

**JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)**

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
REPUBLIC OF THE PHILIPPINES**

**THE DETAILED DESIGN STUDY  
ON  
UPGRADING INTER-URBAN HIGHWAY SYSTEM  
ALONG THE PAN-PHILIPPINE HIGHWAY  
(PLARIDEL, CABANATUAN AND SAN JOSE BYPASSES)**

**VOLUME II  
GENERAL CONDITIONS**

**CABANATUAN BYPASS**

**CONTRACT PACKAGE I**

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**December 2002**

**KATAHIRA & ENGINEERS INTERNATIONAL  
YACHIYO ENGINEERING CO., LTD**

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## CONDITIONS OF CONTRACT

### PART II – CONDITIONS OF PARTICULAR APPLICATION

Some Articles/Clauses of the General Conditions, Part I of FIDIC's Conditions of Contract for Works of Civil Engineering Constructions, 1st Edition, 1999, are revised to incorporate pertinent provisions of the Implementing Rules and Regulations of P.D. 1594, as amended, 24 May and 05 July 2000, Requirements and Conditions of Contract (Volume I) of the 1995 DPWH Standard Specifications and relevant Department Orders and Memoranda issued by DPWH.

#### Clause 1.0 General Provisions

##### Definitions 1.1.1 The Contract

Delete sub-clause 1.1.1.1 entirely and substitute:

“Contract” or “Contract Documents” means the following:

- 1) Contract Agreement
- 2) Proposal Book (Volume I of the Bid Documents)  
Containing the following:
  - a) Invitation for Bids (IFB)
  - b) Project Description
  - c) Instruction to Bidders
  - d) Bill of Quantities containing the following:
    - i) Preamble
    - ii) Work Items containing the Bid Prices
    - iii) Annexes to the Bill of Quantities
    - iv) Daywork Schedule
  - e) Detailed Unit Price Estimates (Sample Form)
- 3) Conditions of Contract (Volume II of the Bid Documents)
  - a) Part I – General Conditions – Conditions of Contract for Construction, FIDIC publication 1<sup>st</sup> Edition 1999 for Building and Engineering Works designed by the Employer.
  - b) Part II – Conditions of Particular Applications
- 4) Technical Specifications (Volume III of the Bid Documents)
  - a) Part I – Standard Specifications – DPWH Standard Specifications for Public Works and Highways, 1995 Edition Volume II – Highways, Bridges and Airports
  - b) Part II - Supplemental Specifications and Special Provisions

- 5) Contract Plans/Drawing (Volume IV of the Bid Documents)
- 6) Addenda (Volume V of the Bid Documents)
- 7) Annexes to Bid:
  - a) Authority of the Signing Official
  - b) Construction Schedule and S- Curve
  - c) Detailed Estimates
  - d) Contractor's Organizational Chart
  - e) Construction Methods
  - f) Personpower/Manpower Schedule
  - g) List of Contractor's Equipment
  - h) Units and/or Under lease and /or under purchase agreements supported by duly executed contract intended for use exclusively for the project.
  - i) Equipment Utilization Schedule and duly executed Contract of Lease of all the equipments and machineries which shall be intended for use exclusively for the project, if any
  - j) Cash Flow by Quarter and Payment Schedule
  - k) Certificate of Site Inspection
  - l) Certificate of Attendance to the Pre-Bid Conference
  - m) Construction Safety and Health Program
- 8) Performance Security
- 9) Prequalification Statements
- 10) Updated Credit Line issued by an authorized accredited bank of the Bangko Sentral ng Pilipinas (BSP) in the amount equal to the average operating expenses of the project for four (4) months
- 11) Notice of Award of Contract with the Contractor's "Conforme" thereto.
- 12) Supplemental Notices/Addenda to the Bidding Documents during the Tender period (Volume V of the Bid Documents)
- 13) Other Contract Documents that may be required by the Employer
- 14) Supporting Documents to the Contract are:
  - a) Duly approved program of work and cost estimates
  - b) Certificate of availability of funds
  - c) Approved Budget for the Contract (ABC)/Abstract of Bids

- d) Resolution of Award by BAC-DPWH
- e) Approval of Award by the Approving Authority
- f) Concurrence of JBIC regarding Contract
- g) Other pertinent documents as may be reasonably required by the existing laws

15) P.D. 1594 and its Implementing Rules and Regulations as amended 24 May and 05 July 2000

16) Applicable DPWH Department Orders

17) Variations Orders and/or Supplemental Agreements that may be issued during or subsequent to the execution of the work

1.1.1.2 “Contract Agreement” means the written agreement entered into by and between the Employer and the Contractor for the execution and completion of the Works.

1.1.1.5 “Specification” means the description in detail of the work to be executed, the character and quality of materials and workmanship and the special responsibilities of the Contractor that are not covered by the Conditions of Contract. It includes the General Specifications, Special Provisions and Supplemental Specification, Special Provisions if any and bulletins referred to in the Contract Documents together with all the outline agreements made.

1.1.1.6 “Drawings” or “Plans” means the approved plans, profiles, typical cross-sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the prescribed Works.

1.1.1.8 “Tender” or “Bid” means the written and priced offer of a Bidder submitted in the prescribed form in response to an Invitation To Bid for the execution and completion of the specified Works in accordance with the Contract.

1.1.1.9 “Appendix to Tender” or “Appendix to Bid” means any of the three appendices to the Tender or Bid, consisting of: Appendix 1 General Requirement, which specified the requirements on bonds, insurance, liquidated damages, bonus, retention, minimum amount of interim certificates, etc; Appendix 2 – Foreign Currency Requirements, wherein the Bidder shall quote his foreign currency requirements; and Appendix 3 – Minimum Essential Construction Plant / Equipment Requirements, which specifies the equipment the Bidder shall commit to complete the execution and completion of the Works; and Appendix 4 – PAGASA Rainfall Observations which are made the basis of computing the estimated number of rainy/unworkable days included in the specified time for completion of the contract (per P.D. 1594, IRR as amended 24 May and 05 July, 2000).

1.1.1.10 “Bill of Quantities” means the form on which the pay item number, the item description, unit of measurement and approximate quantities of the Works are included and on which the Bidder enters both his unit and total prices for each of and every pay item of work. It also means the priced and computed

Bill of Quantities forming part of the Bid or Tender.

1.1.1 **The Contract**

Add the following sub-clauses, 1.1.1.11 and 1.1.1.12

1.1.1.11 “Supplemental Specifications” means the revisions of and/or additional specification to the DPWH Standard Specifications for Public Works and Highways, 1995 edition, Volume II – Highways, Bridges and Airports adopted by DPWH subsequent to its publication.

1.1.1.12 “Special Provisions” means additions or revisions to the Standard and Supplemental Specifications, covering conditions peculiar to an individual Project.

1.1.2 **Parties and Persons**

a) Modify paragraphs 1.1.2.1, 1.1.2.2 and 1.1.2.4 of this Sub-Clause and substitute the following:

1.1.2.1 The “Party” means either the Employer or the Contractor according to the content, and “Parties” refers to both the Employer and the Contractor jointly.

1.1.2.2 The “Employer” or “Owner” is the Government of the Republic of the Philippines represented

by the Department of Public Works and Highways (DPWH), acting through its Secretary, including any if his authorized representative.

1.1.2.4 The “Engineer” is Katahira and Engineers Int’l. (KEI) in association with Yachiyo Engineering Co., Ltd. or any other competent person appointed by the Employer, notified to the Contractor, to act in replacement of the Engineer

1.1.2 **Parties and Persons**

b) Add paragraphs 1.1.2.11 to 1.1.2.17 to read as follows

1.1.2.11 “Government” means the Government of the Republic of the Philippines

1.1.2.12 “Department” means the Department of Public Works and Highways (DPWH) of the Republic of the Philippines

1.1.2.12 “Consultant” means the contracted consultancy firm assigned to the Project as authorized by the Employer, acting through its authorized personnel

1.1.2.13 “JBIC” means the Financing Institution, the Japan Bank for International Cooperation (JBIC).

1.1.2.14 “Chairman” means the Chairman of the Philippine-Japan Highway Loan Project

1.1.2.15 “Secretary” means the Secretary of Department of Public Works and Highways.

1.1.2.16 “BAC” means the Bid and Award Committee for the project, the group organized by the Employer to be in charge of qualifying

bidders (tenderers) and receiving, opening and evaluating all qualified bids (tenders).

- 1.1.2.17 “Joint Ventures” means an entity consisting of more than one partner that, as the Contractor, shall execute the works in the partnership, all partners of which shall be jointly and severally responsible for the Contract.

1.1.3 **Dates, Tests, Periods and Completion**

Revise Paragraphs 1.1.3.2, 1.1.3.3 and 1.1.3.5 and substitute with the following:

- 1.1.3.2 “Commencement Date” or “Starting Date” means the date set in the Notice to Commence or the Notice to Proceed (NTP) from which date the Contractor shall commence the execution of the Works and from which date contract time shall start

- 1.1.3.3 “Time for Completion” or “Contract Time” means the period of time for completing the execution of the Works as stated in the Contract (or as extended under Clause 8.4) calculated from the commencement date

- 1.1.3.5 “Taking-Over Certificate” or “Certificate of Completion” means the certificate issued by the Employer to the Contractor when the whole of the Works or any part of the Works has been substantially completed and has satisfactorily passed all tests prescribed by the Contract.

1.1.4 **Money and Payments**

Revise Paragraphs 1.1.4.4, 1.1.4.7 and 1.1.4.11 and substitute with the following:

- 1.1.4.4 “Final Payment Certificate” means the certificate the payment issued by the Engineer pursuant to Sub-Clause 14.13.

- 1.1.4.7 “Interim Payment Certificate” means any certificate of payment issued by the Engineer other than the Final Payment Certificate.

- 1.1.4.11 “Retention Money” means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 14.9.

1.3 **Communications**

Add the following:

1.3.1 **Addresses for Communications**

For the purpose of this Sub-Clause, the respective addresses are:

A) **Employers Address**

The Honorable Secretary  
Department of Public Works and Highways  
Bonifacio Drive, Port Area, Manila, Philippines



Attn: The Project Director  
PJHL – PMO  
DPWH Compound, 2<sup>nd</sup> Street, Port Area Manila

**B) Engineer's Address**

KATAHIRA and ENGINEER'S INT'L (KEI)  
In association with  
YACHIYO ENGINEERING CO., LTD (YEC)  
*Upgrading Inter-Urban Highway System along the  
Pan-Philippine Highway Project  
Cabanatuan Bypass, Contract Package I  
Province of Nueva Ecija*

**1.4 Law and language**

Delete this clause in its entirety and substitute by the following:

- a) The Language of the Contract shall be the English Language”
- b) “The Contract shall be subject to the Laws, Decrees, and Regulations of the Republic of the Philippines, including the applicable orders and memoranda issued by the Employer (DPWH) and to the Loan Agreement between the Government and the Japan Bank for International Cooperation (JBIC) with respect to the project. If any conflict should arise, the Loan Agreement and JBIC Guidelines should prevail”

**1.5 Priority of Documents**

Delete this Sub-Clause and substitute the following:

In case of conflict, error or, discrepancy in the Contract Documents, the Contractor shall call the attention of the Engineer in writing before proceeding with the work affected thereat.

