (g) A Bidder who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

4.2. In accordance with Section 47 of the IRR of RA 9184, all Bidding Documents shall be accompanied by a sworn affidavit of the Bidder that it is not related to the Head of the Procuring Entity (HoPE), members of the Bids and Awards Committee (BAC), members of the Technical Working Group (TWG), members of the BAC Secretariat, the head of the Project Management Office (PMO) or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. On the part of the Bidder, this Clause shall apply to the following persons:

- a. If the Bidder is an individual or a sole proprietorship, to the Bidder himself;

- b. If the Bidder is a partnership, to all its officers and members;
- c. If the Bidder is a corporation, to all its officers, directors, and controlling stockholders;
- d. If the Bidder is a cooperative, to all its officers, directors, and controlling shareholders or members; and
- e. If the Bidder is a joint venture (JV), the provisions of items (a), (b), (c) or (d) of this Clause shall correspondingly apply to each of the members of the said JV, as may be appropriate.

Relationship of the nature described above or failure to comply with this Clause will result in the automatic disqualification of a Bidder.

## 5. Eligible Bidders

5.1. Unless otherwise provided in the BDS, the following persons shall be eligible to participate in this bidding:

- (a) Duly licensed Filipino citizens/sole proprietorships;
- (b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- (c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
- (d) Cooperatives duly organized under the laws of the Philippines; and
- (e) Persons/entities forming themselves into a Joint Venture (JV), *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%).

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

- (a) When a Treaty or International or Executive Agreement as provided in Section 4 of the RA 9184 and its IRR allow foreign bidders to participate;
  - (b) Citizens, corporations, or associations of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations, or associations of the Philippines;
  - (c) When the Goods sought to be procured are not available from local suppliers; or
  - (d) When there is a need to prevent situations that defeat competition or restrain trade.
- 5.3 Government owned or -controlled corporations (GOCCs) may be eligible to participate only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not attached agencies of the Procuring Entity.
- 5.4 Unless otherwise provided in the BDS, the Bidder must have completed a Single Largest Completed Contract (SLCC) similar to the Project and the value of which, adjusted, if necessary, by the Bidder to current prices using the Philippine Statistics Authority (PSA) consumer price index, must be at least equivalent to a percentage of the ABC stated in the BDS.

For this purpose, contracts similar to the Project shall be those described in the BDS, and completed within the relevant period stated in the Invitation to Bid and ITB Clause 12.1(a)(i).

- 5.5 The Bidder must submit a computation of its Net Financial Contracting Capacity (NFCC), which must be at least equal to the ABC to be bid, calculated as follows:

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.

**The values of the domestic bidder's current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR.**

**For purposes of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their audited financial statements prepared in accordance with international financial reporting standards.**

If the prospective bidder opts to submit a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid. If

issued by a foreign universal or commercial bank, it shall be confirmed or authenticated by a local universal or commercial bank.

## 6. Bidder's Responsibilities

- 6.1 The Bidder or its duly authorized representative shall submit a sworn statement in the form prescribed in as required in ITB Clause 12.1(b)(iii).
- 6.2 The Bidder is responsible for the following:
- (a) Having taken steps to carefully examine all of the Bidding Documents;
  - (b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
  - (c) Having made an estimate of the facilities available and needed for the contract to be bid, if any;
  - (d) Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin(s) as provided under ITB Clause 10.4.
  - (e) **Ensuring that it is not "blacklisted" or** barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
  - (f) Ensuring that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
  - (g) Authorizing the HoPE or its duly authorized representative/s to verify all the documents submitted;
  - (h) Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized **Secretary's Certificate attesting to such fact, if the Bidder is a** corporation, partnership, cooperative, or joint venture;
  - (i) Complying with the disclosure provision under Section 47 of RA 9184 and its IRR in relation to other provisions of RA 3019;
  - (j) Complying with existing labor laws and standards, in the case of procurement of services; Moreover, bidder undertakes to:

- (i) Ensure the entitlement of workers to wages, hours of work, safety and health and other prevailing conditions of work as established by national laws, rules and regulations; or collective bargaining agreement; or arbitration award, if and when applicable.

In case there is a finding by the Procuring Entity or the DOLE of underpayment or non-**payment of workers' wage** and wage-related benefits, bidder agrees that the performance security or portion of the contract amount shall be withheld in favor of the complaining workers pursuant to appropriate provisions of Republic Act No. 9184 without prejudice to the institution of appropriate actions under the Labor Code, as amended, and other social legislations.

- (ii) Comply with occupational safety and health standards and to correct deficiencies, if any.

In case of imminent danger, injury or death of the worker, bidder undertakes to suspend contract implementation pending clearance to proceed from the DOLE Regional Office and to comply with Work Stoppage Order; and

- (iii) Inform the workers of their conditions of work, labor clauses under the contract specifying wages, hours of work and other benefits under prevailing national laws, rules and regulations; or collective bargaining agreement; or arbitration award, if and when applicable, through posting in two (2) conspicuous **places** in the **establishment's premises; and**

- (k) Ensuring that it did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

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

- 6.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents.
- 6.4 It shall be the sole responsibility of the Bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of this Project; (b) climatic conditions; (c)

transportation facilities; and (d) other factors that may affect the cost, duration, and execution or implementation of this Project.

- 6.5 The Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity. However, the Procuring Entity shall ensure that all information in the Bidding Documents, including bid/supplemental bid bulletin/s issued, are correct and consistent.
- 6.6 Before submitting their bids, the Bidder is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect this Project in any way.
- 6.7 The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 6.8 The Bidder should note that the Procuring Entity will accept bids only from those that have paid the applicable fee for the Bidding Documents at the office indicated in the Invitation to Bid.

## 7. Origin of Goods

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

## 8. Subcontracts

- 8.1. Unless otherwise specified in the BDS, the Bidder may subcontract portions of the Goods to an extent as may be approved by the Procuring Entity and stated in the BDS. However, subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project.
- 8.2. Subcontractors must submit the documentary requirements under ITB Clause 12 and comply with the 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.
- 8.3. The Bidder may identify the subcontractor to whom a portion of the Goods will be subcontracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

## B. Contents of Bidding Documents

### 9. Pre-Bid Conference

9.1. (a) If so specified in the BDS, a pre-bid conference shall be held at the venue and on the date indicated therein, to clarify and address the **Bidders' questions on the technical and financial components of this Project**.

(b) The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not later than seven (7) calendar days from the posting of the invitation to bid/bidding documents in the PhilGEPS website. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid, or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids, as specified in the BDS.

9.2. Bidders are encouraged to attend the pre-bid conference to ensure **that they fully understand the Procuring Entity's requirements**. Non-attendance of the Bidder will in no way prejudice its bid; however, the Bidder is expected to know the changes and/or amendments to the Bidding Documents as recorded in the minutes of the pre-bid conference and the Supplemental/Bid Bulletin. The minutes of the pre-bid conference shall be recorded and prepared not later than five (5) calendar days after the pre-bid conference. The minutes shall be made available to prospective bidders not later than five (5) days upon written request.

9.3. Decisions of the BAC amending any provision of the bidding documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) calendar days before the deadline for the submission and receipt of bids.

### 10. Clarification and Amendment of Bidding Documents

10.1. Prospective bidders may request for clarification on and/or interpretation of any part of the Bidding Documents. Such request must be in writing and submitted to the Procuring Entity at the address indicated in the BDS at least ten (10) calendar days before the deadline set for the submission and receipt of Bids.

10.2. The BAC shall respond to the said request by issuing Supplemental/Bid Bulletin, to be made available to all those who have properly secured the Bidding Documents, at least seven (7) calendar days before the deadline for the submission and receipt of Bids.

- 10.3. Supplemental/Bid Bulletins may also be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents not later than seven (7) calendar days before the deadline for the submission and receipt of Bids. Any modification to the Bidding Documents shall be identified as an amendment.
- 10.4. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted in the PhilGEPS and the website of the Procuring Entity concerned, if available, and at any conspicuous place in the premises of the Procuring Entity concerned. It shall be the responsibility of all Bidders who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, Bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with ITB Clause 23.

### C. Preparation of Bids

#### 11. Language of Bids

The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the 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.

#### 12. Documents Comprising the Bid: Eligibility and Technical Components

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

- (a) Eligibility Documents -

##### Class "A" Documents:

- (i) PhilGEPS Certificate of Registration and Membership in accordance with Section 8.5.2 of the IRR, except for foreign bidders participating in the procurement by a Philippine Foreign Service Office or Post, which shall submit their eligibility documents under Section 23.1 of the IRR, provided, that the winning bidder shall register with the PhilGEPS in accordance with section 37.1.4 of the IRR.



- (ii) Statement of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid; and

Statement of the **Bidder's** SLCC similar to the contract to bid, in accordance with ITB Clause 5.4, within the relevant period as provided in the BDS.

The two statements required shall indicate for each contract, the following:

- (ii.1) name of the contract;
  - (ii.2) date of the contract;
  - (ii.3) contract duration;
  - (ii.4) **owner's name and address;**
  - (ii.5) kinds of Goods;
  - (ii.6) For Statement of Ongoing Contracts - amount of contract and value of outstanding contracts;
  - (ii.7) For Statement of SLCC - amount of completed contracts, adjusted by the Bidder to current prices **using PSA's consumer price index, if necessary for** the purpose of meeting the SLCC requirement;
  - (ii.8) date of delivery; and
  - (ii.9) **end user's acceptance or official receipt(s)** or sales invoice issued for the contract, if completed, which shall be attached to the statements.
- (iii) NFCC computation in accordance with ITB Clause 5.5 or a committed Line of Credit from a universal or commercial bank.

**Class "B" Document:**

- (iv) If applicable, the Joint Venture Agreement (JVA) in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners in accordance with Section 23.1(b) of the IRR.
- (b) Technical Documents -
    - (i) Bid security in accordance with ITB Clause 18. If the Bidder opts to submit the bid security in the form of:

- (i.1) a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or
- (i.2) a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;
- (ii) Conformity with technical specifications, as enumerated and specified in Sections VI and VII of the Bidding Documents; and
- (iii) Sworn statement in accordance with Section 25.3 of the IRR of RA 9184 and using the form prescribed in Section VIII. Bidding Forms.
- (iv) For foreign bidders claiming eligibility by reason of their **country's extension of reciprocal rights to Filipinos**, a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

### 13. Documents Comprising the Bid: Financial Component

13.1. Unless otherwise stated in the BDS, the financial component of the bid shall contain the following:

- (a) Financial Bid Form, which includes bid prices and the Price Schedules, in accordance with ITB Clauses 15.1 and 15.4;
- (b) If the Bidder claims preference as a Domestic Bidder, a certification from the DTI issued in accordance with ITB Clause 27, unless otherwise provided in the BDS; and
- (c) Any other document related to the financial component of the bid as stated in the BDS.

13.2. (a) Unless otherwise stated in the BDS, all bids that exceed the ABC shall not be accepted.

(b) Unless otherwise indicated in the BDS, for foreign-funded procurement, a ceiling may be applied to bid prices provided the following conditions are met:

- (i) Bidding Documents are obtainable free of charge on a freely accessible website. If payment of Bidding Documents is required by the procuring entity, payment could be made upon the submission of bids.

- (ii) The procuring entity has procedures in place to ensure that the ABC is based on recent estimates made by the responsible unit of the procuring entity and that the estimates reflect the quality, supervision and risk and inflationary factors, as well as prevailing market prices, associated with the types of works or goods to be procured.
- (iii) The procuring entity has trained cost estimators on estimating prices and analyzing bid variances.
- (iv) The procuring entity has established a system to monitor and report bid prices relative to ABC and **engineer's/procuring entity's estimate.**
- (v) The procuring entity has established a monitoring and evaluation system for contract implementation to provide a feedback on actual total costs of goods and works.

