

**PROCUREMENT OF THE
INDUSTRIAL ALL RISKS POLICY OF THE
BASES CONVERSION DEVELOPMENT
AUTHORITY, SUBIC-CLARK-TARLAC
EXPRESSWAY (BCDA-SCTEX)**

For the Period

4:00 P.M. 1ST July 2012 to
4:00 P.M. 1ST July 2013

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INVITATION TO BID

REINSURANCE OF THE INDUSTRIAL ALL RISKS OF THE BASES CONVERSION DEVELOPMENT AUTHORITY, SUBIC-CLARK-TARLAC EXPRESSWAY (BCDA-SCTEX)

1. The *Government Service Insurance System (GSIS)*, through the *GSIS Corporate Budget for CY 2012* wishes to receive bids for the REINSURANCE OF THE INDUSTRIAL ALL RISKS OF THE BASES CONVERSION DEVELOPMENT AUTHORITY, SUBIC-CLARK-TARLAC EXPRESSWAY (BCDA-SCTEX) for the period from 1 July 2012 to 1 July 2013, with Total Sum Insured of Eighteen Billion Three Hundred Ten Million Eight Hundred Sixty Six Thousand Five Hundred Fifty Seven Pesos and 95/100 (PHP 18,310,866,557.95) with an Approved Budget for the Contract (ABC) of Thirty Two Million Seven Hundred Thirty Thousand Four Hundred Sixty One Pesos and 55/100 (PHP 32,730,461.55), with the following particulars:

Coverage	ABC (inclusive of 20% GSIS Commission)	Retention (%)	Facultative Reinsurance (%)
Industrial All Risk	PHP 32,730,461.55	10%	90 %

Bids received in excess of the ABC shall be automatically rejected at bid opening

2. Bidders should have completed, within *two years* from the date of submission and receipt of bids, a contract similar to the Project. The description of an eligible bidder is contained in the Bidding Documents, particularly in Section II-Instructions to Bidders.
3. Bidding will be conducted through open competitive bidding procedures using a non-discretionary “pass/fail” criterion as specified in the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, otherwise known as the “Government Procurement Reform Act”.

Bidding is open to all interested bidders, whether local or foreign, subject to the conditions for eligibility provided in the IRR of RA 9184.

4. Interested bidders may obtain further information and inspect the Bidding Documents at the Secretariat Head, Claims Department, Level 3, GSIS Building, Financial Center, Roxas Blvd., Pasay City, during office hours.

A complete set of Bidding Documents may be purchased by interested Bidders from the date of publication of this ITB at the above address and upon payment of a non-refundable fee for the Bidding Documents in the amount of *Php7,000.00*.

It may also be downloaded free of charge from the website of the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the Procuring Entity. However, the Underwriting Information *shall only be available to Bidders who have paid the non-refundable fee of Php7,000.00* not later than the submission of their bids.

5. The *GSIS* will hold a Pre-Bid Conference on 11 April 2012 (10:00 am) *at the Multi-Purpose Hall, Level 3, GSIS Building, Financial Center, Roxas Blvd., Pasay City*, which shall be open only to all parties who have purchased the Bidding Documents.
6. Bids must be delivered to the address below on or before 24 May 2012 (9:30am) *at the Multi-Purpose Hall, Level 3, GSIS Building, Financial Center, Roxas Blvd., Pasay City*. All Bids must be accompanied by a bid security in any of the acceptable forms and in the amount stated in **ITB** Clause 18.

Bid opening shall be on 24 May 2012 (10:00 am) at the *Multi-Purpose Hall, Level 3, GSIS Building, Financial Center, Roxas Blvd., Pasay City*. Bids will be opened in the presence of the Bidders or their representatives who choose to attend. Late bids shall not be accepted.

7. The *GSIS* encourages that the eligibility requirements be submitted before the deadline of submission of bids to allow the GIBAC enough time to inform the concerned bidders about any deficiencies on the requirements and for the bidders to correct the same before the deadline for the submission of bids.
8. The *GSIS* reserves the right to accept or reject any bid, to annul the bidding process, and to reject all bids at any time prior to contract award, without thereby incurring any liability to the affected bidder or bidders.
9. For further information, please refer to:

Catherine D. Sotto
Secretariat Head, GSIS Insurance Bids and Awards Committee
Claims Department, Insurance Group, Level 3, GSIS Building
Financial Center, Roxas Blvd., Pasay City
Contact no. 479-3654
Email: gibac@gsis.gov.ph

Juan Philip S. Evangelista
Chairperson
GSIS Insurance Bids and Awards Committee

Section II. Instructions to Bidders

A. General

1. Scope of Bid

- 1.1. The procuring entity named in the **BDS** (hereinafter referred to as the “Procuring Entity”) wishes to receive bids for supply and delivery of the goods as described in Section VI. Technical Specifications (hereinafter referred to as the “Goods”).
- 1.2. The name, identification, and number of lots specific to this bidding are provided in the **BDS**. The contracting strategy and basis of evaluation of lots is described in ITB Clause 28.