It is informed that the hereunder, documents were intended to be mutually complimentary to each other.

In resolving such ambiguities, errors and discrepancies, the Contract Documents shall be given precedence in the following order:

- (1) the Contract Agreement (if approved);
- (2) the Letter of Acceptance;
- (3) the Bid and the Appendix to Bid;
- (4) the Conditions of Contract Part II – Conditions of Particular Application;
- (5) the Conditions of Contract Part I – General Conditions;

- (6) the Specifications;
- (7) the Approved Contract Drawings, and;
- (8) the Priced Bill of Quantities.

With respect to the specifications, the order of precedence shall be as follows:

- (1) Special Provisions containing pertinent provisions of the 1995 DPWH Standard Specifications, Part II - Volume II
- (2) 1995 DPWH Standard Specifications, Part I-Volume II

With respect to the Drawings, the order of preference shall be as follows:

- (1) Figures govern over scaled dimensions
- (2) Approved detailed drawings govern over standard drawings
- (3) Approved change order drawings (revised plans) govern over standard drawings and shop drawings.

#### 1.8 Care and Supply of Documents

Delete the third to the last paragraph and substitute the following:

- (a) The Contractor shall maintain at the Site for the Employer at least one (1) record copy of all Drawings, Specifications, Addenda, Variation Orders, in good order and marked currently to record all changes made during construction and Approved Shop Drawings and Product Data. These shall, at all reasonable times, be available for inspection and use by the Engineer and shall be delivered to him at the completion of the contract for submittal to the Employer.
  - (i) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or by any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
  - (ii) Product Data are illustrations, standard, schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material product or system for some portions of the Work.

The following Sub-Clauses 1.8.1, 1.8.2, 1.8.3 and 1.8.4 shall be added:

#### 1.8.1 Shop Drawings

The Contractor shall furnish to the Engineer all Contractor's, and Sub-Contractor's Shop Drawings. Shop Drawings shall be deemed to include design drawings, fabrication drawings, catalogue cuts, brochures, illustrations, material lists, design calculations, reference standards and performance data which may be required by the specification necessary for the proper execution of the Work, or as otherwise required by the Engineer for assurance that there is an intent to meet the requirements of the specifications. All Shop Drawings shall be in English.

The Contractor shall submit all Shop Drawings to the Engineer in the manner hereinafter described, in sufficient time to prevent delays in delivery of materials or in the progress or completion of the work. Regardless of the source of Shop Drawings, all submissions shall be deemed to be submissions by the Contractor under the Contract.

All subcontractors' Shop Drawings shall first be sent directly to the Contractor. The Contractor shall thoroughly check all such Shop Drawings for measurement, sizes of members, materials and all other details, to assure himself that the Shop Drawings conform to the intent of the Drawings and Specifications.

The Contractor shall return to the subcontractors for correction, such Shop Drawings that are found inaccurate or otherwise in error. After the Contractor has checked and approved such Shop Drawings he shall place thereon the date of such approval and the legible signature of the checker, and shall then submit them to the Engineer for review. The Engineer may refuse to check or review any Shop Drawings that are not submitted in compliance with the foregoing requirements.

The Contractor shall submit four (4) copies of Shop Drawings plus the number that the Contractor wishes to return for his own and his sub-contractor's use.

For all equipments, Shop Drawings shall be complete in all respects and shall show clear compliance with the Specifications. Where applicable, performance figures of equipment, finishes and reference to other relevant drawings must be noted on the Shop Drawings. Details of ancillary items being supplied with the particular equipment must be submitted. Piecemeal submissions will not be considered.

Descriptive brochures where applicable shall be included for information. Any violation on the Shop Drawings is on the prints and not on the original from which the prints were made

shall be in GREEN INK.

The Engineer will review submitted Shop Drawings within a reasonable time and will return them stamped "NO COMMENT", "SEE COMMENTS" or "RESUBMIT".

The Engineer may, at his discretion, require an immediate re-submission of Shop Drawings noted "SEE COMMENTS" so that he can make a further review of amendments. Drawings requiring re-submission shall be either amended and re-submitted or shall be superseded by other submitted Shop Drawings. Comments on Shop Drawings are not orders for Extra Work.

Shop Drawings re-submitted for further review will be reviewed for response to previous notations only and the Contractor, by such re-submission shall be held to have represented that such Shop Drawings contain no other alterations, additions or deletions, unless the Contractor (in writing) specifically calls the Engineer attention to the same.

Should the Contractor question, or dissent, from such notations or comments, he shall call the Engineer's attention to the same for further clarification before re-submitting.

By reviewing Shop Drawings, the Engineer does not assume responsibility for errors or omissions and non-compliance with the Contract requirements. Such errors and omissions must be made good by the Contractor, irrespective, of the receipt, checking, or review of the Shop Drawings by the Engineer and even though the Work is done in accordance with such Shop Drawings.

#### 1.8.2 "As-Staked" Drawings

"As-Staked" Drawings shall be prepared for the entire project. These drawings shall be submitted to the Employer for review and approval regardless of the nature of the changes in the original design, if there is increase /decrease of more than five percent (5%) in quantities of major items of work and more than ten percent (10%) for minor items of work. Variation Order shall be prepared for approval in accordance with sub-clause 13.1

The preparation of the "As-Staked" drawings and the corresponding back-up quantity calculations must be completed within a reasonable period from the commencement of the project. The plans shall indicate major modifications (i.e. change in road alignment, change in type or main components of structures, introduction of new work items), superimposed on the original plans.

The approved "As-Staked" Drawings shall be reproduced (Blue Print) by the contractor in five copies (5). The preparation of the "As-Staked" Drawings and reproduction cost shall be at the expense of the Contractor, payment for which is subsidiary to the pay items of the Contract.

### 1.8.3 “As-Built” Drawings

The Contractor shall prepare and submit one (1) complete set (original) of “As-Built” drawings together with the corresponding Back-Up Quantity Calculations to the Engineer not later than thirty (30) days after the first day of the Defects Liability Period. These “As-Built” Drawings shall indicate all approved changes made during construction, superimposed on the original plans/as-Staked Plans.

To facilitate the preparation of the said plans, the measured quantities with corresponding sketches and computations must be prepared periodically as work progresses and submitted to the Engineer for review and recommendation.

The approved “As-Built” Drawings shall be reproduced (Blue Print) by the contractor in five copies (5) and return the same to the Employer. The preparation of the “As-Staked” Drawings and reproduction cost shall be at the expense of the Contractor, payment for which is subsidiary to the pay items of the Contract.

No Certificate of completion for a Sector or the whole Works shall be issued to then Contractor by the Employer without the approved “As-Built” Drawings.

The review and approval by the Engineer or by the Employer of the “As-Built Drawings does not relieved the Contractor of any responsibility for and/or liabilities arising out of inaccurate, false or otherwise incorrect “As-Built” Drawings prepared and submitted by the Contractor.

### 1.8.4 Quality of Plans (“As-Staked”, “As-Built” and Other Drawings for Variations)

All sheets of the “As-Staked”, “As-Built” and other drawings for Variations should be of uniform size and one (1) standard size (600mm x 900mm) using Mylar or other high quality tracing paper. The sheets must be neat and clean and without any crossed-out or voided portion. The title block should be made an integral part of the sheet plans and not merely patched-up.

### 1.8.5 Supplementary Drawings and Instructions

The Engineer shall have an authority to issue to the contractor from time to time such complementary drawings and instructions of the proper and adequate execution of the works and the remedying of any defects therein. The Contractor shall carry out and be bound by the same.

The Contractor shall designate an additional set of Drawings as

“Record Drawings” and keep them at the site.

The Contractor shall clearly and neatly mark the Record Drawings in ink to indicate all authorized changes in the work, and also the work as actually constructed. These additional plans will not change the work of the Contract but will elucidate or explain it.

## **Clause 3.0 The Engineer**

### **3.1 Engineer’s Duties and Authorities**

Add the following final paragraph

- (d) For actions pertaining to the hereunder Sub-Clauses and upon recommendation of the Engineer, The Employer shall be the sole approving authority.

- Sub-Clause 4.4 - Sub-Contracting
- Sub-Clause 8.3 - Work Program to be Submitted
- Sub-Clause 15.2 - Termination by Employer  
(Default of Contractor in Compliance)
- Sub-Clause 8.8 - Suspension of Work
- Sub-Clause 8.1 - Commencement of Work (Notice  
To Commence)
- Sub-Clause 2.1 - Possession of Site and Access Thereto
- Sub-Clause 8.4 - Extension of Time for Completion
- Sub-Clause 8.7 - Delay Damages
- Sub-Clause 10.1 - Taking-Over of the Works and  
Sections
- Sub-Clause 11.1 - Completion of Outstanding Works  
and Remedying Defects
- Sub-Clause 12.1 - Works to be Measured
- Sub-Clause 13.1 - Right to Vary
- Sub-Clause 13.1.1 - Extra Work Orders
- Sub-Clause 13.1.2 - Supplemental Agreements
- Sub-Clause 13.5 - Use of Provisional Sum
- Sub-Clause 5.3 - Payment Schedule  
(Monthly Payments)
- Sub-Clause 14.5 - Partial Payment of Material Delivered  
at Site
- Sub-Clause 15.2 - Termination by Employer  
(Default By Contractor - Contract  
Termination)
- Sub-Clause 15.3 - Inventory and Valuation at Date  
Of Rescission
- Sub-Clause 15.4 - Payment after Termination
- Sub-Clause 7.6 - Remedial Work
- Sub-Clause 17.3 - Employer Risks
- Sub-Clause 20.5 - Settlement of Disputes
- Sub-Clause 15.3 - Inventory, Valuation and Payment at  
Date of Termination

Sub-Clause 13 - Variations and Adjustment

Including Notice and Resolution of award, Advance Payment, release of retention monies, insurance of pertinent orders, circulars, memoranda, etc.