## 14. Alternative Bids

- 14.1 Alternative Bids shall be rejected. For this purpose, alternative bid is an offer made by a Bidder in addition or as a substitute to its original bid which may be included as part of its original bid or submitted separately therewith for purposes of bidding. A bid with options is considered an alternative bid regardless of whether said bid proposal is contained in a single envelope or submitted in two (2) or more separate bid envelopes.
- 14.2 Each Bidder shall submit only one Bid, either individually or as a partner in a JV. A Bidder who submits or participates in more than one bid (other than as a subcontractor if a subcontractor is permitted to participate in more than one bid) will cause all the proposals with the **Bidder's participation to be disqualified. This shall be without prejudice to any applicable criminal, civil and administrative penalties that may be imposed upon the persons and entities concerned.**

## 15. Bid Prices

- 15.1. The Bidder shall complete the appropriate Schedules of Prices included herein, stating the unit prices, total price per item, the total amount and the expected countries of origin of the Goods to be supplied under this Project.
- 15.2. The Bidder shall fill in rates and prices for all items of the Goods described in the Schedule of Prices. Bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, Schedule of Prices, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as

non-responsive, but specifying a "0" (zero) or a dash (-) for the said item would mean that it is being offered for free to the Government, except those required by law or regulations to be accomplished.

- 15.3. The terms Ex Works (EXW), Cost, Insurance and Freight (CIF), Cost and Insurance Paid to (CIP), Delivered Duty Paid (DDP), and other trade terms used to describe the obligations of the parties, shall be governed by the rules prescribed in the current edition of the International Commercial Terms (INCOTERMS) published by the International Chamber of Commerce, Paris.
- 15.4. Prices indicated on the Price Schedule shall be entered separately in the following manner:
  - (a) **For Goods offered from within the Procuring Entity's country:**
    - (i) The price of the Goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable;
    - (ii) The cost of all customs duties and sales and other taxes already paid or payable;
    - (iii) The cost of transportation, insurance, and other costs incidental to delivery of the Goods to their final destination; and
    - (iv) The price of other (incidental) services, if any, listed in the BDS.
  - (b) For Goods offered from abroad:
    - (i) Unless otherwise stated in the BDS, the price of the Goods shall be quoted DDP with the place of destination in the Philippines as specified in the BDS. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible country. Similarly, the Bidder may obtain insurance services from any eligible source country.
    - (ii) The price of other (incidental) services, if any, listed in the BDS.
  - (c) For Services, based on the form which may be prescribed by the Procuring Entity, in accordance with existing laws, rules and regulations.
- 15.5. **Prices quoted by the Bidder shall be fixed during the Bidder's** performance of the contract and not subject to variation or price escalation on any account. A bid submitted with an adjustable price

quotation shall be treated as non-responsive and shall be rejected, pursuant to ITB Clause 24.

All bid prices for the given scope of work in the contract as awarded shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances. Upon the recommendation of the Procuring Entity, price escalation may be allowed in extraordinary circumstances as may be determined by the National Economic and Development Authority in accordance with the Civil Code of the Philippines, and upon approval by the GPPB. Nevertheless, in cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GOP, promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis.

## 16. Bid Currencies

16.1. Prices shall be quoted in the following currencies:

- (a) For Goods that the Bidder will supply from within the Philippines, the prices shall be quoted in Philippine Pesos.
- (b) For Goods that the Bidder will supply from outside the Philippines, the prices may be quoted in the currency(ies) stated in the BDS. However, for purposes of bid evaluation, bids denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate as published in the *Bangko Sentral ng Pilipinas* (BSP) reference rate bulletin on the day of the bid opening.

16.2. If so allowed in accordance with ITB Clause 16.1, the Procuring Entity for purposes of bid evaluation and comparing the bid prices will convert the amounts in various currencies in which the bid price is expressed to Philippine Pesos at the foregoing exchange rates.

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

## 17. Bid Validity

17.1. Bids shall remain valid for the period specified in the BDS which shall not exceed one hundred twenty (120) calendar days from the date of the opening of bids.

17.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. The bid security described in ITB Clause 18 should also be extended corresponding to the extension of the bid validity period at

the least. A Bidder may refuse the request without forfeiting its bid security, but his bid shall no longer be considered for further evaluation and award. A Bidder granting the request shall not be required or permitted to modify its bid.

## 18. Bid Security

- 18.1. The Bidder shall submit a Bid Securing Declaration or any form of Bid Security in the amount stated in the BDS, which shall be not less than the percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Not Less than the Percentage of the ABC)
<p>(a) <b>Cash or cashier's/manager's</b> check issued by a Universal or Commercial Bank.</p> <p><i>For biddings conducted by LGUs, the <b>Cashier's/Manager's Check</b> may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i></p>	
<p>(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.</p> <p><i>For biddings conducted by LGUs, Bank Draft/Guarantee, or Irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i></p>	Two percent (2%)
<p>(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.</p>	Five percent (5%)

The Bid Securing Declaration mentioned above is an undertaking which states, among others, that the Bidder shall enter into contract with the procuring entity and furnish the performance security required under

ITB Clause 33.2, within ten (10) calendar days from receipt of the Notice of Award, and commits to pay the corresponding amount as fine, and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as provided in the guidelines issued by the GPPB.

- 18.2. The bid security should be valid for the period specified in the BDS. Any bid not accompanied by an acceptable bid security shall be rejected by the Procuring Entity as non-responsive.
- 18.3. No bid securities shall be returned to Bidders after the opening of bids and before contract signing, except to those that failed or declared as post-disqualified, upon submission of a written waiver of their right to file a request for reconsideration and/or protest, or upon the lapse of the reglementary period to file a request for reconsideration or protest. Without prejudice on its forfeiture, bid securities shall be returned only after the Bidder with the Lowest Calculated and Responsive Bid (LCRB) has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in ITB Clause 18.2.
- 18.4. Upon signing and execution of the contract pursuant to ITB Clause 32, and the posting of the performance security pursuant to ITB Clause 33, **the successful Bidder's bid security will be discharged, but in no case** later than the bid security validity period as indicated in the ITB Clause 18.2.
- 18.5. The bid security may be forfeited:
  - (a) 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 28.3(a);
    - (iii) has a finding against the veracity of any of the documents submitted as stated in ITB Clause 29.2;
    - (iv) submission of eligibility requirements containing false information or falsified documents;
    - (v) submission of 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 LCRB;
  - (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 reasons.
- (b) if the successful Bidder:
- (i) fails to sign the contract in accordance with ITB Clause 32; or
  - (ii) fails to furnish performance security in accordance with ITB Clause 33.

## 19. Format and Signing of Bids

- 19.1. Bidders shall submit their bids through their duly authorized representative using the appropriate forms provided in Section VIII. Bidding Forms on or before the deadline specified in the ITB Clauses 21 in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under ITB Clause 12.1, and the second shall contain the financial component of the bid. This shall also be observed for each lot in the case of lot procurement.
- 19.2. Forms as mentioned in ITB Clause 19.1 must be completed without any alterations to their format, and no substitute form shall be accepted. All blank spaces shall be filled in with the information requested.



- 19.3. The Bidder shall prepare and submit an original of the first and second envelopes as described in ITB Clauses 12 and 13. In addition, the Bidder shall submit copies of the first and second envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 19.4. Each and every page of the Bid Form, including the Schedule of Prices, under Section VIII hereof, shall be signed by the duly authorized representative/s of the Bidder. Failure to do so shall be a ground for the rejection of the bid.
- 19.5. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

## 20. Sealing and Marking of Bids

- 20.1. Bidders shall enclose their original eligibility and technical documents described in ITB Clause 12 **in one sealed envelope marked “ORIGINAL - TECHNICAL COMPONENT”, and the original of their financial component in another sealed envelope marked “ORIGINAL - FINANCIAL COMPONENT”, sealing them all in an outer envelope marked “ORIGINAL BID”.**
- 20.2. Each copy of the first and second envelopes shall be similarly sealed **duly marking the inner envelopes as “COPY NO. \_\_\_ - TECHNICAL COMPONENT” and “COPY NO. \_\_\_ - FINANCIAL COMPONENT” and the outer envelope as “COPY NO. \_\_\_”, respectively. These envelopes** containing the original and the copies shall then be enclosed in one single envelope.
- 20.3. The original and the number of copies of the Bid as indicated in the BDS shall be typed or written in ink and shall be signed by the Bidder or its duly authorized representative/s.
- 20.4. All envelopes shall:
  - (a) contain the name of the contract to be bid in capital letters;
  - (b) bear the name and address of the Bidder in capital letters;
  - (c) **be addressed to the Procuring Entity’s BAC in accordance with ITB Clause 1.1;**
  - (d) bear the specific identification of this bidding process indicated in the ITB Clause 1.2; and
  - (e) **bear a warning “DO NOT OPEN BEFORE...” the date and time for the opening of bids, in accordance with ITB Clause 21.**

- 20.5. Bid envelopes that are not properly sealed and marked, as required in the bidding documents, shall not be rejected, but the Bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC or the Procuring Entity shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening.

#### D. Submission and Opening of Bids

##### 21. Deadline for Submission of Bids

**Bids must be received by the Procuring Entity's BAC at the address and on or before the date and time indicated in the BDS.** In case the deadline for submission of bids fall on a non-working day duly declared by the president, governor or mayor or other government official authorized to make such declaration, the deadline shall be the next working day.

##### 22. Late Bids

Any bid submitted after the deadline for submission and receipt of bids prescribed by the Procuring Entity, pursuant to ITB Clause 21, shall be **declared "Late" and shall not be accepted by the Procuring Entity.** The BAC shall record in the minutes of bid submission and opening, the Bidder's name, its representative and the time the late bid was submitted.

##### 23. Modification and Withdrawal of Bids

- 23.1. The Bidder may modify its bid after it has been submitted; provided that the modification is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Bidder shall not be allowed to retrieve its original bid, but shall be allowed to submit another bid equally sealed and properly identified in accordance with ITB Clause 20, linked to its original bid marked as **"TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" and stamped "received" by the BAC.** Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.
- 23.2. A Bidder may, through a Letter of Withdrawal, withdraw its bid after it has been submitted, for valid and justifiable reason; provided that the Letter of Withdrawal is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Letter of Withdrawal must be executed by the duly authorized representative of the Bidder identified in the Omnibus Sworn Statement, a copy of which should be attached to the letter.
- 23.3. Bids requested to be withdrawn in accordance with ITB Clause 23.1 shall be returned unopened to the Bidders. A Bidder, who has acquired the bidding documents, may also express its intention not to participate in the bidding through a letter which should reach and be

stamped by the BAC before the deadline for submission and receipt of bids. A Bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

- 23.4. No bid may be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Financial Bid Form. Withdrawal of a bid during this interval shall result in the **forfeiture of the Bidder's bid security**, pursuant to ITB Clause 18.5, and the imposition of administrative, civil and criminal sanctions as prescribed by RA 9184 and its IRR.

## 24. Opening and Preliminary Examination of Bids

- 24.1. The BAC shall open the bids in public, immediately after the deadline for the submission and receipt of bids, as specified in the BDS. In case the Bids cannot be opened as scheduled due to justifiable reasons, the BAC shall take custody of the Bids submitted and reschedule the opening of Bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the PhilGEPS website and the website of the Procuring Entity concerned.
- 24.2. Unless otherwise specified in the BDS, the BAC shall open the first bid **envelopes and determine each Bidder's compliance with the documents prescribed in ITB Clause 12, using a non-discretionary "pass/fail" criterion. If a Bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed"**.
- 24.3. Unless otherwise specified in the BDS, immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible **bidder whose first bid envelope was rated "passed"**. The second envelope of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC unless otherwise provided in ITB Clause 13.2, the BAC shall rate the bid **concerned as "failed"**. **Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.**
- 24.4. Letters of Withdrawal shall be read out and recorded during bid opening, and the envelope containing the corresponding withdrawn bid shall be returned to the Bidder unopened.