2. Source of Funds

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

3. Corrupt, Fraudulent, Collusive, and Coercive Practices

- 3.1. Unless otherwise specified in the **BDS**, the Procuring Entity as well as the bidders and suppliers shall observe the highest standard of ethics during the procurement and execution of the contract. In pursuance of this policy, the Procuring Entity:
 - (a) defines, for purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in RA 3019.
 - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels

and to deprive the Procuring Entity of the benefits of free and open competition.

(iii) “collusive practices” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.

(iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;

(v) “obstructive practice” is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or

(bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

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

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

4. Conflict of Interest

4.1. All Bidders found to have conflicting interests shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate

administrative, civil, and criminal sanctions. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (f) below:

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

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

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

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

5. Eligible Bidders

- 5.1. Unless otherwise provided in the **BDS**, the following persons shall be eligible to participate in this bidding:
- (a) Duly licensed Filipino citizens/sole proprietorships;
 - (b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
 - (c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
 - (d) Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines; and
 - (e) Unless otherwise provided in the **BDS**, persons/entities forming themselves into a JV, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%).
- 5.2. Foreign bidders may be eligible to participate when any of the following circumstances exist, as specified in the **BDS**:
- (a) When a Treaty or International or Executive Agreement as provided in Section 4 of the RA 9184 and its IRR allow foreign bidders to participate;
 - (b) Citizens, corporations, or associations of a country, included in the list issued by the GPPB, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations, or associations of the Philippines;
 - (c) When the Goods sought to be procured are not available from local suppliers; or
 - (d) When there is a need to prevent situations that defeat competition or restrain trade.
- 5.3. Government corporate entities may be eligible to participate only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the GOP or the Procuring Entity.
- 5.4. Unless otherwise provided in the **BDS**, the Bidder must have completed at least one contract similar to the Project the value of which, adjusted to current prices using the National Statistics Office consumer price index, must be at least equivalent to a percentage of the ABC stated in the **BDS**.

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

- 5.5. The Bidder must submit a computation of its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial Bank to extend a credit line in its favor if awarded the contract for this Project (CLC).

The NFCC, computed using the following formula, must be at least equal to the ABC to be bid:

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

Where:

K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years.

The CLC must be at least equal to ten percent (10%) of the ABC for this Project. If issued by a foreign bank, it shall be confirmed or authenticated by a Universal or Commercial Bank. In the case of local government units (LGUs), the Bidder may also submit CLC from other banks certified by the *Bangko Sentral ng Pilipinas* (BSP) as authorized to issue such financial instrument.

6. Bidder's Responsibilities

- 6.1. The Bidder or its duly authorized representative shall submit a sworn statement in the form prescribed in Section VII Bidding Forms as required in **ITB** Clause 12.1(b)(iii).
- 6.2. The Bidder is responsible for the following:
- (a) Having taken steps to carefully examine all of the Bidding Documents;
 - (b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
 - (c) Having made an estimate of the facilities available and needed for the contract to be bid, if any;
 - (d) Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin(s) as provided under **ITB** Clause 0.
- a. Ensuring that it is not "blacklisted" or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;

- b. Ensuring that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- c. Authorizing the Head of the Procuring Entity or its duly authorized representative/s to verify all the documents submitted;
- d. Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture;
- e. Complying with the disclosure provision under Section 47 of RA 9184 in relation to other provisions of RA 3019; and
- f. Complying with existing labor laws and standards, in the case of procurement of services.

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

- 6.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents.
- 6.4 It shall be the sole responsibility of the Bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of this Project; (b) climatic conditions; (c) transportation facilities; and (d) other factors that may affect the cost, duration, and execution or implementation of this Project.
- 6.5 The Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity.
- 6.6 The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 6.7 Before submitting their bids, the Bidder is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect this Project in any way.
- 6.8 The Bidder should note that the Procuring Entity will accept bids only from those that have paid the nonrefundable fee for the Bidding Documents at the office indicated in the Invitation to Bid.