## **Clause 4.0 The Contractor**

### **4.1 Contractor's General Obligations**

Add the following paragraphs:

The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or other defects in the design or specifications of the Works which he discovers when reviewing the Contract or executing the Works”.

### **4.2 Performance Security**

**Sub-Clause 4.2 is deleted and substituted by the following :**

To guarantee the faithful performance of the Contractor under the contract, he shall post upon the signing of the Contract a performance security in the form of cash, manager's check, cashier's check, bank draft/guarantee confirmed by a local bank (in the case of foreign contractor bonded by a foreign bank acceptable to the Employer as stipulated in the Appendix to Bid), letter of credit issued by a refutable bank, in accordance with the following schedule:

- (1) Cash, manager's check, cashier's check, irrevocable letter of credit, bank draft - five percent (5%) of the total Contract Price.
- (2) Bank Guarantee - ten percent (10%) of the total Contract Price.
- (3) Surety Bond – thirty percent (30%) of the total contract

The performance security shall be denominated in Philippine Currency (Philippine Peso). When providing such security to the Employer, the Contractor shall notify the Engineer of so doing.

This performance security shall be posted in favor of the Employer (DPWH) and shall guarantee the payment of the amount of the security as penalty in the event it is established that the Contractor is in default in his obligation thereunder.

The cost of complying with the requirements of this clause shall be borne by the Contractor.

In the execution of the performance security, the following conditions shall be complied with:

- (a) It shall be executed in accordance with the form prescribed therefore.
- (b) It shall be at least co-terminus with the final completion of the project.
- (c) The following provisions shall form part of the Performance Security:

“The right to institute action on the penal bond pursuant to Act No. 3688 of any individual, firm, partnership, corporation and association supplying the Contractor with the labor and material for the prosecution of the work is hereby acknowledged and confirmed”.

Subject to the conditions of the Contract, the performance security may be released by the Employer after the issuance of the Certificate of Completion of the project, provided that there are no claims for labor and materials and equipment rentals filed against the Contractor or the surety company.

Performance Security of a joint venture shall be in the name of the Joint Venture.

## **4.2 Performance Security**

**Add the following new Sub-Clauses:**

### **4.2.1 Replacement of Performance Security**

Should any surety for the performance security of this Contract become unacceptable to the Employer, the Contractor shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety.

### **4.2.2 Additional and Extension of Security**

The Contractor shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original Contract Price as a result of adjustments in the unit prices, and/or change orders, extra work orders and supplemental agreements. The Contractor shall cause the extension of the validity of the performance security to cover the approved contract time extension



**4.2.3 Reduction of Performance Security**

In case of a reduction in the Contract value and for partial utile work completed by the Contractor and accepted by the Employer and which in the judgment of the Employer shall not affect the structural integrity of the entire project, the Employer shall allow proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reduction is not more than fifty percent (50%) of the original performance security.

**4.3 Contractor's Representative**

Add the following paragraphs

If the Contractors authorized representative is not, in the opinion of the Engineer, fluent in the English language, the contractor shall have available on site at all times a competent interpreter to ensure the proper transmission of instructions and information.

The Contractor shall designate a responsible member of his organization at the site to be approved by the Engineer whose responsibility shall be the prevention of accidents

**4.4 Subcontractors**

Add the following new Sub-Clauses

**4.4.1 Value of Work Subcontracted**

The total value of work that may be subcontracted shall not exceed fifty percent (50%) of the original contract price. Such approval by the Employer shall be limited to not more than fifty percent (50%) of the original Contract Price. Subcontracting shall not relieve the Contractor of his full responsibility for the fulfillment of sub-contracted portions of the Contract that should be constructed in accordance with the Plans and Specifications therein

**4.4.2 Obligations of Sub-Contractor**

By an appropriate written agreement, the Contractor shall require a Sub-Contractor, to the Extent of the Works to be performed by the Sub-Contractor, to be bound to the Contractor on all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Employer and the Engineer. Said agreement shall preserve and protect the right of the Employer and the Engineer under the Contract Documents with respect to the Works to be performed by the Sub-Contractor so that the subcontracting thereof will not prejudice such right of the Employer and the Engineer.

**4.4.3 Provisions Applicable to Sub-Contractor**

Subject to the foregoing provisions of Sub-Clauses 4.4, and 4.5 and where the context requires, the provisions of Clause 5.1 pertaining to Nominated Sub-Contractors shall be applicable to the Sub-Contractors under Clause 4.4.

**4.6 Co-operation**

**Add the following paragraph**

In order to coordinate the efforts of the Contractor or the several Contractors with those of the Engineer, to facilitate the movement of traffic; and to insure the early completion of all phases of the Work; the Contractor shall, prior to beginning of the Work, confer with the Engineer to arrange for a satisfactory Program of Work.

**4.8 Safety Procedures**

**Add the following as final paragraph**

“For the safety and convenience of the traveling public, the Contractor shall erect and maintain, as required by conditions prevailing at the site and progress of the works, all reasonable safeguards for safety and protection. It shall include the posting of danger signs and other warnings against hazards. The Contractor shall also post Project Signboards, one at the beginning and another at the end of the Project, immediately after commencement of the Works, additional Intermediate Billboard every 10 kms if Project is greater than 20 kms. The erection and maintenance of warning signs and project signboards shall be at the expense of the Contractor, payment for which shall be subsidiary to all pay items of the Contract.”

At all times during the conduct of the work the Contractor shall insure the least practicable obstruction to traffic. The convenience of the general public and the residents along the highway and the protection of persons and property are of prime importance and shall be provided for by the Contractor in an adequate and satisfactory manner. When it is necessary for residents living along or near the project to use a portion of the road under construction or a temporary road, the Contractor shall maintain, within the limits of the specifications, that portion of the road or temporary road in a suitable condition for vehicular travel. When it is indicated on the plans or provided in the specifications that traffic shall be carried through construction, the Contractor shall provide and maintain suitable means for the movement of such traffic at all times.

The Contractor shall provide, and maintain in a safe condition, temporary approaches to and crossing of intersecting highways, railroads, private entrances and approaches to partly constructed Work.

**4.13 Rights of Way and Facilities**

**Add the following new Sub-Clauses**

**4.13.1 Cooperation with Utilities and Private Properties**

The Owner will notify all utility companies, all pipeline owner, or other parties and endeavor to have all necessary adjustments of the public or private utility fixtures, pipeline, and other appurtenances within or adjacent to the limits of construction, made as soon as practicable.

Water lines, gas line, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals and all other utility appurtenances within the limits of the proposed construction which are to be relocated or adjusted are to be moved by the Owners of respective utility companies at their expense, except as otherwise provided in the Special Specifications or noted on the plans.

It is understood that the Contractor has considered in his Tender all of the permanent and temporary utility and private property owners and schedule his work so as to minimize any potential delays, inconveniences, or damages to the Work that may result from utility interferences or the operations of moving them

**4.13.2 Existing Structures and Utilities**

The Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities, public or private, including poles, signs, signals, fences, trees, service connections, water pipes, hydrants, sewers, drains, and electric and telephone cables, gas lines, whether or not they are shown on the Drawings. The Contractor shall carefully support and protect all such structures and utilities from damage of any kind. Any damage resulting from the Contractor's operations shall be repaired by him at his own expense.

Before commencing any excavation, the Contractor shall ascertain from records or otherwise, the existence, horizontal and vertical positions, and ownership of all existing utilities and service connections. If the Contractor discovers any utility or service connections in the line of the work that is not shown on the Drawings, he shall immediately notify the Engineer upon determination of the actual position of existing utilities and service connections. No work shall commence on affected utilities shall be done until proper coordination and adjustments have been made.

Service connections of utilities shall be kept operational. If it is necessary to remove or disturb a utility or service connection, the Contractor shall notify both the utility Company and the Engineer prior to proceeding with the Work.

The utility company and private owners affected by the Work shall have the right to enter when necessary upon any portion of the Work for the purpose of maintaining service and of making

changes, in, or repairs to, its facility.

Any utility or property removed or damaged shall be reconstructed as promptly as possible (in close coordination with the utility company or private property owners) to its original or other authorized location in a condition at least as good as its original condition.

The Contractor's responsibilities shall apply even in the event damage occurs after backfilling.

#### 4.17 **Contractor's Equipment**

Add the following paragraphs

The insurance shall be a Contractor's All Risk's Policy with the Government Service Insurance System (GSIS) or with an insurance company acceptable to the Employer, which shall be already in effect before the Contractor commences the execution of the Works.

#### 4.18 **Protection of Environment**

Add the following sentence to the first paragraph

"and shall comply with the measures monitoring and reporting given in the Environmental Compliance Certificate issued by the Environmental Management Bureau (EMB) for this environmentally critical project and shall take all reasonable precautions to avoid harm to the living and work environment. Such precautions shall include but not limited to the following:

- (a) provision of appropriate sanitation facilities
- (b) avoidance of wanton destruction of flora and fauna including trees, shrubs, bamboo and other plants.
- (c) avoidance of noxious gases associated with the Works
- (d) avoidance of excessive noise
- (e) protection of existing water courses, irrigations channels and drainage paths.

If the Engineer considers that inadequate precautions have to be complied with, the Contractor shall take such precautions as the Engineer may reasonably direct.

The expenses to be incurred to comply with ECC and setting of Environmental Monitoring Team and reporting in accordance with ECC shall be subsidiary to all pay items of the Contract

#### 4.24 **Fossils**

Delete the Sub-Clause in its entirety and substitute the following:

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Republic of the Philippines.

The Contractor shall take reasonable precautions to prevent his

workmen or any other person from removing or damaging such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor shall suffer delay and/or shall incur costs then the Engineer shall, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.4; and
- (b) the amount of such costs which shall be added to the Contract Price,

and shall therefore prepare the necessary variation order, which shall be duly accepted by the Contractor, for the approval of the Employer. The variation order shall not unreasonably be disapproved by the Employer.

No right whatever shall accrue to the Contractor and no compensation of any nature shall be due him for discovery of such objects and all rights accruing under the law to the discoverer shall devolve exclusively to the Republic of the Philippines.

## **Clause 5.0 Nominated Sub-Contractors**

### **5.5 Obligations of Sub-Contractor**

Add as Sub-Clauses 5.5 and 5.6

Appropriate written agreement, the Contractor shall require a Sub-Contractor, to the extent of the Works to be performed by the Sub-Contractor, to be bound to the Contractor on all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Employer and the Engineer. Said agreement shall preserve and protect the right of the Employer and the Engineer under the Contract Documents with respect to the Works to be performed by the Sub-Contractor so that the subcontracting thereof will not prejudice such right of the Employer and the Engineer.