- 24.5. All members of the BAC who are present during bid opening shall initial every page of the original copies of all bids received and opened.
- 24.6. In the case of an eligible foreign bidder as described in ITB Clause 5, **the following Class “A” Documents may be substituted with the** appropriate equivalent documents, if any, issued by the country of the foreign Bidder concerned, which shall likewise be uploaded and maintained in the PhilGEPS in accordance with Section 8.5.2 of the IRR;
- (a) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives;
  - (b) **Mayor’s/Business permit issued by the local government where** the principal place of business of the bidder is located; and
  - (c) Audited Financial Statements showing, among others, the **prospective bidder’s total and current assets and liabilities stamped “received” by the Bureau of Internal Revenue or its duly** accredited and authorized institutions, for the preceding calendar year which should not be earlier than two years from the date of bid submission.
- 24.7. Each partner of a joint venture agreement shall likewise submit the requirements in ITB Clauses 12.1(a)(i). Submission of documents required under ITB Clauses 12.1(a)(ii) to 12.1(a)(iii) by any of the joint venture partners constitutes compliance.
- 24.8. The Procuring Entity shall prepare the minutes of the proceedings of the bid opening that shall include, as a minimum: (a) names of Bidders, their bid price (per lot, if applicable, and/or including discount, if any), bid security, findings of preliminary examination; and (b) attendance sheet. The BAC members shall sign the abstract of bids as read.
- 24.9. The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall ensure the integrity, security, and confidentiality of all submitted bids. The Abstract of Bids as read and the minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.
- 24.10. To ensure transparency and accurate representation of the bid submission, the BAC Secretariat shall notify in writing all bidders whose bids it has received through its PhilGEPS-registered physical address or official e-mail address. The notice shall be issued within seven (7) calendar days from the date of the bid opening

## E. Evaluation and Comparison of Bids

### 25. Process to be Confidential

- 25.1. Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award, unless otherwise allowed in the case of ITB Clause 26.
- 25.2. Any effort by a bidder to influence the Procuring Entity in the Procuring **Entity's decision in respect of bid evaluation, bid comparison or contract award** will result in the rejection of the **Bidder's bid**.

### 26. Clarification of Bids

To assist in the evaluation, comparison, and post-qualification of the bids, the Procuring Entity may ask in writing any Bidder for a clarification of its bid. All responses to requests for clarification shall be in writing. Any clarification submitted by a Bidder in respect to its bid and that is not in response to a request by the Procuring Entity shall not be considered.

### 27. Domestic Preference

- 27.1. Unless otherwise stated in the BDS, the Procuring Entity will grant a margin of preference for the purpose of comparison of bids in accordance with the following:
  - (a) The preference shall be applied when the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder.
  - (b) For evaluation purposes, the lowest Foreign Bid shall be increased by fifteen percent (15%).
  - (c) In the event that the lowest bid offered by a Domestic Bidder does not exceed the lowest Foreign Bid as increased, then the Procuring Entity shall award the contract to the Domestic Bidder at the amount of the lowest Foreign Bid.
  - (d) If the Domestic Bidder refuses to accept the award of contract at the amount of the Foreign Bid within two (2) calendar days from receipt of written advice from the BAC, the Procuring Entity shall award to the bidder offering the Foreign Bid, subject to post-qualification and submission of all the documentary requirements under these Bidding Documents.
- 27.2. A Bidder may be granted preference as a Domestic Bidder subject to the certification from the DTI that the Bidder is offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines

substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

## 28. Detailed Evaluation and Comparison of Bids

- 28.1. The Procuring Entity will undertake the detailed evaluation and comparison of bids which have passed the opening and preliminary examination of bids, pursuant to ITB Clause 24, in order to determine the Lowest Calculated Bid.
- 28.2. The Lowest Calculated Bid shall be determined in two steps:
  - (a) The detailed evaluation of the financial component of the bids, to establish the correct calculated prices of the bids; and
  - (b) The ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the Lowest Calculated Bid.
- 28.3. The Procuring Entity's BAC shall immediately conduct a detailed **evaluation of all bids rated "passed," using non-**discretionary pass/fail criteria. The BAC shall consider the following in the evaluation of bids:
  - (a) Completeness of the bid. Unless the BDS allows partial bids, bids not addressing or providing all of the required items in the Schedule of Requirements including, where applicable, Schedule of Prices, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a zero (0) or a dash (-) for the said item would mean that it is being offered for free to the Procuring Entity, except those required by law or regulations to be provided for; and
  - (b) Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications. Any adjustment shall be calculated in monetary terms to determine the calculated prices.
- 28.4. Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall not be considered, unless otherwise indicated in the BDS.
- 28.5. **The Procuring Entity's evaluation of bids shall only be based on the bid price quoted in the Bid Form, which includes the Schedule of Prices.**

- 28.6. Bids shall be evaluated on an equal footing to ensure fair competition. For this purpose, all bidders shall be required to include in their bids the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.
- 28.7. If so indicated pursuant to ITB Clause 1.2, Bids are being invited for individual lots or for any combination thereof, provided that all Bids and combinations of Bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the Bid or combination of Bids offering the lowest calculated cost to the Procuring Entity. Bid prices quoted shall correspond to all items specified for each lot and to all quantities specified for each item of a lot. Bid Security as required by ITB Clause 18 shall be submitted for each contract (lot) separately. The basis for evaluation of lots is specified in BDS Clause 28.3.

## 29. Post-Qualification

- 29.1. The BAC shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Lowest Calculated Bid complies with and is responsive to all the requirements and conditions specified in ITB Clauses 5, 12, and 13.
- 29.2. Within a non-extendible period of five (5) calendar days from receipt by the bidder of the notice from the BAC that it submitted the Lowest Calculated Bid, the Bidder shall submit its latest income and business tax returns filed and paid through the BIR Electronic Filing and Payment System (eFPS) and other appropriate licenses and permits required by law and stated in the BDS.

Failure to submit any of the post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award. Provided in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the bid security in accordance with Section 69 of the IRR of RA 9184.

- 29.3. The determination shall be based upon an examination of the **documentary evidence of the Bidder's qualifications submitted** pursuant to ITB Clauses 12 and 13, as well as other information as the Procuring Entity deems necessary and appropriate, using a non-**discretionary "pass/fail" criterion**, which shall be completed within a period of twelve (12) calendar days.
- 29.4. If the BAC determines that the Bidder with the Lowest Calculated Bid passes all the criteria for post-qualification, it shall declare the said bid as the LCRB, and recommend to the HoPE the award of contract to

the said Bidder at its submitted price or its calculated bid price, whichever is lower.

- 29.5. **A negative determination shall result in rejection of the Bidder's Bid,** in which event the Procuring Entity shall proceed to the next Lowest Calculated Bid with a fresh period to make a similar determination of **that Bidder's capabilities to perform satisfactorily. If the second Bidder,** however, fails the post qualification, the procedure for post qualification shall be repeated for the Bidder with the next Lowest Calculated Bid, and so on until the LCRB is determined for recommendation for contract award.
- 29.6. Within a period not exceeding fifteen (15) calendar days from the determination by the BAC of the LCRB and the recommendation to award the contract, the HoPE or his duly authorized representative shall approve or disapprove the said recommendation.
- 29.7. In the event of disapproval, which shall be based on valid, reasonable, and justifiable grounds as provided for under Section 41 of the IRR of RA 9184, the HoPE shall notify the BAC and the Bidder in writing of such decision and the grounds for it. When applicable, the BAC shall conduct a post-qualification of the Bidder with the next Lowest Calculated Bid. A request for reconsideration may be filed by the bidder with the HoPE in accordance with Section 37.1.3 of the IRR of RA 9184.

### 30. Reservation Clause

- 30.1. Notwithstanding the eligibility or post-qualification of a Bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made **by the said Bidder, or that there has been a change in the Bidder's** capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility and bidding requirements, statements or documents, or any changes in the situation of the Bidder which will affect its capability to undertake the project so that it fails the preset eligibility or bid evaluation criteria, the Procuring 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 HoPE;
  - (ii) If the project is no longer necessary as determined by the HoPE; 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 LCRB refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the IRR of RA 9184.

## F. 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 valid JVA, if applicable, 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, 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) Notice of Award of Contract; and
- (f) 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 (Not less than the Percentage of the Total Contract Price)
<p>(a) <b>Cash or cashier's/manager's</b> check issued by a Universal or Commercial Bank.</p> <p><i>For biddings conducted by the LGUs, the <b>Cashier's/Manager's Check</b> may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i></p>	<p>Five percent (5%)</p>
<p>(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.</p> <p><i>For biddings conducted by the LGUs, the Bank Draft/Guarantee or Irrevocable Letter of Credit may be issued by other banks</i></p>	

<i>certified by the BSP as authorized to issue such financial instrument.</i>	
(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 IRR of RA 9184.

## Section III. Bid Data Sheet

ITB Clause	
1.1	<p>The Procuring Entity is Power Sector Assets and Liabilities Management (PSALM) Corporation.</p> <p>The name of the contract is Maintenance Service Agreement for VMWare System.</p> <p>The identification number of the contract is 2019-PB-VMS-021-01.</p>
1.2	<p>The name and reference number of the project:</p> <p>Maintenance Service Agreement for VMWare System (Project Reference No. 2019-PB-VMS-021-01)</p>
2	<p>The Funding Source is:</p> <p>The Government of the Philippines (GOP) through <b>PSALM's 2019</b> Corporate Operating Budget in the total amount of ONE MILLION SEVEN HUNDRED THOUSAND PESOS (PHP1,700,000.00).</p> <p>The name of the Project is:</p> <p>Maintenance Service Agreement for VMWare System (Project Reference No. 2019-PB-VMS-021-01)</p>
3.1	No further instructions.
5.1	No further instructions.
5.2	Foreign bidders, except those falling under ITB Clause 5.1(b), may not participate in this Project.
5.4	The bidder must have completed, within three (3) years from the date of submission and receipt of bids as provided under ITB Clause 12.1(a)(iii), a single contract that is similar to this Project , equivalent to at least fifty percent (50%) of the ABC.
7	No further instructions.
8.1	Subcontracting is not allowed.
8.2	Not applicable.
9.1	The Procuring Entity will hold a pre-bid conference for this Project at 11:00 AM, Thursday, 21 March 2019 at the 24th Floor Vertis North Corporate Center I, Astra cor. Lux Drives, North Ave. , Quezon City 1105.