7. Origin of Goods

Unless otherwise indicated in the **BDS**, there is no restriction on the origin of goods other than those prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, subject to **ITB** Clause 0.

8. Subcontracts

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

B. Contents of Bidding Documents

9. Pre-Bid Conference

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

(b) *The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid, or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids, as specified in the **BDS**.*
- 9.2 Bidders are encouraged to attend the pre-bid conference to ensure that they fully understand the Procuring Entity's requirements. Non-attendance of the Bidder will in no way prejudice its bid; however, the Bidder is expected to know the changes and/or amendments to the Bidding Documents discussed during the pre-bid conference.
- 9.3 Any statement made at the pre-bid conference shall not modify the terms of the Bidding Documents unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin.

10. Clarification and Amendment of Bidding Documents

- 10.1 Bidders who have purchased the Bidding Documents may request for clarification on any part of the Bidding Documents for an interpretation. Such request must be in writing and submitted to the Procuring Entity at the address indicated in the **BDS** at least ten (10) calendar days before the deadline set for the submission and receipt of bids.
- 10.2 Supplemental/Bid Bulletins may be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the Bidding Documents shall be identified as an amendment.
- 10.3 Any Supplemental/Bid Bulletin issued by the BAC shall also be posted on the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the Procuring Entity concerned, if available. It shall be the responsibility of all Bidders who secure the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, Bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with **ITB** Clause 23.

C. Preparation of Bids

11. Language of Bid

The bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Procuring Entity, shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation in English certified by the appropriate embassy or consulate in the Philippines, in which case the English translation shall govern for purposes of interpretation of the bid.

12. Documents Comprising the Bid: Eligibility and Technical Components

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

(a) Eligibility Documents –

Class "A" Documents:

- (i) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration as stated in the **BDS**;
- (ii) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located;

- (iii) Statement of all its ongoing and completed government and private contracts within the period stated in the **BDS**, including contracts awarded but not yet started, if any. The statement shall include, for each contract, the following:
 - (iii.1) name of the contract;
 - (iii.2) date of the contract;
 - (iii.3) kinds of Goods;
 - (iii.4) amount of contract and value of outstanding contracts;
 - (iii.5) date of delivery; and
 - (iii.6) end user's acceptance or official receipt(s) issued for the contract, if completed.
- (iv) Audited financial statements, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission;
- (v) NFCC computation or CLC in accordance with **ITB** Clause 5.5; and

Class "B" Document:

- (vi) If applicable, the JVA in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.
- (b) Technical Documents –
- (i) Bid security in accordance with **ITB** Clause 18. If the Bidder opts to submit the bid security in the form of:
 - (i.1) a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or
 - (i.2) a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;
 - (ii) Conformity with technical specifications, as enumerated and specified in Sections VI and VII of the Bidding Documents; and
 - (iii) Sworn statement in accordance with Section 25.2(a)(iv) of the IRR of RA 9184 and using the form prescribed in Section VII. Bidding Forms.

13. Documents Comprising the Bid: Financial Component

- 13.1 Unless otherwise stated in the **BDS**, the financial component of the bid shall contain the following:
- (a) Financial Bid Form, which includes bid prices and the bill of quantities and the applicable Price Schedules, in accordance with **ITB** Clauses 0 and 0;
 - (b) If the Bidder claims preference as a Domestic Bidder or Domestic Entity, a certification from the DTI, SEC, or CDA issued in accordance with **ITB** Clause 27, unless otherwise provided in the **BDS**; and
 - (c) Any other document related to the financial component of the bid as stated in the **BDS**.
- 13.2 (a) Unless otherwise stated in the **BDS**, all bids that exceed the ABC shall not be accepted.
- (b) Unless otherwise indicated in the **BDS**, for foreign-funded procurement, a ceiling may be applied to bid prices provided the following conditions are met:
- (i) Bidding Documents are obtainable free of charge on a freely accessible website. If payment of Bidding Documents is required by the procuring entity, payment could be made upon the submission of bids.
 - (ii) The procuring entity has procedures in place to ensure that the ABC is based on recent estimates made by the responsible unit of the procuring entity and that the estimates reflect the quality, supervision and risk and inflationary factors, as well as prevailing market prices, associated with the types of works or goods to be procured.
 - (iii) The procuring entity has trained cost estimators on estimating prices and analyzing bid variances.
 - (iv) The procuring entity has established a system to monitor and report bid prices relative to ABC and engineer's/procuring entity's estimate.
 - (v) The procuring entity has established a system to monitor and report bid prices relative to ABC and procuring entity's estimate. The procuring entity has established a monitoring and evaluation system for contract implementation to provide a feedback on actual total costs of goods and works.