### **5.6 Value of Work Sub-Contracted**

The total value of work that may be subcontracted shall not exceed fifty percent (50%) of the original contract price. Such approval by the Employer shall be limited to not more than fifty percent (50%) of the original Contract Price. Subcontracting shall not relieve the Contractor of his full responsibility for the fulfillment of sub-contracted portions of the Contract that should be constructed in accordance with the Plans and Specifications therein.

## **Clause 6.0 Staff and Labor**

### **6.1 Engagement of Staff and Labour**

Add the following as final paragraph:

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor from sources within the Republic of the Philippines. The Government of the Republic of the Philippines will allow only expatriate engineers, skilled workers and senior management staff who have visas and permission to work in the Philippines.

Add the following new Sub-Clauses

**6.1.1 Mandatory Hiring of Local**

Pursuant to the Implementing Rules and Regulations, Section 7 of R.A. 6685, the skilled and unskilled labor requirements of the Project shall be recruited as follows:

The mandatory 50% minimum percentage of the unskilled labor shall be recruited from the unemployed bonafide residents of the locality (barangay)/(municipality) where the project is being undertaken

**6.1.2 Expatriate Staff and labor**

Staff and labor from outside Philippines shall not be employed by the Contractor without first obtaining a permit or permits from the government authorities. The Employer will assist the Contractor to obtain from government authorities all necessary visas and working permits for his expatriate staff and labor to be employed for the execution of the Contract. All associated costs will be borne by the Contractor.

**6.2 Rates of Wages and Conditions of Labor**

**Amend the Sub-Clause with the following:**

The Contractor shall pay rates of wages and observe conditions of labor not less favorable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or conditions of labor so established, the Contractor shall pay rates of wages and observe conditions of labor which are less favorable than the general level of wages and conditions observed by other employers whose circumstances in the trade or industry in which the Contractor is engaged are similar.

**6.2.1 Payment of Salary and Wages**

Add the following as new Sub-Clause

The Contractor shall provide and have on the Site, or any others place safe and convenient to the staff and labor, on every payday, cash sufficient in amount to pay all the staff and labor. Payment of salaries and wages of the staff and labor shall be made bi-monthly and not later than three (3) days after every pay period.

In the event of fault being made in the payment of any money in respect of salaries and wages of any person employed by the

Contractor and claim thereof is filed with the Employer, or with the Engineer which shall refer to it to the Employer, and proof thereof is furnished to the satisfaction of the Employer, the Employer may, failing payment of the said money by the Contractor, make payment of such claim out of any money due or which may later become due to the Contractor under the Contract, and such payment shall be deemed to be a payment made to the Contractor under and by virtue of the Contract.

#### **6.4 Labour Laws**

Add the following as final paragraph:

The Contractor shall, in all his dealing with his staff and labor for the time being employed in or in connection with the Works, have due regard to all officially declared holidays, recognized festivals, days of rest and religious and other customs.

The following sub-clauses (6.4.1. and 6.4.2) are added:

##### **6.4.1 Arms and Ammunitions**

The Contractor, in accordance with existing laws, ordinances and rules and regulations in force, shall not possess, give, sell and barter or otherwise dispose of any arms and ammunitions of any kind or allow such acts by his staff and labor within the site

##### **6.4.2 Alcoholic and Beverages**

The Contractor shall not, otherwise than in accordance with existing laws, ordinance and rules and regulations in force, posses, give, sell, barter or otherwise dispose of any alcoholic beverages or drugs, nor allow such acts by his staff and labor within the site.

#### **6.5 Working Hours**

Add the following paragraph:

Subject to any provision to the contrary contained in the Contract, none of the Permanent Works shall, save as hereinafter provided, be carried on during the night or on Sundays, if locally recognized as days rest, or their equivalent, without the permission in writing of the Engineer or his representative, except when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case, the Contractor shall immediately advise the Engineer or his representative. Provided always that the provisions of this Clause shall not be applicable in the case of any work which is customarily carried out by rotation or double shifts.

#### **6.6 Facilities for Staff and Labour**

Add the following paragraphs:

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodations and amenities as he may consider necessary for all his staff and labor, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, air conditioning, cookers, refrigerators, furniture and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camp/housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer

The Contractor shall use his best endeavors to prevent squatting on the site, even by his staff or labor.

**The following paragraphs are added as Sub-Clauses 6.6.1  
6.6.2, 6.6.3, and 6.6.4**

**6.6.1 Supply of Water**

The Contractor shall, in so far as is reasonably practicable, having regard to local conditions, provide on the Site to the satisfaction of the Engineer an adequate supply of drinking water and other water for the use of his staff and labor.

**6.6.2 Temporary Latrine**

The Contractor shall provide and maintain efficient and sanitary latrine accommodation for the use of his staff and labor and shall keep the site and the latrine in a clean and sanitary condition to the satisfaction of the Engineer

**6.6.3 Epidemics**

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply and carry out such regulations, orders and requirements as may be imposed by the government or the local medical or sanitary authorities, for the purpose of overcoming the same.

**6.6.4 Measure against Insect and Pest nuisance**

The Contractor shall at all times take the necessary precautions to protect all staff and labor employed on the site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall provide his staff and labor with suitable prophylactics for the prevention of malaria or dengue and take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all building erected on the Site. Such treatment shall be carried out at least once in six (6) months or as instructed by



the Engineer.

## **6.7 Health and Safety**

Add the following paragraphs:

Due precautions shall be taken by the Contractor, and at his own expense, to ensure the safety of his staff and labor and, in collaboration with and to the requirements of local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

## **Clause 7.0 Plant, Materials and Workmanship**

### **7.1 Manner of Execution**

Add the following as Sub-Clause 7.1.1

#### **7.1.1 Certificate of Origin, Contents and/or Standard of Quality**

When requested, the Contractor shall furnish a manufacturer's certificate of origin, contents and/or standard of quality for all materials, plant and equipments to be incorporated into the permanent works.

### **7.3 Inspection**

Add the following as Sub-Clauses 7.3.1, 7.3.2 and 7.3.3

#### **7.3.1 Inspection and Testing**

For materials and Plant whose sampling and testing is not possible after their manufacture, fabrication or preparation as sampling for testing itself is not possible as the utility or structural qualities of the material and Plant will be adversely affected, it shall be the responsibility of the Contractor to see to it that inspection, sampling and testing are undertaken prior to or during manufacture, fabrication or preparation.

In the event plant inspection is undertaken, the following conditions shall be met:

- (a) The Engineer shall have the cooperation and assistance of the Contractor and/or the producer with whom he has contracted for the supply of the materials.
- (b) The Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- (c) Adequate safety measures are to be provided and maintained.

**7.3.2 Dates for Inspection and Testing**

The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any material or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his authorized representative, cannot attend on the date agreed, the Contractor shall reset inspection and testing to another date convenient to both the Engineer and the Contractor. The Contractor shall never proceed with the test without the presence of the Engineer and in his absence, his authorized representative, and the Engineer for his part shall never unreasonably delay any testing.

**7.3.3 Absence or Silence of Specifications**

In the absence of definite specifications or reference to a specifications or apparent silence of the Specifications and Plans as to any detail or the apparent omission of detailed description concerning materials, Plant and workmanship, it shall be deemed as meaning that only the best general practice is to prevail and that only materials, Plant and workmanship of first class quality are to be used. All interpretation of the Specifications and Plans shall be on the basis stated above

**7.4 Testing**

Add the following as Sub-Clauses 7.4.1, 7.4.2, 7.4.3, 7.4.4, 7.4.5 and 7.4.6

**7.4.1 Costs of Sampling and Testing**

Sampling and quality control testing as well as any check test to verify the quality of materials shall be done by the Contractor at his own expense under the direct supervision of the Engineer. The kind of tests and frequency of testing shall conform to the Minimum Quality Control Testing requirements of the DPWH. Sampling and testing shall be in accordance with the methods specified in the item of work in the Specifications, and if not specified, shall conform to the appropriate American Association of State Highway and Transport Officials (AASHTO), American Society for Testing and Materials (ASTM) or equivalent Standard Test Methods

**7.4.2 Re-sampling and Re-Testing**

The approval of preliminary samples shall not be considered as an indication of acceptance of all materials from the same source. Any material that has passed the prescribed tests may be re-sampled and re-tested at any time

**7.4.3 Manufacturer's Certificate in Lieu of Testing**

Where obtaining samples from a finished manufactured product would adversely delay the project construction, the Engineer may, in lieu of requiring tests, accept at his discretion the

manufacturer's certified analysis for such product

**7.4.4 Field Testing and Laboratory**

In order to expedite the inspection and testing of materials and Plant and Works, the Contractor shall provide and maintain as part of the Facilities for the Engineer, a field testing laboratory at the project site, as called for in the Specifications and in the Bill of Quantities. The Contractor is required to furnish the testing equipment and provide qualified and experienced laboratory staff who shall conduct the tests under the supervision of the Engineer.

The provision and maintenance of the field testing laboratory is a pay item under the Facilities for the Engineer.

The Fabrication Plant to be provided by the Contractor and indicated in the Plans and Specifications shall be furnished with complete equipment, more particularly for pre-cast concrete members, and provided with experienced and qualified laboratory staff who shall conduct the test under the supervision of the Engineer.

**7.4.5 Source of Supply**

In order to expedite the inspection, sampling and testing of materials and Plant, the Contractor shall notify the Engineer of his proposed sources of materials and Plant prior to delivery. At the option of the Engineer, materials and Plant may be approved at the source of supply before delivery is started.

If it is found after trial that sources of supply for previously approved materials do not produced the specified products, the Contractor shall furnish materials from other approved sources.

If there are suggested sources of local materials, the quality of materials in such suggested sources will be acceptable in general, but the Contractor shall determine for himself the equipment and work required to produce material meeting the specifications. It shall be understood that it is not feasible to ascertain from samples the limits of an entire deposit, and that variations shall be considered as usual and to be expected. The Engineer may order procurement of materials from any portion of a deposit and may reject portions of the deposit as unacceptable.

In case of suggested sources of local materials, it is the responsibility of the Contractor to negotiate and acquire the right to take materials from the suggested sources, together with the right to use such property as may be required for plant site, stock piles and haul roads. Acquisition of right of access to reach such suggested sources is also the responsibility of the Contractor.

If the Contractor desires to use materials from sources other than those suggested or other sources of materials have to be used due to insufficiency of the suggested sources, tests on preliminary samples must indicate general acceptability of the material before permission is granted. Additional samples may be

required of the Contractor for inspection, sampling and testing prior to approval and authorization to use the source.