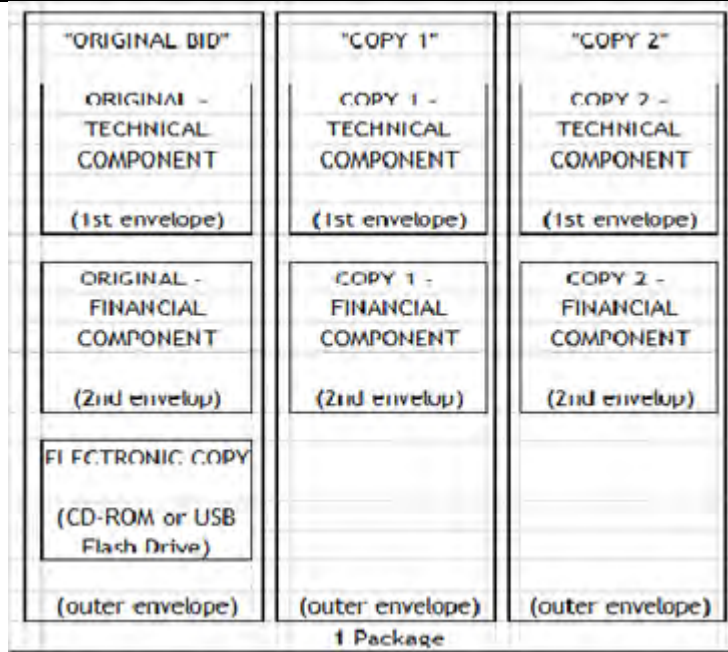
ITB Clause	
10.1	<p><b>The Procuring Entity’s address is:</b></p> <p>THE CHAIRPERSON  Bids and Awards Committee  24th Floor Vertis North Corporate Center I, Astra cor.  Lux Drives, North Ave., Quezon City 1105  Tel. No.: (02) 902 9094  Email address: <a href="mailto:BAC2019@psalm.gov.ph">BAC2019@psalm.gov.ph</a>  BAC Secretariat: <a href="mailto:BACSec2019@psalm.gov.ph">BACSec2019@psalm.gov.ph</a></p>
12.1	<p>A. Bidders whose PhilGEPS registration/membership are not yet under Platinum Category per Section 8.5.2 of the IRR, shall submit the following documents in accordance with Section 23.1(a) of the IRR, in lieu of PhilGEPS Certificate of Registration and Membership:</p> <p>ELIGIBILITY DOCUMENTS</p> <p><b><u>CLASS “A” DOCUMENTS:</u></b></p> <ul style="list-style-type: none"> <li>(i) Registration Certificate from SEC, DTI for sole proprietorship, or CDA for cooperatives.</li> <li>(ii) <b>Mayor’s/Business Permit for 2019 issued by</b> 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.</li> </ul> <p><b>In cases of recently expired Mayor’s/Business Permits, it shall</b> be accepted together with the official receipt as proof that the bidder has applied for renewal for CY 2019: Provided, that the renewed permit shall be submitted as a post-qualification requirement.</p> <ul style="list-style-type: none"> <li>(iii) Tax Clearance Certificate per Executive Order No. 398, s. 2005, issued by the Bureau of Internal Revenue (BIR).</li> </ul> <p>Only a valid TCC issued by BIR pursuant to the above related BIR issuances is acceptable. Provisional Tax Clearance Certificate or any other form is not accepted. For the avoidance of doubt, a TCC issued by the Revenue Regional Office and submitted by a Bidder should be issued on or before the date of effectivity of BIR Revenue Memorandum Order No. 46-2018.</p> <p>For further clarification on valid TCC, Tax Clearances for Bidding Purposes shall only be valid after the same have been posted in the BIR Website. In case the TCC is not yet posted in the BIR Website, the Bidder must submit a certified true</p>

ITB Clause	
	<p>copy of the TCC issued by the BIR, or its original, which will be returned to the Bidder after the bidding process.</p> <p>(iv) <b>The prospective bidder’s Audited Financial Statement</b>, showing, among others, <b>the prospective bidder’s total and current and liabilities, stamped “received” by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions</b>, for the preceding calendar year, which should not be earlier than two (2) years from bid submission.</p> <p>The Audited Financial Statement and its composition shall comply with the requirements of Section 2 of the Bureau of Internal Revenue [BIR] Revenue Regulation 07-2007 which states that:</p> <p><b>“x x x Section 2. COVERAGE.</b> - The Financial Statements shall be composed of the following:</p> <ul style="list-style-type: none"> <li>(iv.1) Balance Sheet;</li> <li>(iv.2) Income Statement/Profit and Loss Statement;</li> <li>(iv.3) Statement of Changes in Equity, showing either: <ul style="list-style-type: none"> <li>a. All changes in equity</li> <li>b. Changes in equity, other than those arising from transactions with equity holders acting in their capacity as equity holders;</li> </ul> </li> <li>(iv.4) Statement of Cash Flow;</li> <li>(iv.5) Notes, comprising a summary of significant accounting policies and other explanatory notes; and</li> <li>(iv.6) Schedules attached to the afore-cited statements.</li> </ul> <p style="text-align: center;"><b>x x x”.</b></p> <p>B. Bidders may submit either <b>their Class “A” Documents in accordance</b> with Section 23.1(a) of the IRR or the PhilGEPS Certificate of Registration and Membership under Platinum Category, or a combination thereof.</p>
12.1(a)(i)	The <b>bidder’s SLCC</b> similar to the contract to be bid should have been completed within three (3) years prior to the deadline for the submission and receipt of bids.
12.1 (b) (ii)	For the Conformity with Section VI (Schedule of Requirements) and Section VII (Technical Specifications), bidder shall use Form No. TEC-04 of Section VIII. Bidding Forms.
13.1(b)	No further instructions.

ITB Clause	
13.2	The ABC is ONE MILLION SEVEN HUNDRED THOUSAND PESOS (PHP1,700,000.00). Any bid with a financial component exceeding this amount shall not be accepted.
13.2 (b)	Not applicable.
15.4(a)(iv)	Incidental services are required in accordance with SCC 6.2.
15.4 (b) (i)	Not applicable.
15.4(b)(ii)	Incidental services are required in accordance with SCC 6.2.
16.1(b)	The Bid prices for Goods supplied from outside of the Philippines shall be quoted in Philippine Pesos.
16.3	Payment shall be in Philippine Pesos.
17.1	Bids shall be valid until 02 August 2019.
18.1	<p>The bid security shall be in the form of a Bid Securing Declaration or any of the following forms and amounts:</p> <ol style="list-style-type: none"> <li>1. The amount of not less than PhP34,000.00 [2% of PhP1,700,000.00], <b>if bid security is in cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit;</b></li> <li>2. The amount of not less than PhP85,000.00 [5% of PhP1,700,000.00] if bid security is in Surety Bond;</li> </ol> <p>If the Bid Security is in the form of cashier's/manager's check, the payee shall be <b>"PSALM CORPORATION"</b>.</p>
18.2	The bid security shall be valid until 02 August 2019.
20.3	Each Bidder shall submit one (1) original and two (2) copies of the technical and financial components of its bid as illustrated below:



ITB Clause



In addition, all documents comprising the Technical and Financial Components shall be electronically scanned and recorded in a compact disc-read only memory [CD-ROM] or USB Flash Drive. This CD-ROM or USB Flash Drive shall be marked as **"ELECTRONIC COPY"** and shall be put inside the sealed envelope labeled **"ORIGINAL BID"**.

All submissions must be contained and sealed in one (1) package.

Each sealed Bid shall be labeled as follows:

<p><b>&lt;HEADER/LABEL&gt;</b></p> <p><b>ATTENTION: THE CHAIRPERSON</b>                  Bids and Awards Committee                  24th Floor Vertis North, Corporate Center 1, Astra cor. Lux Drives                  North Avenue, Quezon City 1105                  Tel. No.: (02) 739-5261                  Email address: BAC2019@psalm.gov.ph                  BACSec2019@psalm.gov.ph</p> <hr/> <p>NAME OF PROJECT: _____</p> <p>PROJECT REFERENCE NO. _____</p> <hr/> <p>DATE AND TIME OF OPENING OF BIDS: _____</p> <p>SUBMITTED BY: BIDDER'S NAME AND SIGNATURE _____</p> <p>ADDRESS: BIDDER'S ADDRESS _____</p> <hr/> <p><b>"DO NOT OPEN BEFORE DATE AND TIME OF OPENING OF BIDS"</b></p>
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<HEADER/LABEL> shall be:

1. **"ORIGINAL BID PLUS TWO COPIES INSIDE"** - for the bid package
2. **"ORIGINAL BID"** - for the 1<sup>st</sup> outer envelope

ITB Clause	
	<p>1.1 <b>“ORIGINAL - TECHNICAL COMPONENT”</b> - for the 1<sup>st</sup> envelope inside the 1<sup>st</sup> outer envelope</p> <p>1.2 <b>“ORIGINAL - FINANCIAL COMPONENT”</b> - for the 2<sup>nd</sup> envelope inside the 1<sup>st</sup> outer envelope</p> <p>1.3 <b>“ELECTRONIC COPY”</b> - CD-ROM or USB Flash Drive</p> <p>3. <b>“COPY 1”</b> - for the 2<sup>nd</sup> outer envelope</p> <p>a. <b>“COPY 1 - TECHNICAL COMPONENT”</b> - for the 1<sup>st</sup> envelope inside the 2<sup>nd</sup> outer envelope</p> <p>b. <b>“COPY 1- FINANCIAL COMPONENT”</b> - for the 2<sup>nd</sup> envelope inside the 2<sup>nd</sup> outer envelope</p> <p>4. <b>“COPY 2”</b> - for the 3<sup>rd</sup> outer envelope</p> <p>a. <b>“COPY 2 - TECHNICAL COMPONENT”</b> - for the 1<sup>st</sup> envelope inside the 3<sup>rd</sup> outer envelope</p> <p>b. <b>“COPY 2- FINANCIAL COMPONENT”</b> - for the 2<sup>nd</sup> envelope inside the 3<sup>rd</sup> outer envelope</p>
21.	<p>The address for submission of bids is:</p> <p>The BAC Chairperson  PSALM Corporation  24th Floor Vertis North Corporate Center I, Astra cor.  Lux Drives, North Ave., Quezon City 1105</p> <p>The deadline for Submission of Bids is at 11:00 AM, Thursday, 04 April 2019.</p>
24.1	<p>The place of bid opening is:</p> <p>PSALM CORPORATION  24th Floor Vertis North Corporate Center I, Astra cor.  Lux Drives, North Ave., Quezon City 1105</p> <p>The date and time of Bid Opening is at 11:15 AM, Thursday, 04 April 2019.</p>
24.2	No further instructions.
24.3	No further instructions.
27.1	No further instructions.
28.3(a)	Partial bid is not allowed.
28.4	No further instructions.
29.2	<p>In addition, the bidder with the Lowest Calculated Bid shall submit certified true copies of the following documents:</p> <ol style="list-style-type: none"> <li>1. Bureau of Internal Revenue (BIR) Certificate of Registration or BIR Form 2303;</li> <li>2. Certification from the manufacturer that they are certified reseller or partner of the proposed equipment; and</li> </ol>

ITB Clause	
	<p data-bbox="469 237 1418 309">3. Certification from the manufacturer that they are certified to provide technical support.</p> <p data-bbox="400 342 1418 414">NOTE: The latest income and business tax returns are those filed within the last six (6) months preceding the date of bid submission.</p> <p data-bbox="400 448 1418 629">Latest Annual ITR shall refer to the ITR for the year 2017 filed in 2018. For new establishments which have no annual ITR yet, it shall refer to <b>the most recent quarter's ITR. Further, for areas where e-filing is yet to be implemented, a Certification to that effect from BIR main office is acceptable.</b></p> <p data-bbox="400 663 1418 813">Latest Business Tax Return refers to Value Added Tax (VAT) and/or Percentage Tax Returns, whichever is applicable covering the last quarter and month prior to the bid opening. Bidders filing both the VAT and Percentage Tax Returns must submit both returns.</p>
32.4(f)	No additional requirement.

# Section IV. General Conditions of Contract

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## 1. Definitions

1.3. 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 HoPE 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, 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. Schedule of Requirements.
- 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. Sub-Contracting

- 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 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 the 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 the given scope of work in this Contract as awarded, all bid prices are considered fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 or 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 HoPE 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. Ten percent (10%) 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 and Terms of 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 receipt of the Goods and upon submission of the documents (i) through (vi) specified in the SCC provision 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.**

## 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 VII. Technical Specifications; 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 inspections 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 total 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 the 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 22, 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 **the Supplier's** 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 shall 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;

(b) As a result of *force majeure*, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or



(c) The Supplier fails to perform any other obligation under the Contract.