14. Alternative Bids

Alternative Bids shall be rejected. For this purpose, alternative bid is an offer made by a Bidder in addition or as a substitute to its original bid which may be included as part of its original bid or submitted separately therewith for purposes of bidding. A bid with options is considered an alternative bid regardless of whether said bid proposal is contained in a single envelope or submitted in two (2) or more separate bid envelopes.

15. Bid Prices

15.1 The Bidder shall complete the appropriate Price Schedules included herein, stating the unit prices, total price per item, the total amount and the expected countries of origin of the Goods to be supplied under this Project.

15.2 The Bidder shall fill in rates and prices for all items of the Goods described in the Bill of Quantities. Bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, Bill of Quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Government.

15.3 The terms Ex Works (EXW), Cost, Insurance and Freight (CIF), Cost and Insurance Paid to (CIP), Delivered Duty Paid (DDP), and other trade terms used to describe the obligations of the parties, shall be governed by the rules prescribed in the current edition of the International Commercial Terms (INCOTERMS) published by the International Chamber of Commerce, Paris.

15.4 Prices indicated on the Price Schedule shall be entered separately in the following manner:

(a) For Goods offered from within the Procuring Entity's country:

(i) The price of the Goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable:

(i.1) on the components and raw material used in the manufacture or assembly of Goods quoted ex works or ex factory; or

(i.2) on the previously imported Goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf and any Procuring Entity country sales and other taxes which will be payable on the Goods if the contract is awarded.

(ii) The price for inland transportation, insurance, and other local costs incidental to delivery of the Goods to their final destination.

(iii) The price of other (incidental) services, if any, listed in the **BDS**.

(b) For Goods offered from abroad:

- (i) Unless otherwise stated in the **BDS**, the price of the Goods shall be quoted DDP with the place of destination in the Philippines as specified in the **BDS**. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible country. Similarly, the Bidder may obtain insurance services from any eligible source country.
- (ii) The price of other (incidental) services, if any, listed in the **BDS**.

15.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation or price escalation on any account. A bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to **ITB** Clause 24.

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

16. Bid Currencies

16.1 Prices shall be quoted in the following currencies:

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

16.2 If so allowed in accordance with **ITB** Clause 0, the Procuring Entity for purposes of bid evaluation and comparing the bid prices will convert the amounts in various currencies in which the bid price is expressed to Philippine Pesos at the foregoing exchange rates.

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

17. Bid Validity

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

- 17.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. The bid security described in **ITB** Clause 18 should also be extended corresponding to the extension of the bid validity period at the least. A Bidder may refuse the request without forfeiting its bid security, but his bid shall no longer be considered for further evaluation and award. A Bidder granting the request shall not be required or permitted to modify its bid.

18. Bid Security

- 18.1 The bid security in the amount stated in the **BDS** shall be equal to the percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Equal to Percentage of the ABC)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Two percent (2%)
(b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	
(c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)
(d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

For biddings conducted by LGUs, the Bidder may also submit bid securities in the form of cashier's/manager's check, bank draft/guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial statement.

- 18.2 The bid security should be valid for the period specified in the **BDS**. Any bid not accompanied by an acceptable bid security shall be rejected by the Procuring Entity as non-responsive.
- 18.3 No bid securities shall be returned to bidders after the opening of bids and before contract signing, except to those that failed or declared as post-disqualified, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest. Without prejudice on its forfeiture, bid securities shall be returned only after the bidder with the Lowest Calculated and Responsive Bid has signed

the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in **ITB** Clause 0.

18.4 Upon signing and execution of the contract pursuant to **ITB** Clause 32, and the posting of the performance security pursuant to **ITB** Clause 33, the successful Bidder's bid security will be discharged, but in no case later than the bid security validity period as indicated in the **ITB** Clause 0.

18.5 The bid security may be forfeited:

(a) if a Bidder:

- (i) withdraws its bid during the period of bid validity specified in **ITB** Clause 17;
- (ii) does not accept the correction of errors pursuant to **ITB** Clause 28.3(b);
- (iii) fails to submit the requirements within the prescribed period or a finding against their veracity as stated in **ITB** Clause 0;
- (iv) submission of eligibility requirements containing false information or falsified documents;
- (v) submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding;
- (vi) allowing the use of one's name, or using the name of another for purposes of public bidding;
- (vii) withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the Lowest Calculated and Responsive Bid;
- (viii) refusal or failure to post the required performance security within the prescribed time;
- (ix) refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification;
- (x) any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
- (xi) failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful; or

(xii) all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.