If the material is to be purchased by the Contractor from suppliers, the Contractor shall, before placing order for materials, manufactured articles and machinery to be a part of permanent works, submit for approval of the Engineer, a complete description of such items, the names of the firms from whom he proposes to obtain such items, together with a list of the items he proposes each firm would supply. No materials, manufactured articles or machinery shall be ordered from any firm without the written approval of the Engineer. When directed by the Engineer or otherwise specified in the Contract, the Contractor shall submit samples for approval.

If it is found after trial that sources of supply for previously approved materials, manufactured articles, or machinery do not produce specified products, the Contractor shall furnish the items from other sources approved by the Engineer.

No material, regardless of its source, shall be incorporated in the Work until representative samples taken by the Contractor and tested in an approved laboratory or tested by the Contractor in the presence of the Engineer, have been approved and written authority is issued by the Engineer for the use thereof

**7.4.6 Compensation for Delay due to Testing**

The Contractor shall not be entitled to any compensation for any delay or damage incurred pending the completion of testing and approval of materials, plants or the works.

**Clause 8.0 Commencement, Delays and Suspension**

**8.1 Commencement of Works**

Delete the last paragraph and substitute the following as final paragraph:

The Contractor shall commence the works after receipt by him of a Notice to Proceed (NTP) which shall be issued by the Employer upon the approval of the Contract. Contract effectivity shall depend on the stipulations made on the NTP, and shall then proceed with the works with due expedition and without delay.

**8.1.1 Pre-Construction Conference**

Add as new Sub-Clause 8.1.1

Before the start of construction or immediately thereafter, a pre-construction conference shall be held for the purpose of establishing guidelines and procedures for the smooth execution of the project.

As soon as the Contractor has received the Notice to Commence, the Engineer shall set a pre-construction conference with the Contractor and his staff together with the Employer's representative(s). The

conference agenda shall include but not limited to the following:

- 1) Project organizational set-ups with definition of the lines authority
  - (a) Contractor's Table of Organization
  - (b) Engineer's Table of Organization
  - (c) Employer's Table of Organization
- 2) Agreed PERT/CPM and construction schedule of the Contractor
- 3) Joint survey schedule
- 4) Sources of materials
- 5) Testing of materials
- 6) Right-of-Way
- 7) Coordination meetings, schedule and frequency
- 8) Accomplishment estimates and cut-off dates
- 9) Reporting and monitoring
- 10) Clarification on application of laws like P.D. 1594 and its amendments
- 11) Billing procedures
- 12) Sub-contractors to be proposed for approval
- 13) Inter-office relations and procedures
- 14) Other matters/problems of specific nature to the project that could affect construction progress.

## 8.2 Time for Completion

Add the following paragraph:

The Contract Time for the completion of the performance of the Works, furnishing of the materials and completion of the construction contemplated by the Contract shall be the number of calendar days as stated in the Appendix to Bid (General Requirements) subject to adjustment under the conditions referred in Clause 8.4. The contract time stated in the Tender Documents is the estimate of the actual number of working days required to complete the project with corrections for Sundays, legal holidays and pre-determined rainy/ unworkable days considered unfavorable for the prosecution of the Works at the project site which is also indicated in the Appendix to Bid (General Requirements).

Add new Sub-Clauses 8.2.1 and 8.2.2

### 8.2.1 Completion of Facilities for the Engineer

The building facilities for the Engineer shall be completed within three (3) months from the effectivity of the Contract. Works may be commenced on the site provided the Contractor has made arrangements to temporarily house the Engineer and his staff and provide/furnish items necessary thereto in the meantime that he is completing the "Facilities for the Engineer" as per contract. These arrangements shall be subject to the satisfaction and approval of the Engineer

**8.2.2 Pre-determined Rainy/Unworkable Days due to Rainfall**

Unworkable days due to rainfall were pre-determined based on data from PAGASA. The minimum 10mm daily rainfall is considered unworkable day. The pre-determined unworkable days due to rainfall is given in Appendix 5.6 of Appendices to Bid.

**8.3 Programme**

This sub-Clause (8.3) is deleted its entirety and substituted by the following:

The Contractor shall, within fourteen (14) calendar days after the Notice of Award, submit to the Engineer for his approval a programme that shall include, but not limited to:

- (a) Construction Schedule
  - (i) A PERT/CPM network diagram of all activities involved in the execution and completion of the Works within the Contract Time, clearly identifying the critical path with allowance for bad weather and contingencies.
  - (ii) A time-sequenced Bar Chart based on the PERT/CPM network diagram with the progress S-curve superimposed thereon, indicating the monthly progress estimates of accomplishments for every pay item expressed in terms of percentages and quantities or amounts.
- (b) An updated Construction Methods which shall embody a narrative description of the order of procedure in which the Contractor proposes to carry out each main items of work.
- (c) An updated Contractor's Organization Charts:
  - (i) Structural Chart showing the hierarchical order or personnel the Contractor shall assign for superintendence on the execution of the Works.
  - (ii) Functional Chart showing the respective duties, roles, etc. of every component of the chart.
- (d) Manpower Schedule showing the complement of manpower proposed for the execution of the Works.
- (e) Equipment Utilization Schedule showing the complement of equipment for the execution of the Works including provision for downtime based on the foregoing diagram.
- (f) A Cash Flow and Payments Schedule showing a detailed cash flow estimate, in monthly and quarterly periods, of all payments the Contractor will be entitled to receive under the

Contract, consistent with the foregoing diagram, chart and schedule.

The Construction Schedule submitted by the Contractor as part of his Bid shall meet the Time(s) for Completion specified in the Bidding Documents Volume I: Proposal Book. Prior to award of Contract, the Employer, the Engineer and the Contractor will agree to clarifications and modifications of the Construction Schedule. The Work shall be performed in accordance with the Construction Schedule as revised prior to award of Contract or as subsequently approved by the Employer with the recommendation of the Engineer.

The execution of the Works shall not commence unless the program is duly reviewed and approved. Any delay incurred and any costs attributable to such delay, due to the submission of incomplete, or otherwise unsatisfactory program shall be the Contractor's responsibility

#### 8.3.1 Revision of Programme

##### Add this as Sub-Clause 8.3.2

The Employer or the Engineer shall have the right to reject any part of the original programme submitted with the Bid even if the Bid is accepted and to require the Contractor to revise the original programme to the satisfaction of the Engineer prior to the award and signing of the Contract Agreement. The Contractor shall not commence execution of the Works prior to acceptance (not receipt) of the Programme, subject to the provisions of the following Sub-Clause.

The Construction Schedule shall be revised and re-submitted at intervals as required by the Employer or the Engineer. In addition, the Contractor shall immediately advise the Engineer any proposed changes in the Construction Schedule. Revised changes in the Construction Schedule shall show construction operations for each item of work from the time of Notice to Proceed to the anticipated completion date, thereby indicating the periods during which work was previously under way as well as estimated future periods of construction operations. Each revised Construction Schedule shall be related to the Construction Schedule accepted for award of Contract and shall show months ahead or behind the schedule for both completed activities and future activities.

#### 8.4 Extension of Time for Completion

##### Add the following paragraphs:

Extension of contract time may be granted to the Contractor under the following conditions:

- (a) when the affected activities fall within the critical path of the approved PERT/CPM Network Diagram.
- (b) when the actual rainy/unworkable days considered

unfavorable for the prosecution of the Works at the site for such period is in excess of the number of pre-determined rainy/unworkable days given in the Appendix to Bid.

- (c) when the reason given to support the request for extension was not considered in the determination of original contract time for the completion of the Works during the conduct of detailed engineering and in the preparation of the Bid Documents.
- (d) when major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the Employer.

No extension of contract time shall be granted due to:

- (a) ordinary unfavorable weather conditions
- (b) inexcusable failure or negligence of Contractor to provide the required equipment, supplies or materials, or
- (c) other causes for which the Employer is not directly responsible.

#### 8.4.1 Consent of Bondsmen

Add this as new Sub-Clause, 8.4.1

Provided, further, that the written consent of bondsmen must be attached to any request of the Contractor for time extension of contract time and submitted to the Employer through the Engineer for consideration and that the validity of the performance security shall be correspondingly extended.

#### 8.6 Rate of Progress

Delete entire Clause 8.6 and substitute with the following:

It is the intention of this Clause to remind and call the attention of the Contractor to the instructions issued by the Secretary of the DPWH through Department Order No. 102, Series of 1988 defining the courses of actions to be taken by the Engineer whenever the Contract reached the level of negative slippage indicated below:

##### 1. *Negative Slippage of 5% ("Early Warning Stage")*

The Contractor shall be given a warning and required to submit a "catch-up" program to eliminate the slippage. The Engineer or Owner's representative shall provide thorough supervision and monitoring of the work

##### 2. *Negative Slippage of 10% ("ICU" Stage)*

The Contractor shall be given a second warning and required to



submit a detailed action program on a fortnightly (two weeks) basis with Contractor submitting to accelerate the work and accomplish physical targets which will reduce the slippage over a defined time period. The Contractor shall be instructed to specify additional input resources in terms of money, manpower, materials, machines and management support which should be mobilized for this action program. Closer supervision shall be exercised by the Engineer or Owner's representatives and to meet the Contractor every other week to evaluate the progress of work and resolved the problems.

**3. Negative Slippage of 15% ("Make or Break" Stage)**

The Contractor shall be issued a final warning and required to come up with a more detailed program of activities with a weekly physical targets, together with the additional input resources. On-site supervision shall be intensified, and evaluation of project performance will be done at least once a week. The Engineer shall prepare contingency plans for the termination/rescission of the Contract and/or take-over of the Work by Administration or by Negotiated Contract.

**4. Negative Slippage beyond 15% ("Terminal" Stage)**

The Engineer shall initiate termination or rescission of the Contract or take-over of the remaining work by administration or assignment to other Contractor.