23.2. In the event the Procuring Entity terminates this Contract in whole or in part, for any of the reasons provided under GCC Clauses 23 to 26, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar goods or Services. However, the Supplier shall continue performance of this Contract to the extent not terminated.

23.3. In case the delay in the delivery of the Goods and/or performance of the Services exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the Procuring Entity may terminate this Contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.

## 24. Termination for Insolvency

The Procuring Entity shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Supplier.

## 25. Termination for Convenience

25.1. The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The HoPE may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

25.2. The Goods that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the **Supplier's receipt of Notice to Terminate shall be accepted by the** Procuring Entity at the contract terms and prices. For Goods not yet performed and/or ready for delivery, the Procuring Entity may elect:

(a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or

(b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.

25.3. If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from this Contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity before recovery may be made.

## 26. Termination for Unlawful Acts

26.1. The Procuring Entity may terminate this Contract in case it is determined *prima facie* that the Supplier has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- (a) Corrupt, fraudulent, and coercive practices as defined in ITB Clause 3.1(a);
- (b) Drawing up or using forged documents;
- (c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- (d) Any other act analogous to the foregoing.

## 27. Procedures for Termination of Contracts

27.1. The following provisions shall govern the procedures for 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) 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 HoPE shall terminate this Contract only by a written notice to the Supplier conveying the termination of this Contract. The notice shall state:
  - (i) 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;
  - (ii) the extent of termination, whether in whole or in part;
  - (iii) an instruction to the Supplier to show cause as to why this Contract should not be terminated; and

- (iv) special instructions of the Procuring Entity, if any.
- (c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;
- (d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the HoPE a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the HoPE shall issue an order terminating this Contract;
- (e) The Procuring Entity may, at any time before receipt of the **Supplier's verified position paper** in item (d) above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or **performed before the Supplier's receipt of the notice**;
- (f) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate;
- (g) The HoPE 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 HoPE; and
- (h) The Supplier must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

## 28. Assignment of Rights

The Supplier shall not assign his rights or obligations under this Contract, in **whole or in part, except with the Procuring Entity's prior written consent**.

## 29. Contract Amendment

Subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties.

### 30. Application

These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of this Contract.

## Section V. Special Conditions of Contract

GCC Clause	
1.1(g)	The Procuring Entity is Power Sector Assets and Liabilities Management (PSALM) Corporation.
1.1(i)	The Supplier is <i>[to be inserted at the time of contract award]</i> .
1.1(j)	The Funding Source is:  <b>The Government of the Philippines (GOP) through PSALM's 2019 Corporate Operating Budget in the total amount of ONE MILLION SEVEN HUNDRED THOUSAND PESOS (PHP1,700,000.00).</b>
1.1(k)	The Project Site is defined in Section VI. Schedule of Requirements.
2.1	No further instructions.
5.1	PSALM's address for Notices is:  IRENE JOY BESIDO-GARCIA President and CEO, PSALM Corporation 24th Floor Vertis North Corporate Center I, Astra cor. Lux Drives, North Ave., Quezon City 1105  <b>The Supplier's address for Notices is:</b> <i>[Insert address including, name of contact, fax and telephone number]</i>
6.2	Delivery and Documents -  The Delivery terms of this Contract shall be as follows:  The items shall be delivered at the 24th Floor Vertis North Corporate Center I, Astra cor. Lux Drives, North Ave., Quezon City 1105. Risk and title will pass from the Supplier to the Procuring Entity upon receipt and final acceptance of the Goods at their final destination.  Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in Section VI. Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are as follows:  Upon delivery of the required documents to the Project Site, the Supplier shall notify the Procuring Entity and present the following documents to the Procuring Entity:

	<p>Required Documents for Billing and Commencement of MSA</p> <ul style="list-style-type: none"> <li>• Winning Bidder must submit/deliver the Proof of MSA Enrollment to Principal (if applicable);</li> <li>• Document indicating the MSA period;</li> <li>• Preventive Maintenance and Health Check Schedule; and</li> <li>• Support Procedures and Problem Escalation.</li> </ul> <p><b>For purposes of this Clause the Procuring Entity’s Representatives</b> at the Project Site are <i>Jon Romer G. Gervacio and Ernesto Y. Tinaan, Jr.</i></p>
10.3	No further instructions.
10.4	Not applicable.
10.5	Payment using LC is not allowed.
11.3	No further instructions.
13.4(c)	No further instructions.
16.1	No further instructions.
17.3	<p>The warranty is specified under Section VII - Technical specifications hereof.</p> <p>The retention money/bond to be deducted shall be five percent (5%) of the amount of contract.</p>
17.4	The repair/replacement of defective parts or unit/s are specified under Section VII - Technical Specifications hereof.
17.5	A penalty of PhP100.00 for every unit for every hour of delay in the repair or replacement of the defective unit/s shall be deducted from the 5% retention. In case of full depletion of retention bond, the penalty shall be charged directly to the winning bidder.
21.1	No additional provision.
29	No further instructions.

# Section VI. Schedule of Requirements

- 1) Maintenance Service Agreement (MSA) Period
  - The comprehensive MSA shall cover the software including the labor and on-site visits for one (1) year; and
  - The MSA period shall commence upon the completion of the required documents and/or any deliverables and issuance of the Certificate of Effectivity by the Procuring Entity.
- 2) Required Documents for Billing and Commencement of MSA
  - Winning Bidder must submit/deliver the Proof of MSA Enrollment to Principal (if applicable);
  - Document indicating the MSA period;
  - Preventive Maintenance and Health Check Schedule; and
  - Support Procedures and Problem Escalation.
- 3) Certification (Must be presented during post-qualification)
  - The winning bidder must secure certification from the manufacturer that they are certified reseller or partner.
  - The winning bidder must secure certification from the manufacturer that they are certified to provide technical support.
  - Bidder must have three (3) local certified technical support engineers, who **are regular and locally employed under bidder's** organization.
    - a) Certified Engineer for Virtualization
    - b) Certified Engineer for Server
    - c) Certified Engineer for Network
- 4) Liquidated Damages
  - Liquidated Damages will be imposed if the delivery of the required documents and/or any deliverables will not be accomplished by the winning bidder after fifteen (15) days upon acknowledgement of the Notice to Proceed.
  - The applicable rate for the liquidated damages is one tenth (1/10) of one (1) percent of the total bid price of the winning bidder for every day of delay.
- 5) Payment Terms
  - Payment shall be divided into four (4) disbursements. It shall be made after the conduct of preventive maintenance and providing the preventive maintenance report and service invoice.
- 6) Retention
  - The 5% retention bond shall be deducted for every quarterly payment.
- 7) Penalty
  - A penalty of PhP100.00 for every hour of delay in the repair of the problem or issues reported. See service level agreement in Section VII for the resolution time and replacement of defective parts.
  - Penalty will be deducted from the 5% retention.

8) Delivery Schedule and Address

- Winning Bidder must submit/deliver the Required Documents and other deliverables not more than fifteen (15) days upon receipt of the Notice to Proceed and must be delivered at 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, Quezon City.



## Section VII. Technical Specifications

PSALM TECHNICAL STANDARD SPECIFICATION			
Procurement of Maintenance Support for Virtualization Software			
ITEM	DESCRIPTION	QTY	U/M
I	Maintenance Support for Virtualization Software		
	The following software shall be covered by the Maintenance Service Agreement:		
	A. Production Support Coverage VMWare vCenter Server 6 Foundation Contract Number: 41455725 Order Number: 20614093 Instance Number: 153736302	1	instance
	B. Production Support Coverage VMWare vCenter Server 6 Standard Contract Number: 465519060 Order Number: 24068878 Instance Number: 170646687	1	instance
	C. Production Support Coverage VMware vSphere6 Enterprise for 1 processor (Unlimited Cores per CPU) Contract Number: 41455725 Order Number: 22145353 Instance Number: 154531576	8	CPUs
	D. Production Support Coverage VMware vSphere6 Enterprise for 1 processor (Unlimited Cores per CPU) Contract Number: 41455725 Order Number: 20614093 Instance Number: 154531581	4	CPUs
	E. VMWARE Site Recovery Manager 8 Standard Contract Number: 452421494 Order Number: 23504223 Instance Number: 172028207	25	VM
	Other Requirements:	1	LOT
II	Scope of Work		
	A. The virtualization software licenses support and maintenance service agreement shall cover warranty on labor and on-site visit for one (1) year.		
	B. Perform quarterly preventive maintenance and health check of all items included in item I.		
	C. Provide unlimited technical phone consultation		
	D. Provide a total of 4x on-site visits or local support per year, i.e., reconfiguration of VMWare application, features, existing setup and the like, where needed, other included software and attend to other activities to be non-maintenance.		
	E. Provide RCA (Root Cause Analysis) after solving the problem.		

PSALM TECHNICAL STANDARD SPECIFICATION	
Procurement of Maintenance Support for Virtualization Software	
	F. Include firmware updates, software patches, and driver updates, minor and major release, if available and applicable.
	G. Provide and install all new features and latest VMWare ESXi software updates at no extra cost to PSALM.
Service Level Agreement	
	A. On call support shall be available 24 hours a day, 7 days a week;
	B. One (1) hour response through telephone call or email shall be provided from the time of the first call or email by PSALM Personnel;
	C. Onsite support must have a response time of not more than four (4) hours from the time of the call in cases where in the phone or email support could not solve the problem; and
	D. Resolution time must not be more than six (6) hours from the time of first onsite visit.
Helpdesk Facilities	
	A. Bidder must have a 24 x 7 helpdesk system via phone and email support. Helpdesk system must automatically track, monitor and escalate open case until the issue is declared resolved and closed. Vendor should be ready for a site visit and show how their current helpdesk system works.
	B. Helpdesk service facility shall include: <ul style="list-style-type: none"> <li>i) Technical engineer dispatch facility</li> <li>ii) Case logging and monitoring</li> <li>iii) Support history and reporting</li> </ul>
Support Procedures and Problem Escalation	
	A. Bidder must provide procedures on support and problem escalation and provide the following information: <ul style="list-style-type: none"> <li>i) 24x7 Telephone Number and Cell Phone Number</li> <li>ii) Email Address</li> <li>iii) Procedures</li> </ul>
Preventive Maintenance / Health Check Tasks and Schedule	
	A. Provide quarterly schedule for the preventive maintenance and health check.
	B. Preventive Maintenance shall include the following tasks: <ul style="list-style-type: none"> <li>i) Software checks such as size of files, clean-up of data, and existence of updated back-ups;</li> <li>ii) Risk identification for known software irregularities and provision for software/patches updates;</li> <li>iii) Conduct a complete diagnostic routine within the system; and</li> <li>iv) Provide PM report after each activity.</li> </ul>

## Section VIII. Bidding Forms

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## Checklist/Evaluation Sheet of Requirements for Bidder

The FIRST ENVELOPE shall contain the following eligibility and technical documents:

PSALM REQUIREMENTS Submitted <input checked="" type="checkbox"/> Not-submitted <input checked="" type="checkbox"/>	REMARKS
I. ELIGIBILITY DOCUMENTS	
<b>CLASS "A" Documents</b>	
1. PhilGEPS Certificate of Registration and Platinum <b>Membership together with Annex "A"</b> in accordance with Section 8.5.2 of the IRR.	
<p>a. Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives,</p>	
<p>b. <b>Mayor's/Business Permit for 2019 issued by the City or Municipality</b> where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or Areas.</p> <p><b>In cases of recently expired Mayor's/Business Permits</b>, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal for CY 2019: Provided, that the renewed permit shall be submitted as a post-qualification requirement.</p>	
<p>c. Tax Clearance Certificate per Executive Order No. 398, s. 2005, issued by the Bureau of Internal Revenue (BIR). Only a valid TCC issued by BIR pursuant to the above related BIR issuances is acceptable. Provisional Tax Clearance Certificate or any other form is not accepted. For the avoidance of doubt, a TCC issued by the Revenue Regional Office and submitted by a Bidder should be issued on or before the date of effectivity of BIR Revenue Memorandum Order No. 46-2018.</p> <p>For further clarification on valid TCC, Tax Clearances for Bidding Purposes shall only be valid after the same have been posted in the BIR Website. In case the TCC is not yet posted in the BIR Website, the Bidder must submit a certified true copy of the TCC issued by the BIR, or its original, which will be returned to the Bidder after the bidding process.</p>	