(b) if the successful Bidder:

(i) fails to sign the contract in accordance with **ITB** Clause 32; or

(ii) fails to furnish performance security in accordance with **ITB** Clause 33.

19. Format and Signing of Bids

19.1 Bidders shall submit their bids through their duly authorized representative using the appropriate forms provided in Section VII. Bidding Forms. on or before the deadline specified in the **ITB** Clauses 21 in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under **ITB** Clause 12.1, and the second shall contain the financial component of the bid.

19.2 Forms as mentioned in **ITB** Clause 19.1 must be completed without any alterations to their format, and no substitute form shall be accepted. All blank spaces shall be filled in with the information requested.

19.3 The Bidder shall prepare and submit an original of the first and second envelopes as described in **ITB** Clauses 12 and 13. In the event of any discrepancy between the original and the copies, the original shall prevail.

19.4 The bid, except for unamended printed literature, shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative/s of the Bidder.

19.5 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

20. Sealing and Marking of Bids

20.1 Bidders shall enclose their original eligibility and technical documents described in **ITB** Clause 12 in one sealed envelope marked "ORIGINAL - TECHNICAL COMPONENT", and the original of their financial component in another sealed envelope marked "ORIGINAL - FINANCIAL COMPONENT", sealing them all in an outer envelope marked "ORIGINAL BID".

20.2 Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY NO. ____ - TECHNICAL COMPONENT" and "COPY NO. ____ - FINANCIAL COMPONENT" and the outer envelope as "COPY NO. ____", respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

- 20.3 The original and the number of copies of the Bid as indicated in the **BDS** shall be typed or written in indelible ink and shall be signed by the bidder or its duly authorized representative/s.
- 20.4 All envelopes shall:
- (a) contain the name of the contract to be bid in capital letters;
 - (b) bear the name and address of the Bidder in capital letters;
 - (c) be addressed to the Procuring Entity's BAC in accordance with **ITB** Clause 1.1;
 - (d) bear the specific identification of this bidding process indicated in the **ITB** Clause 1.2; and
 - (e) bear a warning "DO NOT OPEN BEFORE..." the date and time for the opening of bids, in accordance with **ITB** Clause 21.
- 20.5 If bids are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the bid.

D. Submission and Opening of Bids

21. Deadline for Submission of Bids

Bids must be received by the Procuring Entity's BAC at the address and on or before the date and time indicated in the **BDS**.

22. Late Bids

Any bid submitted after the deadline for submission and receipt of bids prescribed by the Procuring Entity, pursuant to **ITB** Clause 21, shall be declared "Late" and shall not be accepted by the Procuring Entity.

23. Modification and Withdrawal of Bids

23.1 The Bidder may modify its bid after it has been submitted; provided that the modification is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Bidder shall not be allowed to retrieve its original bid, but shall be allowed to submit another bid equally sealed, properly identified, linked to its original bid marked as "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

23.2 A Bidder may, through a Letter of Withdrawal, withdraw its bid after it has been submitted, for valid and justifiable reason; provided that the Letter of Withdrawal is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids.

- 23.3 Bids requested to be withdrawn in accordance with **ITB** Clause 0 shall be returned unopened to the Bidders. A Bidder may also express its intention not to participate in the bidding through a letter which should reach and be stamped by the BAC before the deadline for submission and receipt of bids. A Bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.
- 23.4 No bid may be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Financial Bid Form. Withdrawal of a bid during this interval shall result in the forfeiture of the Bidder's bid security, pursuant to **ITB** Clause 0, and the imposition of administrative, civil and criminal sanctions as prescribed by RA 9184 and its IRR.