**8.7 Delay Damages**

Delete this Sub-Clause in its entirety and substitute the following:

Where the Contractor refuses or fails to satisfactorily complete the Works within specified Contract Time plus any time extension duly granted and is hereby in default under the Contract, the Contractor shall pay the Employer for liquidated damages, and not by way of penalty, an amount to be determined in accordance with the following formula for each calendar day of delay, until the Work is completed and accepted or taken-over by the Employer.

$$\begin{aligned} \text{TLD} &= \text{VUUP} \times [(1 + \text{OCC})^n - 1] \times K \\ \text{VUUP} &= \text{TCP} - \text{VCUP} \end{aligned}$$

Where:

TLD	=	Total Liquidated Damages, in Pesos
VUUP	=	Value of the Uncompleted and Unusable Portions of the contract work, as of the expiry date of the Contract, in Pesos
TCP	=	Total Contract Price, in Pesos
VCUP	=	Value of the Completed and Usable Portion of the Contract Work, as of the expiry date of the

		Contract, in Pesos
OCC	=	Prevailing Opportunity Cost of Capital for Government Project set by NEDA, which is currently pegged at 15%
n	=	Total Number of years that the contract Work is delayed after the expiry date of the contract
K	=	Adjustment factor to cover additional losses
	=	$1 + C + (i \times n)$

Where:

C - Cost of Construction Supervision as a percentage, not exceeding ten percent (10%) of construction cost

i - Annual Inflation Rate

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

In any case that the delay in the completion of the Work exceed a time duration of equivalent to twenty percent (20%) of the specified contract time plus any time extension duly granted to the Contractor, the Employer may forfeit the Contractor's Performance Security and take over the prosecution of the project or award the same to a qualified Contractor through Negotiated contract.

In no case however, shall the total sum of liquidated damages exceed fifteen percent (15%) of the total Contract Price, in which event the Contract shall be automatically taken-over by the Employer or award the same to a qualified contractor through negotiation and the Contractor's Performance Security shall be forfeited. The amount of the forfeited Performance Security shall be aside from the liquidated damages that the Contractor shall pay the Employer under the provisions of this Clause".

## **Clause 9.0 Tests on Completion**

### **9.2 Delayed Tests**

Add the following as Sub-Clause 9.2.1

#### **9.2.1 Compensation for Delay due to Testing**

The Contractor shall not be entitled to any compensation for any delay or damage incurred pending the completion of testing and approval of materials, plants or the works.

## **Clause 10.0 Employer's Taking Over**

**10.1 Taking Over of the Works and Sections**

Delete the entire text of this Sub-Clause and substitute with the following:

Once the project reaches an accomplishment of ninety-five percent (95%) of the total contract amount (Substantially Completed), the contract time may be suspended and the Engineer upon the request of the Contractor will create an Inspectorate Team. The Inspectorate shall conduct preliminary inspection, determine and prepare the punch-list of the remaining balance of work and all the defects/deficiencies that must be completed/corrected in preparation for the issuance of Certificate of Completion for the project. Upon issuance of the punch-list to the Contractor, the contract time shall resume. The Contractor shall complete the balance of work within the remaining contract time, while the correction of work deficiencies shall be completed within a specific time schedule as agreed upon by the Engineer. The preliminary inspection and punch-listing must be completed by the Engineer within two (2) weeks.

The suspension of contract time during the preliminary inspection and punch-listing shall not preclude the Employer's claim for liquidated damages, nor the Contractor's claim for Incentive Bonus, as the case may be.

When the balance of work and the corrections of defects/deficiencies had been completed, the Contractor shall request for the Final Inspection for Completion of the project which will be conducted by the Quality Assurance Unit (QAU) of the Employer.

The request for final inspection shall be accompanied by the following documents:

- (a) Pertinent documents such as Copy of the approved Contract Agreement, variation orders, extra work orders, supplemental agreement, final statement of work accomplished, "As-Staked" Plans and "As-Built" Plans.
- (b) Certification from the Engineer that they have conducted inspection of the project together with the punch-list of defects/deficiencies and recommendations.
- (c) Certification from the Engineer that the Contractor has already corrected the noted defects/deficiencies of the project and that all rectification works were verified to have been undertaken in accordance with the recommendations of the Engineer.

If everything is satisfactorily completed or corrected as found during the QAU's final inspection, a Certificate of Completion will be issued to the Contractor as soon as possible provided there are no claims filed against the Contractor and provided further that the record plans or the "As-Built" Plans are duly approved and the Contractor has posted the required surety bond/bank guarantee

equal to ten percent (10%) covering the one (1) year Defects Liability Period.

## **Clause 11.0 Defects Liability**

### **11.1.1 Defects Liability Period**

Add the following as Sub-Clause 11.1.1

The Defects Liability Period shall mean the three hundred sixty-five (365) calendar days (one year) period of maintenance calculated from the date of completion of the project as stated in the Certificate of Completion.

Within the prescribed Defects Liability Period, the Contractor shall be liable for any defects and failures noted or occurring on the project which may be traceable to poor workmanship, use of poor quality materials and non-compliance with the Plans and Specifications.

At the end of the Defects Liability Period, the Engineer shall conduct inspection of the project to determine if there are defects or failures that has occurred within the period. If there's any, the Contractor shall correct/remedy the defects at his own expense.

After correction, the Contractor shall request for Final Inspection prior to the issuance of the Certificate of Acceptance. The inspection will again be conducted by the Quality Assurance Unit (QAU) of the Employer.

The request for inspection shall be accompanied by the following documents:

- (a) Final Inspection Report (Completion) by the Quality Assurance Unit (QAU).
- (b) Certificate of Completion for the Project.
- (c) Certification from the Engineer that they have conducted inspection of the project after the Defects/Liability Period together with the punch-list of defects/failures that occurred during the period.
- (d) Certification from the Engineer that the Contractor has already corrected the noted defects/failures of the project and that all rectification works were verified to have been undertaken in accordance with the recommendations of the Engineer.

If everything is satisfactorily corrected as found during the QAU's inspection, a Certificate of Acceptance shall be issued to the Contractor as soon as possible.

## **Clause 12.0 Measurement and Evaluation**

**12.1 Works to be Measured**

Add the following Sub-Clauses 12.1.1, 12.1.2, 12.1.3, 2.1.1.4, 12.1.1.5, and 12.1.1.6

**12.1.1 Variation Orders**

The Engineer shall make any variations of the Works or any part thereof that may in his opinion be necessary for the completion of the Works. The variation orders will cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the pre-construction plans used for purposes of bidding and the "As-Staked" Plans or construction drawings prepared after a joint survey by the Employer, the Engineer and the Contractor after award of contract. The addition/deletion of works should be within the general scope of the project as bid and awarded. A variation order may either be in the form of a Change Order, Extra Work Order or a Supplemental Agreement

**12.1.2 Change Orders**

- (1) A change order may be issued by the Engineer after the same has been approved by the Employer if the amount of the variation order is within the limits of the formers authority to approve original contracts and under the following conditions:
  - (a) Where the aggregate cost of Variation Order(s) is limited to 25% of the Original Contract Cost excluding the effects of price escalation and provided that no major pay item (i.e., pay item which represent at least 20% of the total estimated cost of the contract) shall be increased by more than 100% of its original cost.
  - (b) Where there is a decrease or increase in the original work items under the contract in work due to deletion/addition of work items or sections of the project.
  - (c) Where there is damage to structure and/or destruction of completed work in any section of the project due to force majeure or causes beyond the control of man.
- (2) For a unit price contract, the quantity overruns or underruns of not more than fifteen percent (15%) of the estimates per major pay item and twenty five percent (25%) per minor pay item in the Bill of Quantities need not be covered by Variation Order provided that the same is authorized by the Employer for the completion of the Contract

### 12.1.3 Extra Work Orders

An Extra Work Order may be issued by the Engineer after it has been approved by the Employer to cover the introduction of new work items under the following conditions:

- (1) Where are additional works needed and necessary for the completion, improvement or protection of the project which were not included as items of work in the original Contract.
- (2) Where there are subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract beyond the limit of the Change Order.
- (3) Where there are unknown physical conditions at the Site of an unusual nature differing materially beyond the limits of a Change Order from those ordinarily encountered and generally recognized as inherent in the work of character provided for in the Contract.
- (4) Where there are duly approved construction drawings or any instruction issued by the implementing office during the term of Contract which involved extra cost.

### 12.1.4 Supplemental Agreement

A separate Supplemental Agreement may be entered into for all change orders and extra work orders if the aggregate amount exceeds 25% of the escalated original contract price. A Supplemental Agreement may likewise be entered into for works immediately beyond the project limits but are immediately abutting the project under the same terms and conditions as the original contract provided that it does not exceed 100% of the escalated original contract price less the cost of mobilization and provided further that funds are certified as available and subject to approval by the Employer.

### 12.1.1.5 Preparation and Submission of Variation Order

In claiming for any variation order, the Contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within 30 calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at the time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the Contractor for any claim. The preparation and submission of Change Orders, Extra Work Orders or Supplemental Agreements are as follows:

- (a) If the Engineer believes that Change Order, Extra Work Order or Supplemental Agreement should be issued, he shall prepare the proposed Order or Supplemental Agreement accompanied with the notices submitted by the Contractor, the plans therefore, his computations as to the

quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work needed of such Change Order, Extra Work Order or Supplemental Agreement, and shall submit the same to the Employer.

- (b) The Employer upon receipt of the proposed Change Order, Extra Work or Supplemental Agreement may send an inspectorate team to conduct an on-the-spot investigation to verify the need for the work to be prosecuted.
- (c) The Employer after being satisfied that such Change Order, Extra Work Order or Supplemental Agreement is justified and necessary, shall process and approve the plans, quantity, and unit cost of new items involved.

#### 12.1.1.5 Commencement of Varied Works and Payment

Under no circumstances shall the Contractor proceed to commence work under any Change Order, Extra Work Order or Supplemental Agreement unless it has been approved by the Employer or his duly authorized representative. Exceptions to the preceding rule are the following:

- (a) The Employer, shall, subject to the availability of funds, authorize the immediate start of work under any Change Order or Extra Work Order under any or all of the following conditions:
  - (i) In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or;
  - (ii) When time is of the essence;

Provided, however, that such approval is valid on work done up to the point where the cumulative increase in value of work on the Project which has not yet been duly and fully approved does not exceed five percent (5%) of the total original contract price or P500,000 whichever is less;

Provided, further, that immediately after the start of work, the corresponding Change/Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change/Extra Work Order may be made only after approval of the Employer.

- (b) For a Change/Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract price or original adjusted contract price, no work thereon may be commenced unless said Change/Extra Work Order has been approved by the Employer.

## **Clause 13.0 Variations and Adjustments**

### **13.4 Payment in Applicable Currencies**

Delete this sub-clause in its entirety and substitute by the Following:

All payments to the Contractor shall be computed first in Philippine Currency (Philippine Peso). Any amount to be billed by the Contractor for expenditures made in other currencies shall be converted to Philippine Pesos. For the purpose of such computation, the exchange rates provided under Clause 14.15 of the Conditions of Contract shall be used. If the Contractor desires to have a percentage of the amount paid to him in a foreign currency, he shall quote the desired percentage in the Bid.