<p>d. <b>The prospective bidder’s Audited Financial Statement, showing, among others, the prospective bidder’s total and current and liabilities, stamped “received” by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission.</b></p> <p>In accordance with Section 2 of the Bureau of Internal Revenue Regulation 07-2007, the Audited Financial Statement shall be composed of the following:</p> <ol style="list-style-type: none"> <li>a. Balance Sheet;</li> <li>b. Income Statement/Profit and Loss Statement;</li> <li>c. Statement of Changes in Equity, showing either: <ol style="list-style-type: none"> <li>1. All changes in equity</li> <li>2. Changes in equity, other than those arising from transactions with equity holders acting in their capacity as equity holders;</li> </ol> </li> <li>d. Statement of Cash Flow;</li> <li>e. Notes, comprising a summary of significant accounting policies and other explanatory notes; and</li> <li>f. Schedules attached to the afore-cited statements.</li> </ol>	
<p>2. Statement of all its ongoing government and private contracts within the period stated in the BDS, including contracts awarded but not yet started, if any (<i>Form No. ELIG-01</i>)</p>	
<p>3. Statement of Single Largest Completed Contract which is Similar in Nature during the Last Three (3) Years (<i>Form No. ELIG-02</i>)</p>	
<p>4. NFCC computation in accordance with ITB Clause 5.5 (<i>Form No. ELIG-03</i>) or a committed Line of Credit from a universal or commercial bank (<i>Form No. PSALM-03</i>)</p>	
<p><b>CLASS “B” Documents</b></p>	
<p>5. If applicable, the Joint Venture Agreement (JVA) in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners in accordance with Section 23.1(b) of the IRR. (<i>Form No. ELIG-04</i>)</p>	
<p>II. TECHNICAL DOCUMENTS</p>	
<p>6. The Bid Security, in accordance with ITB Clause 18, shall be any of the following:</p>	
<p>a. Duly Notarized Bid Securing Declaration (<i>Form No. TEC-01</i>)</p>	

b. <b>Cash or cashier's/manager's check issued by a Universal or Commercial Bank - 2% of ABC</b>	
c. Bank Guarantee - 2% of ABC ( <i>Form No. TEC-02</i> )	
d. Duly Notarized Irrevocable letter of credit - 2% of ABC ( <i>Form No. TEC-03</i> )	
e. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security- 5% of ABC	
7. Conformity with technical specifications, as enumerated and specified in Sections VI and VII of the Bidding Documents, using the form prescribed in Section VIII. Bidding Forms ( <i>Form No. TEC-04</i> ).  <u>Form No. TEC-04 must be accomplished and duly notarized.</u>	
8. Sworn statement in accordance with Section 25.3 of the IRR of RA 9184 using the form prescribed in Section VIII. Bidding Forms ( <i>Form No. TEC-05</i> ).  The Omnibus Sworn Statement (Form No. TEC-05) must be accompanied by a duly <b>notarized Secretary's Certificate</b> , Board/Partnership Resolution, or Special Power of Attorney, whichever is applicable, stating that the signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract.	

The SECOND ENVELOPE shall contain the following:

III. FINANCIAL COMPONENT	
1. Duly Signed and completed Bid Form ( <i>Form No. FIN-01</i> )	
2. Duly Signed and completed Detailed Bid Price Schedule ( <i>Form No. FIN-01A</i> )	

Form No. ELIG-01

List of all Ongoing Government and Private Contracts including Contracts Awarded but not yet Started

Business Name : \_\_\_\_\_

Business Address : \_\_\_\_\_

Name of Contract/ Project Cost	a. <b>Owner's Name</b> b. Address c. Telephone Nos.	Nature of Work	Bidder's Role		a. Date Awarded b. Date Started c. Date of Completion	% of Accomplishment		Value of Outstanding Works / Undelivered Portion
			Description	%		Planned	Actual	

Note: The following documents shall be submitted upon post-qualification:

1. Notice of Award and/or Contract
2. Notice to Proceed issued by the owner

Submitted by : \_\_\_\_\_

(Printed Name & Signature)

Designation : \_\_\_\_\_

Date : \_\_\_\_\_

Form No. ELIG-02

Statement of Single Largest Completed Contract which is Similar in Nature During the last three (3) years

---

Business Name : \_\_\_\_\_

Business Address : \_\_\_\_\_

Name of Contract	a. <b>Owner's Name</b> b. Address c. Telephone Nos.	Nature of Work	Bidder's Role		a. Amount at Award b. Amount at Completion c. Duration	a. Date Awarded b. Contract Effectivity c. Date Completed
			Description	%		

Note: The following documents shall be submitted upon post-qualification:

1. Contract
2. Certificate of Completion/Acceptance

Submitted by : \_\_\_\_\_

(Printed Name & Signature)

Designation : \_\_\_\_\_

Date : \_\_\_\_\_



Financial Documents for Eligibility Check

- A. **Summary of the Applicant Supplier’s/Distributor’s/Manufacturer’s assets and liabilities on the basis of the income tax return and audited financial statement, stamped “RECEIVED” by the Bureau of Internal Revenue (BIR) or BIR authorized collecting agent, for the immediately preceding year and a certified copy of Schedule of Fixed Assets particularly the list of construction equipment.**

		Year 20__
1.	Total Assets	
2.	Current Assets	
3.	Total Liabilities	
4.	Current Liabilities	
5.	Net Worth (1-3)	
6.	Net Working Capital (2-4)	

- B. The Net Financial Contracting Capacity (NFCC) based on the above data is computed as follows:

NFCC = [(Current asset - current liabilities) (15)] minus value of all outstanding or uncompleted portions of the project under ongoing contracts yet to be started coinciding with the contract to be bid.

or

Commitment from a licensed bank to extend to it a credit line if awarded the contract.

Name of Bank: \_\_\_\_\_ Amount: \_\_\_\_\_

Submitted by:

\_\_\_\_\_  
Name of Supplier / Distributor / Manufacturer

\_\_\_\_\_  
Signature of Authorized Representative

Date: \_\_\_\_\_

*NOTE:*

*If Partnership or Joint Venture, each Partner or Member Firm of Joint Venture shall submit Form No. ELIG-03.*

Joint Venture Agreement

KNOW ALL MEN BY THESE PRESENTS:

That this JOINT VENTURE AGREEMENT is entered into By and Between \_\_\_\_\_, of legal age,  (civil status) , owner/proprietor of \_\_\_\_\_ and a resident of \_\_\_\_\_.

and -

\_\_\_\_\_, of legal age,  (civil status) , owner/proprietor of \_\_\_\_\_ a resident of \_\_\_\_\_.

That both parties agree to join together their manpower, equipment, and what is needed to facilitate the Joint Venture to participate in the Eligibility, Bidding and Undertaking of the here-under stated project to be conducted by the PSALM Corporation.

NAME OF PROJECT

CONTRACT AMOUNT

That both parties agree to be jointly and severally liable for the entire assignment.

That both parties agree that \_\_\_\_\_ and/or \_\_\_\_\_ shall be the Official Representative of the Joint Venture, and is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Joint Venture in the bidding as fully and effectively and the Joint Venture may do and if personally present with full power of substitution and revocation.

That this Joint Venture Agreement shall remain in effect only for the above stated Project until terminated by both parties.

\_\_\_\_\_  
Name and Signature of Authorized Representative

\_\_\_\_\_  
Name and Signature of Authorized Representative

\_\_\_\_\_  
Official Designation

\_\_\_\_\_  
Official Designation

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Name of Firm

Witnesses

1. \_\_\_\_\_

2. \_\_\_\_\_

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES )  
\_\_\_\_\_ )S.S.

BEFORE ME, a Notary Public for and in \_\_\_\_\_, Philippines, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared:

Name	Identification Document	Issued on	Issued at

known to me and known to be the same persons who executed the foregoing instrument consisting of \_\_\_\_\_ ( ) pages, including the page whereon the acknowledgment is written and acknowledged before me that the same is his free and voluntary act and deed and/or that of the Corporation he represents.

WITNESS MY HAND AND NOTARIAL SEAL, at the place and on the date first above written.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2019.

Bid Securing Declaration Form

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REPUBLIC OF THE PHILIPPINES)  
CITY OF \_\_\_\_\_) S.S.

X-----X

BID SECURING DECLARATION  
Invitation to Bid: *[Insert Reference number]*

---

To: IRENE JOY BESIDO-GARCIA  
President and CEO  
Power Sector Assets and Liabilities  
Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Bid Security, which may be in the form of a Bid-Securing Declaration.
2. I/We accept that: (a) I/we will be automatically disqualified from bidding for any contract with any procuring entity for a period of two (2) years upon receipt of your Blacklisting Order; and, (b) I/we will pay the applicable fine provided under Section 6 of the Guidelines on the Use of Bid Securing Declaration<sup>1</sup>, within fifteen (15) days from receipt of the written demand by the procuring entity for the commission of acts resulting to the enforcement of the bid securing declaration under Sections 23.1(b), 34.2, 40.1 and 69.1, except 69.1(f), of the IRR of RA 9184; without prejudice to other legal action the government may undertake.
3. I/We understand that this Bid-Securing Declaration shall cease to be valid on the following circumstances:
  - (a) Upon expiration of the bid validity period, or any extension thereof pursuant to your request;
  - (b) I am/we are declared ineligible or post-disqualified upon receipt of your notice to such effect, and (i) I/we failed to timely file a request for reconsideration or (ii) I/we filed a waiver to avail of said right;

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<sup>1</sup> Issued by the GPPB through GPPB Resolution 03-2012 on 27 January 2012, as amended by GPPB Resolution 15-2014 dated 20 June 2014.

(c) I am/we are declared as the Bidder with the Lowest Calculated and Responsive Bid, and I/we have furnished the performance security and signed the Contract.

IN WITNESS WHEREOF, I/we have hereunto set my/our hands this \_\_\_ day of \_\_\_\_\_ 2019 at \_\_\_\_\_.

**[Insert NAME OF BIDDER'S AUTHORIZED REPRESENTATIVE]**  
**[Insert signatory's Title/Designation]**  
Affiant

SUBSCRIBED AND SWORN to before me this \_\_\_ day of [month] [year] at [place of execution], Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her [insert type of government identification card used], with his/her photograph and signature appearing thereon, with no. \_\_\_\_\_ and his/her Community Tax Certificate No. \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_.

Witness my hand and seal this \_\_\_ day of [month] [year].

NAME OF NOTARY PUBLIC  
Serial No. of Commission \_\_\_\_\_  
Notary Public for \_\_\_\_\_ until \_\_\_\_\_  
Roll of Attorneys No. \_\_\_\_\_  
PTR No. \_\_, [date issued], [place issued]  
IBP No. \_\_, [date issued], [place issued]

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2019.

Form of Bid Security (Bank Guarantee)

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WHEREAS, *[insert name of Bidder]* (hereinafter called the “Bidder”) has submitted his bid dated *[insert date]* for the *[insert name of contract]* (hereinafter called the “Bid”).