The percentage which the Contractor breakdown in his Bid for conversion into a foreign currency shall be justified by a unit cost breakdown of major items of work showing both local and foreign components. This percentage shall be subject to negotiation between the Contractor and Employer. However, after acceptance by the employer, the percentage shall remain fixed throughout the duration of the contract provided further that to be entitled for payment in foreign currency(ies), the Contractor shall produce evidence of purchase and/or payment acceptable to the Employer attesting that they actually incurred such expenditures in foreign currency(ies).

#### **13.4.1 Rate of Exchange**

##### **Add Sub-Clause 13.4.1**

The Tender Bid Prices and the Contract Amount is required to be expressed in a single currency and shall be quoted or stated in Philippine currency. However, a Bidder who expects to incur a portion of the contract expenditures in foreign currency may specify in Appendix 2 to the Bid Form the total amount of the currency requirement, which he intends to be paid accordingly or alternatively in terms of such foreign currency. The Bidder shall also indicate the equivalent percentage of the total foreign currency requirement with respect to the total bid amount.

The rates of exchange for currency conversion to be used by the Bidder in the bid preparation shall be the selling rates for similar transactions prevailing on the date 28 days prior to the date of the Bid opening as published by the Bangko Sentral ng Pilipinas

The exchange rate for currency conversion to be use in the payment of the agreed amount to be paid in foreign currency, shall be based on the selling rates for similar transactions prevailing on the date 28 days prior to the date of the Bid opening as published by the Bangko Sentral ng Pilipinas up to the date of approval of the resolution of award. This exchange rate shall remain fixed throughout the contract duration.

## **Clause 14.0 Contract Price and Payment**



**14.4 Schedule of Payment**

Add the following Sub-Clauses 14.4.1 and 14.4.2:

**14.4.1 Payments to Contractor**

All payments to the Contractor by the Employer shall be made:

- (a) in the case of payments under Sub-Clause 13.7 expressed in the relevant amounts of foreign and local currencies listed in the Appendix to Bid;
- (b) in the case of payments for certain provisional sum items excluded from the Appendix to Bid, in the currencies and proportions applicable to these items at the time when the Engineer gives instructions for the work covered by these items to be carried out; and
- (c) in any other case, including Increase or Decrease of Costs under Sub-Clause 13.7 in the currencies and proportions stated in the Appendix to Bid as applicable to such payment provided that the proportions of currencies stated in the Appendix to Bid may from time to time upon the application of either party be varied as may be agreed upon.

**14.4.2 Payments to Employer**

All payments to the Employer by the Contractor including payments made by way of deduction or set-off shall be made:

- (a) in the case of credits under Sub-Clause 13.7 expressed in the relevant amounts of foreign and local currencies listed in the Appendix to Bid;
- (b) in the case of liquidated damages expressed in the relevant amounts for foreign and local currencies listed in the Appendix to Bid;
- (c) in the case of reimbursement of any sum previously expended by the Employer, in the currency in which the sum was expended by the Employer;
- (d) in any other case, in such currency as may be agreed upon.

If the part payable in a particular currency of any sum payable to the Contractor is wholly or partly insufficient to satisfy by way of deduction or set-off payment due to the Employer in that currency, in accordance with the provisions of this Sub-Clause, then the Employer may if he so desires make such deduction or set-off wholly or partly as the case may be from the balance of such sum payable in other currencies.

**14.15 Currencies of Payment**

Add the following paragraphs:

The amount in foreign currency which the Contractor quotes in this Tender shall be justified by a unit price breakdown. The

expected foreign currency requirements in his Bid on Appendix 2 to Bid Form shall include but not limited to the specific requirements mentioned below, subject however for negotiation, between the contractor and the employer.

- a. Expatriate staff and labor employed directly on the works;
- b. Social insurance, medical and other charges to such expatriate staff labor, and foreign travel expenses;
- c. Imported materials, both temporary and permanent, required for the Work;
- d. Depreciation and use of imported plants and equipment, including spare parts required for the Work;
- e. Foreign insurance and freight charges for imported materials, plant and equipment, including spare parts; and

Overhead expenses, fees and financial charges arising outside the Philippines in connection with the Works.

The equivalent percentage of the agreed amount to be paid in foreign currency shall be re-computed and shall be *adjusted proportionately to the fluctuation of the exchange rate used in the bid preparation and the exchange rate to be adopted in the payment* to the Contractor. This percentage shall remain fixed throughout the contract duration

## **Clause 15.0 Termination by Employer**

### **15.2 Termination by Employer**

Delete Sub-Clause 15.2 in its entirety and substitute the following:

The Employer shall rescind the Contract whenever the project has incurred a negative slippage of fifteen percent (15%) or more regardless whether or not previous warning have been issued to the Contractor to improve his performance, or for causes attributable to Contractor such as:

- (a) abandonment of the Contract Works;
- (b) fails to comply with Sub-Clause 4.2 or with notice under Sub- Clause 15.1
- (c) not actually having on the project site the minimum essential equipment listed on the Appendix to Bid necessary to prosecute the works in accordance with the approved work schedule, as required for the project before the twenty five percent (25%) of the Original

Contract Time expires;

- (d) not executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract;
- (e) neglect or refusal to remove materials or to perform a new work that has been rejected as defective or unsuitable;
- (f) sub-letting any part of the Contract Works without approval by the Employer; and
- (g) shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favor of his creditors or shall agree to carry out the Contract under a committee of inspectors of his creditors or, being a corporation, shall go into liquidation, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods.
- (h) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other of value as an inducement or reward

In any of these events or circumstances, the Employer may, upon giving 14 days notice to the Contractor, terminate the Contract and expel the Contractor from the site. However, in the case of sub-paragraph (g) and (h), the Employer may by notice terminate the contract immediately.

### 15.3 Valuation at Date of Termination

Delete the entire Sub-Clause and substitute the following:

After the issuance of the duly approved Notice of Rescission, the Engineer, the Commission on Audit (COA) auditor and the Contractor or their respective representatives shall immediately conduct jointly an inventory which shall cover the following:

- 1) the work accomplished by the original Contractor as of the date of receipt of the Notice of Rescission;
- 2) construction materials supplied to the Contractor by the Employer, if any;
- 3) materials that the Contractor has supplied and delivered at the project site, which the Employer or the new

Contractor may use for the completion of the project;

- 4) all claims for labor, materials, equipment rentals, etc. used in the project.

The inventory serve as the basis for determining any amount still due to the Contractor or for work accomplished in the project, as well as the amount of obligation payable by the Contractor to the Employer, if any.

After giving fourteen (14) days notice in writing to the Contractor, the Employer may enter upon the Site and the Works and expel the Contractor there from without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers of the Employer or those conferred on the Engineer by the Contract, and may by itself complete the Works or may employ any other Contractor to complete the Works.

The Employer or such other Contractor may use for such completion so much of the construction plant, temporary works and materials which have been deemed to be reserved for the construction and completion of the Works, under the provisions of the Contract, as it or they may think proper, and the Employer may at any time sell any of the said construction plant, temporary works and unused materials and apply the proceeds of the sale in or towards the satisfaction of any sum or which may become due to it from the Contractor under the Contract.

## **Clause 16.0 Suspension and Termination by Contractor**

### **16.2 Termination By Contractor**

Add the following paragraphs:

- (g) Or failing to avoid a complete stoppage of the Works for a continuous period of more than three (3) months through no act or fault of the Contractor, or
- (h) Failure of the Employer to deliver, within reasonable time, the necessary right-of-way, materials and supplies, it is obligated to furnish under the terms of the Contract, or
- (i) Adverse peace and order situation at the Site, as certified in writing by the Philippine National Police (PNP) having responsibility over the area of interest and confirmed in writing by the Department of Interior and Local Government (DILG) Regional director, makes it impossible to work

### **16.4 Inventory and Valuation Payment on Termination**

Add the following as final paragraphs:

Upon the issuance of the duly approved Notice of Termination of the Contract, an inventory should be jointly conducted by the Engineer, the Commission on Audit (COA) auditor and the Contractor or their respective representatives shall immediately conduct jointly an inventory adapting the same procedure under Sub-Clause 15.3

If the Contract is terminated, the Contractor shall be paid for all the Works certified by the Engineer as having been executed and accomplished prior to the date of termination at the rates and prices provided for in the Contract, plus the following:

- 1) The amounts payable in respect of any preliminary items insofar as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the Engineer of any such items of the work or service comprised therein which has been partially carried out or performed.
- 2) The cost of materials or goods reasonable ordered for the Permanent Works or Temporary Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the employer upon such payments being made by it).
- 3) The reasonable cost of removal of the Construction Plant and the return thereof to the Contractor's plant site.

Provided always that against any payment due from the Employer under this clause, the Employer shall be entitled to be credited with any outstanding balance due from the Contractor for advances in respect of Construction Plant and materials, and any sum previously paid by the Employer to the Contractor in respect of the execution of the Work

## **Clause 17.0 Risk and Responsibility**

### **17.5 Intellectual and Industrial Property Rights**

Add the following last paragraph to this Sub-Clause:

The Contractor's prices are to include all royalties and cost arising from patents, trademarks and copyrights in any way involve in the Works.

## **Clause 18.0 Insurance**

### **18.2 Insurance of Works and Contractor's Equipment**

Add the following paragraphs:

The insurance shall be a Contractor's All Risk's Policy with the Government Service Insurance System or (GSIS) with an Insurance company acceptable to the Employer, which shall be already in effect before the Contractor commences the execution of the Works

### **18.3 Insurance against Injury to Persons and damage to property**

Add the following paragraphs:

The insurance shall be with the Government Service Insurance System or (GSIS) with an Insurance company acceptable to the Employer, which shall be already in effect before the Contractor commences the execution of the Works

## **Following Clause 21.0 shall be Added**

## **Clause 21.0 Taxation**

### **21.1 General Taxation**

Notwithstanding the following taxation provisions stated herein, all are subject to Philippine Laws and the Exchange of Note between and Governments of the Republic of the Philippines and Japan in connection with the Project.

### **21.2 Foreign Taxation, Duties, Levies and other Charges**

The unit prices bid by the Contractor shall include all taxes, duties, levies and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's equipment, Plant, materials, spare parts and supplies to be used on, or furnished under the Contract and on the services performed under the Contract.

### **21.3 Local Taxation, Duties, Levies and other Charges**

The unit prices bid by the Contractor shall include all custom duties, import duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulations in being as of the date 30 days prior to the closing date for submission of bids in the Employers Country on the Contractor's equipment, plant, materials and supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the

services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's Country on profits made by him in respect of the Contract.

**21.4 Income Taxes on Staff**

Contractor's Staff and labor will be liable to pay personal income taxes in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations

**21.5 Duties on Contractor's Equipment**

Notwithstanding the provisions of Sub-Clause 21.2, Contractor's Equipment, including essential spare parts thereof, imported by the Contractor shall be temporarily exempted from import duties and taxes upon initial importation, provided the Contractor shall post with the Customs Authorities at the port of entry an approved re-export bond or bank guarantee, valid until the time of completion of the Contract plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, callable in the event that the Contractor's Equipment is not re-exported from the Philippines on completion of the Contract. A copy of the bond or bank guarantee endorsed by the Customs Authorities shall be provided by the Contractor to the Employer upon importation on individual items of Contractor's Equipment and spare parts. Upon re-export of individual items of Contractor's Equipment or spare parts, or upon completion of the Contract, the contractor shall prepare, for approval by Customs Authorities, an assessment of the residual value of Contractor's Equipment and spare parts to be re-exported, based on the depreciation scale(s) and other criteria used by the Customs Bureau for such purposes under the provisions of applicable law. Import duties shall be due and payable to the Customs Bureau by the Contractor on.

- (a) the difference between the initial imported value and the residual value of Contractor's Equipment and spare parts to be re-exported; and
- (b) on the initial imported value of that Contractor's Equipment and spare parts remaining in the Philippines after completion of the Contract.

Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

## 21.6 Import Duties and Related Taxes on Materials

Importation of materials for this Project shall be subject to duties and taxation according to the prevailing laws and regulations of the Philippines, payable by the Contractors at the time of importation

## Following Clause 22.0 shall be Added

### Clause 22.0 Miscellaneous

#### 22.1 Bribes

If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favor or disfavor to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and expel the Contractor and the provisions of Clause 15.1 hereof shall apply as if such entry and expulsion had been made pursuant to that Clause.

#### 22.2 Employer's Right to Terminate Contract

The Employer may at any time terminate the Contract by giving at least thirty (30) Calendar Days written notice to the Contractor, with a copy to the Engineer. For any of the following reasons:

- (a) failure to acquire the necessary right-of-way;
- (b) non-availability of cash to support the Contract;
- (c) occurrence of Employer's Risks such as those enumerated in Sub-Clause 17.3.

In the event of such termination, the Contractor shall proceed as provided in Sub-Clause 16.3 shall be paid by the Employer as provided in Sub-Clause 15.4.

#### 22.3 Restrictions on Eligibility

- (a) Any Plant or services which will be incorporated in or required for the Works, as well as the Contractor's Equipment and other supplies, shall have its origin in eligible source countries.
- (b) For the purposes of this Clause, "origin" means the place where the equipment is produced, or manufactures, or from which the services are provided.



- (d) The origin of Goods and Services is distinct from the Nationality of the Supplier.

**22.4 Joint and Several Liability**

If the Contractor is a Joint Venture of two or more persons, all such person shall be joint and severally bound to the Employer for the fulfillment of the terms of the Contract and shall designate one of the persons to act as a leader with authority to bind the joint venture and shall not be altered without the prior consent of the Employer.

**22.5 Details to be Confidential**

The Contractor shall treat the details of the Contract as private and confidential, save insofar as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without previous consent in writing of the Employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract, the same shall be referred to the decision of the Employer whose award shall be final.

**22.6 Contract Confidentiality**

The Contract and everything connected hereto shall be treated by the Contractor as private and confidential. The written consent of the Employer and subject to such conditions that the Employer may prescribe

**22.7 Metrication**

The Work has been designed in the Metric System, unless otherwise specifically excepted and equipment, materials, standard and drawings required for the execution and completion of the Work shall be supplied in metric units in accordance with the International Standard.

The unit of measurement for the project shall be those indicated in the Method of Measurement and Payment of the individual item shown in the Bill of Quantities and as described in the Technical Specifications and/or Special Provisions

**22.8 Alternative Materials**

In cases where any prescribed materials are not readily obtainable in the market, the Contractor may request in writing to the Engineer to use alternative materials which may be acceptable and approved by the Employer to avoid a delay in the performance of the Contractor's obligation under the Contract, provided that such substitute materials are of equal or better quality.

**22.9 Dangerous Materials**

The Contractor and its Sub-contractors shall convey, store and make use of all explosives, petroleum, acetylene, carbide and other similar dangerous materials provided by them for use in or on the Works in strict accordance with the provision of laws, orders, ordinances and regulations that are in effect at the Site or may be issued from time to time by the Government

**22.10 Government Officials/ Engineers not Personally Liable**

No member or officer of the Employer or the Engineer or his representative nor any of their respective staffs or their employees shall in any way be personally bound or liable for the acts or obligations to the Employer under the Contract they shall not be answerable for any default or omissions, observance or performance of any of the acts, matters or things which are contained herein; it being understood that in all such matters they act solely as agents and representatives of the Employer

**22.11 Inducement, Rewards and/or Gifts**

The Employer shall be entitled to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination or shall be entitled to recover from the Contractor the amount of any loss the Employer may have sustained, if the Contractor shall have offered or given or agreed to give any person any consideration of any kind as an inducement or reward or gift for doing forbearing to do or for having done or forborne to do any action in relation to obtaining or showing or forbearing to show favor or disfavor to any person in relation to this Contract or any other Contract with the Employer

**22.12 Removal, Relocation and Inclusion of Public Utilities and Site Facilities**

Where removal, relocation and inclusion of public utilities and site facilities are essential to the Work under Contract, such works are not to be executed by the Contractor but by their respective owners, the Contractor is expected to abide to the following stipulations:

- (1) The Work Programme to be submitted, as required by Sub-Clause 8.3 of the Conditions of Contract, shall be the basis, reference or the factor that will determine any negotiations or working arrangements to be entered into the Employer with the particular owners of water supply, communications, electrical and gas supply and telephone utilities, railway tracks, drainage and site facilities, such

as ports, piers, existing reclaimed area, etc. It is therefore essential that the Contractor provide the details of the priorities and sequences of his construction activities and operations and any particulars that may be required by the Engineer on the said programme.

- (2) He shall not commence on any portion or section of the Site or Works that may affect or disturb the functions of the original conditions of the public utilities and site facilities unless a written permission has been first secured from the Engineer.
- (3) No expense shall be borne by the Contractor in connection with the removal, relocation or inclusion of public utilities and site facilities save for the purpose of payment of any claims from their owners as a result or damages or injuries caused by him or any of his Sub-contractor

## 22.13 Work for Authorities

The Contractor shall comply with all the requirements and shall be responsible for all measures associated with:

(a) Special arrangements with Local Government Officials

The Contractor shall make all necessary arrangements with the Local Officials regarding work to be carried out that may or may not affect any navigable channel and or Rivers and take all necessary precautions to avoid accidents, damage, delay or interference of any kind that may interrupt or disrupt navigable channels or affect river other operations. The Contractor shall have no right or claim for compensation arising out of the obligations prescribed in this Clause.

(b) Special Arrangements with the Water District/Department

The Contractor shall make all necessary arrangements for the planning and coordination of work associated with the installation of water supply pipes and shall permit the installation of such pipes by other during the course of construction. The Contractor shall have no right or claim for compensation arising out of any obligation under this Clause.

(c) Special Arrangements with the National Telecommunications Commission (NTC) within the provinces of the project area or to the Nearest City

The Contractor shall be entirely responsible for ensuring that all his operations, installation of radio communication facilities and other provisions comply fully with the requirements of the National Telecommunications

Commission. The Contractor shall obtain all necessary permits/approvals required for his operation, type of radio equipment to be used which do not cause interference to airport, telecommunications, navigation equipment and radio stations transmitter facilities in the area. The Contractor shall have no right or claim for compensation arising out any obligation under this Clause.

#### 22.14 Load Restriction

The Contractor shall comply with the legal restrictions in the hauling of materials on public roads beyond the limits of the Project.

The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors, and in particular shall select routes, choose and use vehicles, and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and materials from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be caused to such highways and bridges.

Should it be found necessary for the Contractor to move one or more loads of constructional plant machinery or pre-constructed units, or parts of units of Work, over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall, before moving the load on to such highway or bridge, give notice to the Engineer of the weight and other particulars of the load to be moved and his proposals of protection or strengthening the said highway or bridge. Unless without fourteen days of the receipt of such notice the Engineer shall by counter-notice direct that such protection or strengthening is necessary, then the Contractor will carry out at his own expenses such proposals or any modification thereof that the Engineer shall require.

The Contractor shall bear all responsibility and liability for damages or injury resulting from his failure to abide by this provision except when such transport or passage is done by special written permission of the Owner. The Contractor shall be responsible for all damages caused by his hauling within the limits of the Work.

Any type of equipment of such weight or so loaded as to cause damage to drainage structures of any kind, or to any other type of construction, either constructed or previously constructed, will not be permitted to operate in any location where damage would be caused. No loads shall be permitted on a pavement or base before the expiration of the curing period.

**22.15 Fire Prevention and Control**

The Contractor shall obey all national, provincial, city, municipal and local fire laws and ordinances.

If fire occurs in the construction area of the Work, the entire project crew shall immediately be alerted and the Contractor shall dispatch and direct sufficient men and equipment, up to the total manpower and equipment available, for firefighting operations.

Free access shall be maintained at all times to fire hydrants and water valves.

**22.16 Drainage**

All portions of the Work shall be kept properly and adequately drained during construction. The Contractor shall be held responsible for all drainage which may be caused from inadequate or improper drainage of the Site of Works.

**22.17 Monthly Progress and Final Report**

The Contractor shall prepare the monthly progress reports and final report, including the monthly statements for billing purposes. The Engineer shall review these reports for submittal and appropriate action by the Employer. Ten (10) copies of the progress reports shall be submitted in order that all office/agencies concerned will each be furnished a copy. Additional copies shall be submitted upon request.

**22.18 Philippine Jurisdiction**

This Contract shall be deemed to be a Philippine contract and shall be governed and construed according to Philippine laws. The Philippine Court shall have exclusive jurisdiction to hear and determine all legal actions and proceeding in the event of any litigation arising out of the Contract.

The Contractor shall comply with all existing laws, Executive Orders, Administrative Orders, Letters of Implementation, rules and regulations issued or to be issued by competent agencies or authorities of the Philippine Government which may have particular application to the Contract.

This is the last page of the Conditions of Particular Application.