KNOW ALL MEN by these presents that We *[insert name of Bank]* of *[insert name of Country]* having our registered office at *[insert address]* (hereinafter called the “Bank” are bound unto PSALM Corporation (hereinafter called the “Entity”) in the sum of *[insert amount]*<sup>2</sup> for which payment well and truly to be made to the said Entity the Bank binds himself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

THE CONDITIONS of this obligation are:

1. If the Bidder:
  - (a) withdraws his Bid during the period of bid validity specified in the Form of Bid; or
  - (b) does not accept the correction of arithmetical errors of his bid price in accordance with the Instructions to Bidder; or
2. If the Bidder having been notified of the acceptance of his bid by the Employer during the period of bid validity:
  - (a) fails or refuses to execute the Contract Form in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders.

We undertake to pay to the Entity up to the above amount upon receipt of his first written demand, without the Entity having to substantiate his demand, provided that in his demand the Entity will note that the amount claimed by him is due to him owing to the occurrence of one or both of the two (2) conditions, specifying the occurred condition or conditions.

The Guarantee will remain in force up to and including the date *[insert days]*<sup>3</sup> days after the deadline for submission of Bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Entity, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE \_\_\_\_\_ SIGNATURE OF THE BANK \_\_\_\_\_

WITNESS \_\_\_\_\_ SEAL \_\_\_\_\_

\_\_\_\_\_  
(Signature, Name and Address)

<sup>3</sup> Usually 28 days after the end of the validity period of the Bid. Date should be inserted by the Entity before the Bidding Documents are issued.

Form of Bid Security (Irrevocable Letter of Credit)

---

Date: \_\_\_\_\_

OFFICE OF THE PRESIDENT AND CEO  
Power Sector Assets and Liabilities  
Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105

Irrevocable Letter of Credit No. \_\_\_\_\_  
For Contract No. \_\_\_\_\_

**WHEREAS, \_\_\_\_\_, hereinafter called “Supplier” has undertaken in pursuance to (name of Project and contract number), and whereas it has been stipulated by you in the said Contract that the Supplier shall furnish an irrevocable standby Letter of Credit for a sum specified therein as security for the faithful compliance of Supplier’s obligations in accordance with the Contract.**

WHEREAS, we have agreed to guarantee this obligation by Supplier.

THEREFORE, we hereby affirm that we are guarantors and responsible to you, on behalf of Supplier, up to the total amount of \_\_\_\_\_ and we undertake to pay you, upon first written demand declaring the Supplier to be in default under the Contract and without cavil, or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without you needing to prove or to show grounds or reasons for your demand for the sum specified therein.

This irrevocable guarantee is valid until the issuance by you of Notice of Final Acceptance.

This certification is being issued in favor of the said Supplier in connection with the requirements of bidding of (name of the procuring entity) for the above-mentioned contract. We are aware that any false statements issued by us makes us liable for perjury.



Name and Signature of Authorized

Financing Institution Officer : \_\_\_\_\_

Official Designation : \_\_\_\_\_

Concurred By:

**Name & Signature of Supplier's**

Authorized Representative : \_\_\_\_\_

Official Designation : \_\_\_\_\_

*Note:*

*The amount committed should be machine validated.*

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
\_\_\_\_\_ ) S.S.

BEFORE ME, a Notary Public for and in \_\_\_\_\_, Philippines, this \_\_\_\_\_  
day of \_\_\_\_\_, 2019, personally appeared:

NAME

GOV'T ISSUED ID & NO. ISSUED AT/ON

\_\_\_\_\_  
\_\_\_\_\_

known to me and known to be the same person who executed the foregoing  
instrument consisting of \_\_\_\_\_ ( ) pages, including the page whereon the  
acknowledgment is written and acknowledged before me that the same is his free  
and voluntary act and deed and that of the Corporation he represents.

WITNESS MY HAND AND NOTARIAL SEAL, at the place and on the date first above  
written.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2019.

Form No. TEC-04

Conformity with Section VI (Schedule of Requirements) and  
Section VII (Technical Specifications)

---

(Name of Bidder) hereby undertakes that it shall COMPLY with the general requirements stated in Sections VI (Schedule of Requirements) and Section VII (Technical Specifications).

\_\_\_\_\_  
Name and Signature of Authorized Official

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

REPUBLIC OF THE PHILIPPINES)  
\_\_\_\_\_ ) S.S.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in \_\_\_\_\_, Philippines, this \_\_\_ day of \_\_\_\_\_, 2019, personally appeared:

Name	Government-Issued ID & No.	Issued on	Issued at
(SUPPLIER)			

known to me and to me known to be the same person who executed the foregoing instrument consisting of \_\_\_\_\_ (\_\_\_) pages, including the page whereon this Acknowledgment is written, all pages signed by both parties and their instrumental witnesses, and they acknowledged before me that the same is their free and voluntary act and deed and that of the Corporation they represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2019.

Omnibus Sworn Statement

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REPUBLIC OF THE PHILIPPINES )  
CITY/MUNICIPALITY OF \_\_\_\_\_ ) S.S.

AFFIDAVIT

I, \_\_\_\_\_ of legal age, *[Civil Status]*, *[Nationality]*, and residing at *[Address of Affiant]*, after having been duly sworn in accordance with law, do hereby depose and state that:

1. I am the duly authorized and designated representative of *(Name of Bidder)* with office address at *(address of Bidder)*;
2. I am granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract for *[Name of the Project]* of the *[Name of the Procuring Entity]*, as shown in the attached *[state title of attached document showing proof of authorization (e.g., duly notarized Secretary's Certificate, Board/Partnership Resolution, or Special Power of Attorney, whichever is applicable;)]*;
3. *(Name of Bidder)* is not **“blacklisted” or barred from bidding by the Government** of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board;
4. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
5. *(Name of Bidder)* is authorizing the Head of the Procuring Entity or its duly authorized representative(s) to verify all the documents submitted;
6. None of the officers, directors, and controlling stockholders of *(Name of Bidder)* is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;
7. *(Name of Bidder)* complies with existing labor laws and standards;
8. *(Name of Bidder)* is aware of and has undertaken the following responsibilities as a Bidder:
  - a) Carefully examine all of the Bidding Documents;

- b) Acknowledge all conditions, local or otherwise, affecting the implementation of the Contract;
  - c) Made an estimate of the facilities available and needed for the contract to be bid, if any; and
  - d) Inquire or secure Supplemental/Bid Bulletin(s) issued for the *[Name of the Project]*; and
9. *(Name of Bidder)* did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_ day of \_\_\_\_\_, 2019 at \_\_\_\_\_, Philippines.

---

***Bidder's Representative / Authorized Signatory***

SUBSCRIBED AND SWORN to before me this \_\_\_ day of *[month]* *[year]* at *[place of execution]*, Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her *[insert type of government identification card used]*, with his/her photograph and signature appearing thereon, with no. \_\_\_\_\_ and his/her Community Tax Certificate No. \_\_\_\_\_ issued on \_\_\_ at \_\_\_\_\_.

Witness my hand and seal this \_\_\_ day of *[month]* *[year]*.

NAME OF NOTARY PUBLIC  
 Serial No. of Commission \_\_\_\_\_  
 Notary Public for \_\_\_\_\_ until \_\_\_\_\_  
 Roll of Attorneys No. \_\_\_\_\_  
 PTR No. \_\_\_\_\_ *[date issued]*, *[place issued]*  
 IBP No. \_\_\_\_\_ *[date issued]*, *[place issued]*

Doc. No. \_\_\_\_\_;  
 Page No. \_\_\_\_\_;  
 Book No. \_\_\_\_\_;  
 Series of 2019.

Date: \_\_\_\_\_  
Invitation to Bid No: \_\_\_\_\_

To: The BAC Chairperson  
Power Sector Assets and Liabilities  
Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105

Gentlemen and/or Ladies:

Having examined the Bidding Documents including Bid Bulletin Numbers *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to *[supply/deliver/perform]* *[description of Goods]* in conformity with the said Bidding Documents for the sum of \_\_\_\_\_ *[total Bid amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Bid.

We undertake, if our Bid is accepted, to deliver the Goods in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Bid is accepted, we undertake to provide a performance security in the form, amounts, and within the times specified in the Bidding Documents.

We agree to abide by this Bid for the Bid Validity Period specified in the BDS provision for ITB Clause 17.1 and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below: 4

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "None")

Until a formal Contract is prepared and executed, this Bid, together with your written acceptance thereof and your Notice of Award, shall be binding upon us.

We understand that you are not bound to accept the lowest or any Bid you may receive.

We certify/confirm that we comply with the eligibility requirements as per ITB Clause 5 of the Bidding Documents.

We likewise certify/confirm that the undersigned, *[for sole proprietorships, insert: as the owner and sole proprietor or authorized representative of Name of Bidder, has the full power and authority to participate, submit the bid, and to sign and **execute the ensuing contract, on the latter's behalf for the Name of Project of the Name of the Procuring Entity**]* *[for partnerships, corporations, cooperatives, or joint ventures, insert: is granted full power and authority by the Name of Bidder, to participate, submit the bid, and to sign and execute the ensuing contract on the **latter's behalf for Name of Project of the Name of the Procuring Entity**].*

We acknowledge that failure to sign each and every page of this Bid Form, including the attached Schedule of Prices, shall be a ground for the rejection of our bid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
*[signature]*

\_\_\_\_\_  
*[in the capacity of]*

Duly authorized to sign Bid for and on behalf of \_\_\_\_\_

### Detailed Bid Price Schedule

Date: \_\_\_\_\_

Project: Maintenance Service Agreement for VMWare System  
Code: Project Reference No. 2019-PB-VMS-021-01

Date of Bidding: \_\_\_\_\_  
 Time of Bidding: \_\_\_\_\_

(Bidder Name/Address/Tel. No.)

ITEM	Description	Unit Price (without RVAT)	QTY	U/M	Total Price (without RVAT)
I	Maintenance Support for Virtualization Software A. Production Support Coverage VMWare vCenter Server 6 Foundation		1	INSTANCE	
	B. Production Support Coverage VMWare vCenter Server 6 Standard		1	INSTANCE	
	C. Production Support Coverage VMware vSphere6 Enterprise for 1 processor (Unlimited Cores per CPU)		8	CPUs	
	D. Production Support Coverage VMware vSphere6 Enterprise for 1 processor (Unlimited Cores per CPU)		4	CPUs	
	E. VMWARE Site Recovery Manager 8 Standard		25	VM	
II	Other Requirements		1	LOT	

TOTAL PRICE = \_\_\_\_\_

PLUS: 12% VAT = \_\_\_\_\_

TOTAL BID PRICE = \_\_\_\_\_

PhP

TOTAL AMOUNT OF BID PRICE IN WORDS = \_\_\_\_\_

Note:  
 Total Bid Price shall not exceed the Approved Budget for the Contract

\_\_\_\_\_  
 Authorized Official/Position

\_\_\_\_\_  
 Signature/Date



Form No. PSALM-01

CONTRACT

*Maintenance Service Agreement for VMWare System  
(Project Reference No. 2019-PB-VMS-021-01)*



THIS CONTRACT made this \_\_\_\_ day of \_\_\_\_\_ between POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION with principal office address at the 24th Floor, Vertis North Corporate Center 1, Astra cor. Lux Drives, North Avenue, Diliman, 1101 Quezon City, Philippines, represented by its President and CEO, IRENE JOY BESIDO-GARCIA hereinafter **called “PSALM”**;

-and-

\_\_\_\_\_ with principal address at \_\_\_\_\_, Philippines, represented by its \_\_\_\_\_, \_\_\_\_\_, hereinafter **called “the Supplier”**;

WITNESSETH THAT:

WHEREAS, the PSALM invited Bids for certain MAINTENANCE SERVICE AGREEMENT FOR VMWARE SYSTEM (Project Reference No. 2019-PB-VMS-021-01) and has accepted a Bid by the Supplier for the supply of those Goods and services in the sum of *[contract price in words and figures]* (hereinafter **called “the Contract Price”**).

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto agreed and do hereby mutually agree to be bound by the covenants and stipulations herein set forth as follows:

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract herein referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Contract, viz:
  - (a) **the Supplier’s Bid, including the Technical and Financial Proposals, and all other documents/statements submitted, including corrections to the bid resulting from PSALM’s bid evaluation;**
  - (b) the Schedule of Requirements;
  - (c) the Technical Specifications;
  - (d) the General Conditions of Contract (GCC);
  - (e) the Special Conditions of Contract (SCC);
  - (f) the Performance Security;

ERNESTO Y. TINAAAN, JR.  
TWG-Head  
PSALM Corporation

IRENE JOY BESIDO-GARCIA  
President and CEO

- (g) The Notice of Award; and
- (h) the Notice to Proceed;

The documents mentioned above shall be collectively referred to as **“Contract Documents”**.

- 3. In consideration of the payments to be made by PSALM to the Supplier as hereinafter mentioned, the Supplier hereby covenants with PSALM to provide the Goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
- 4. PSALM hereby covenants to pay the Supplier in consideration of the provision of the goods and services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the time and in the manner prescribed by the contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in accordance with the laws of the Republic of the Philippines on the day and year first above written.

Signed, sealed, and delivered by IRENE JOY BESIDO-GARCIA, President and CEO of PSALM Corporation.

\_\_\_\_\_  
IRENE JOY BESIDO-GARCIA

Signed, sealed, and delivered by \_\_\_\_\_, the  
\_\_\_\_\_ (for the Supplier).

\_\_\_\_\_  
(SUPPLIER)

Witnessed by:

\_\_\_\_\_

Certification of funds availability:

\_\_\_\_\_  
YOLANDA D. ALFAFARA  
Manager  
Controllership Department

Signed in the Presence of:

Republic of the Philippines)  
\_\_\_\_\_ ) s.s.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in \_\_\_\_\_, Philippines, this \_\_\_ day  
of \_\_\_\_\_, personally appeared:

ERNESTO Y. TINAAN, JR.  
TWG-Head  
PSALM Corporation

Name	Identification Document	Issued on	Issued at
IRENE JOY BESIDO-GARCIA	PASSPORT No. EC2031322	03 September 2014	DFA Manila

known to me and to me known to be the same person who executed the  
foregoing instrument consisting of three (3) pages, including the page  
whereon this Acknowledgment is written, all pages signed by both parties and  
their instrumental witnesses, and they acknowledged before me that the  
same is their free and voluntary act and deed and that of the Corporations  
they represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above  
written.

Notary Public

Doc. No. \_\_\_\_;  
Page No. \_\_\_\_;  
Book No. \_\_\_\_;  
Series of 2019.

PSALM Corporation

IRENE JOY BESIDO-GARCIA  
President and CEO

Performance Security  
(To be submitted in the stationery of the Issuing Bank)

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*IRREVOCABLE STANDBY LETTER OF CREDIT*

Number: \_\_\_\_\_  
Amount: \_\_\_\_\_  
Stated Expiration Date \_\_\_\_\_  
Account Party: \_\_\_\_\_

Power Sector Assets and Liabilities Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105

Subject: Letter of Credit No. \_\_\_\_\_

We refer to the Philippine Bidding Documents for the Maintenance Service Agreement for VMWare System (Project Reference No. 2019-PB-VMS-021-01) as amended or otherwise **supplemented, (the “Bidding Documents”)**.

We hereby establish this Irrevocable Standby Letter of Credit No. [●] (this **“SBLC”**) for the benefit of Power Sector Assets and Liabilities Management Corporation (the **“Beneficiary”**) **in an amount not exceeding a total of** \_\_\_\_\_ (PHP \_\_\_\_\_) **(the “Drawing Amount”)**. Funds under this SBLC are available to you at sight upon our receipt of a certificate in the form of Annex A **attached hereto (a “Demand Certificate”), notifying us of the occurrence** of a Bid Security Drawing Event as defined in the Instruction to Bidders, *viz*:

1. if the Bidder/Account Party:
  - (a) withdraws his bid during the period of bid validity specified in the Form of Bid;
  - (b) does not accept the correction of arithmetical errors of his bid price in accordance with Instructions to Bidders; or
2. if the Bidder/Account Party having been notified of the acceptance of his bid during the period of bid validity:
  - (a) fails or refuses to execute the Contract Form in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security in accordance with the Instruction to Bidders.
3. If the Bidder/Account Party does not comply with any of the other conditions set forth in Instruction to Bidders Clause 18.5.

The Demand Certificate shall upon presentment be appropriately completed and purportedly signed by your duly authorized officer, employee or signatory on or before the Expiration Date (as hereinafter defined). This SBLC does not contain any condition to drawing other than the confirmation by us that the Demand Certificate appears to comply on its face with the requirements of the immediately preceding sentence.

The SBLC shall be drawable at our office in Metro Manila, Philippines. We will pay amounts drawn hereunder from our general funds.

You shall present one Demand Certificate dated the date of presentation for each drawing hereunder to [name and address of issuing bank]. If you present the Demand Certificate by 10:00 a.m. local time on any day on which we are open for business **(each such day, a “Business Day”)**, in strict conformance with the terms and conditions of this SBLC, we will honor the same by making payment in immediately available funds, in accordance with your payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on our part, without notice to the Account Party prior to such payment and notwithstanding any conditions, demands, or objections by the Account Party or any other party, without you having to further substantiate such demand, by 4:00 p.m. local time on such Business Day, otherwise we will honor your Demand Certificate by 10:00 a.m. local time the following Business Day.

If any demand for payment does not conform to the terms and conditions of this SBLC, we shall give you prompt notice of the same stating the reasons therefor and that we will, upon your request, hold any documents presented to us for five (5) Business Days or return the same to you. Upon being notified that any demand for payment did not conform to this SBLC, you may correct any such non-conforming demand; provided that such corrected demand shall be made and presented to us on or before the Expiration Date (as defined below).

This SBLC shall expire at 5:00 p.m. at our office on the earliest of the following: (i) the Stated Expiration Date; (ii) our honoring of the Demand Certificate/s presented hereunder that, in the aggregate, equal the Drawing Amount, and (iii) the surrender by you of the original SBLC for cancellation. The earliest of the foregoing dates is **referred to herein as the “Expiration Date.”** Except as otherwise expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date for any reason whatsoever. Notwithstanding the occurrence of the Stated Expiration Date, We will honor and pay for the amount drawn by You as stated in the Demand Certificate; *provided*, that the Demand Certificate was presented to Us before the Expiration Date.

This SBLC sets forth in full our undertaking and references herein to any document, instrument or agreement, except the Demand Certificate/s referred to herein, shall not in any way amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of this SBLC shall be in writing and addressed and presented to us at our office at [address

of issuing bank] Attention: [●], and shall make reference to this SBLC by number. You shall personally deliver such documents, notices and other communications to us or send them to us by facsimile to [●], or such other number as we may specify from time to time in writing to you.

This SBLC shall be subject to **International Standby Practices 1998 (“ISP98”)** and in case of dispute arising from, or in connection with, the interpretation or implementation thereof, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

Very truly yours,  
[Issuing Bank]

THIS ANNEX A IS AN INTEGRAL PART OF  
LETTER OF CREDIT NO. [●]  
DATED [●]

ANNEX A  
DEMAND CERTIFICATE  
[Date]

[Address of issuing bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit

Ladies and Gentlemen:

We refer to your Letter of Credit No. [●] (the **“SBLC”**). Any term defined in the SBLC shall have the same meaning when used herein. A Bid Security Drawing Event has occurred and the Beneficiary hereby demands payment of [amount] under the SBLC, such payment to be made to [insert account instructions].

IN WITNESS WHEREOF, this Certificate has been executed and delivered by the Beneficiary on the [●] day of [●].

POWER SECTOR ASSETS AND LIABILITIES  
MANAGEMENT CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

Credit Line Certificate

Date: \_\_\_\_\_

OFFICE OF THE PRESIDENT AND CEO  
Power Sector Assets and Liabilities  
Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105

CONTRACT/PROJECT : \_\_\_\_\_  
  
COMPANY/FIRM : \_\_\_\_\_  
ADDRESS : \_\_\_\_\_  
\_\_\_\_\_  
  
BANK/FINANCING INSTITUTION : \_\_\_\_\_  
ADDRESS : \_\_\_\_\_  
\_\_\_\_\_  
  
AMOUNT : \_\_\_\_\_

This is to certify that the above Bank/Financing Institution with business address indicated above, commits to provide the <Contractor / Distributor / Manufacturer / Supplier>, if awarded the above-mentioned Contract, a credit line in the amount specified above which shall be exclusively used to finance the performance of the above-mentioned contract subject to our terms, conditions and requirements.

The credit line shall be available within fifteen (15) calendar days after receipt by the <Contractor / Distributor / Manufacturer / Supplier> of the Notice of Award and such line of credit shall be maintained until the project is completed by the Supplier.

This Certification is being issued in favor of said <Contractor / Distributor / Manufacturer / Supplier> in connection with the bidding requirement of \_\_\_\_(Name of the Procuring Entity)\_\_\_\_ for the above-mentioned Contract. We are aware that any false statements issued by us make us liable for perjury.

Name and Signature of Authorized Financing Institution Officer:  
\_\_\_\_\_  
Official Designation: \_\_\_\_\_

Concurred By:

Name & Signature of <Contractor/Distributor/Manufacturer>  
Authorized Representative : \_\_\_\_\_  
Official Designation : \_\_\_\_\_

Note:  
*The amount committed should be machine validated.*



Republic of the Philippines)  
\_\_\_\_\_ ) S.S.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in \_\_\_\_\_, Philippines, this \_\_\_ day of \_\_\_\_\_, 2019, personally appeared:

Name	Government—issued ID & No.	Issued on	Issued at
(SUPPLIER)			

known to me and to me known to be the same person who executed the foregoing instrument consisting of three (3) pages, including the page whereon this Acknowledgment is written, all pages signed by both parties and their instrumental witnesses, and they acknowledged before me that the same is their free and voluntary act and deed and that of the Corporation they represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Notary Public

Doc. No. \_\_\_\_;  
Page No. \_\_\_\_;  
Book No. \_\_\_\_;  
Series of 2019.

Bank Guarantee Form for Warranty Coverage

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IRENE JOY BESIDO-GARCIA  
President and CEO  
Power Sector Assets and Liabilities  
Management Corporation  
24th Floor Vertis North Corporate Center I, Astra cor.  
Lux Drives, North Ave., Quezon City 1105

**WHEREAS, [insert name and address of Supplier] (hereinafter called the “Supplier”)** has undertaken, in pursuance of Contract No. [insert number] dated [insert date] to execute the contract for MAINTENANCE SERVICE AGREEMENT FOR VMWARE SYSTEM (Project Reference No. 2019-PB-VMS-021-01) **(herein called the “Contract”);**

WHEREAS, it has been stipulated by you in the said Contract that the Supplier shall furnish you with a Bank Guarantee by a recognized bank for the sum equivalent to (10% of the Contract price) as security for compliance with the Contract;

WHEREAS, we have agreed to give the Supplier such a Bank Guarantee;

NOW THEREFORE, we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Supplier, in an amount equivalent to (10% of the contract price), and we undertake to pay you, upon your first written demand and without cavil or argument, the aforesaid amount without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Supplier before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there under or of any of the Contract documents which may be made between you and the Supplier shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until the expiration of the warranty period(s) for the GOODS provided for under the said Contract.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_  
NAME OF BANK \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
DATE \_\_\_\_\_