24. Opening and Preliminary Examination of Bids

- 24.1 The BAC shall open the first bid envelopes of Bidders in public as specified in the **BDS** to determine each Bidder's compliance with the documents prescribed in **ITB** Clause 12. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed".
- 24.2 Unless otherwise specified in the **BDS**, immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible bidder whose first bid envelope was rated "passed". The second envelope of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC unless otherwise provided in **ITB** Clause 0, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.
- 24.3 Letters of withdrawal shall be read out and recorded during bid opening, and the envelope containing the corresponding withdrawn bid shall be returned to the Bidder unopened. If the withdrawing Bidder's representative is in attendance, the original bid and all copies thereof shall be returned to the representative during the bid opening. If the representative is not in attendance, the bid shall be returned unopened by registered mail. The Bidder may withdraw its bid prior to the deadline for the submission and receipt of bids, provided that the corresponding Letter of Withdrawal contains a valid authorization requesting for such withdrawal, subject to appropriate administrative sanctions.
- 24.4 If a Bidder has previously secured a certification from the Procuring Entity to the effect that it has previously submitted the above-enumerated Class "A"

Documents, the said certification may be submitted in lieu of the requirements enumerated in **ITB** Clause 12.1(a), items (i) to (v).

- 24.5 In the case of an eligible foreign Bidder as described in **ITB** Clause 5, the Class “A” Documents described in **ITB** Clause 12.1(a) may be substituted with the appropriate equivalent documents, if any, issued by the country of the foreign Bidder concerned.
- 24.6 Each partner of a joint venture agreement shall likewise submit the requirements in **ITB** Clauses 12.1(a)(i) and 12.1(a)(ii). Submission of documents required under **ITB** Clauses 12.1(a)(iii) to 12.1(a)(v) by any of the joint venture partners constitutes compliance.
- 24.7 A Bidder determined as “failed” has three (3) calendar days upon written notice or, if present at the time of bid opening, upon verbal notification, within which to file a request or motion for reconsideration with the BAC: Provided, however, that the motion for reconsideration shall not be granted if it is established that the finding of failure is due to the fault of the Bidder concerned: Provided, further, that the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. If a failed Bidder signifies his intent to file a motion for reconsideration, the BAC shall keep the bid envelopes of the said failed Bidder unopened and/or duly sealed until such time that the motion for reconsideration or protest has been resolved.
- 24.8 The Procuring Entity shall prepare the minutes of the proceedings of the bid opening that shall include, as a minimum: (a) names of Bidders, their bid price, bid security, findings of preliminary examination; and (b) attendance sheet. The BAC members shall sign the abstract of bids as read.

E. Evaluation and Comparison of Bids

25. Process to be Confidential

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

26. Clarification of Bids

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

27. Domestic Preference

- 27.1 Unless otherwise stated in the **BDS**, the Procuring Entity will grant a margin of preference for the purpose of comparison of bids in accordance with the following:
- (a) The preference shall be applied when (i) the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder, or (ii) the lowest bid offered by a non-Philippine national is lower than the lowest bid offered by a Domestic Entity.
 - (b) For evaluation purposes, the lowest Foreign Bid or the bid offered by a non-Philippine national shall be increased by fifteen percent (15%).
 - (c) In the event that (i) the lowest bid offered by a Domestic Entity does not exceed the lowest Foreign Bid as increased, or (ii) the lowest bid offered by a non-Philippine national as increased, then the Procuring Entity shall award the contract to the Domestic Bidder/Entity at the amount of the lowest Foreign Bid or the bid offered by a non-Philippine national, as the case may be.
 - (d) If the Domestic Entity/Bidder refuses to accept the award of contract at the amount of the Foreign Bid or bid offered by a non-Philippine national within two (2) calendar days from receipt of written advice from the BAC, the Procuring Entity shall award to the bidder offering the Foreign Bid or the non-Philippine national, as the case may be, subject to post-qualification and submission of all the documentary requirements under these Bidding Documents.
- 27.2 A Bidder may be granted preference as a Domestic Entity subject to the certification from the DTI (in case of sole proprietorships), SEC (in case of partnerships and corporations), or CDA (in case of cooperatives) that the (a) sole proprietor is a citizen of the Philippines or the partnership, corporation, cooperative, or association is duly organized under the laws of the Philippines with at least seventy five percent (75%) of its interest or outstanding capital stock belonging to citizens of the Philippines, (b) habitually established in business and habitually engaged in the manufacture or sale of the merchandise covered by his bid, and (c) the business has been in existence for at least five (5) consecutive years prior to the advertisement and/or posting of the Invitation to Bid for this Project.
- 27.3 A Bidder may be granted preference as a Domestic Bidder subject to the certification from the DTI that the Bidder is offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

28. Detailed Evaluation and Comparison of Bids

- 28.1 The Procuring Entity will undertake the detailed evaluation and comparison of bids which have passed the opening and preliminary examination of bids, pursuant to **ITB** Clause 24, in order to determine the Lowest Calculated Bid.
- 28.2 The Lowest Calculated Bid shall be determined in two steps:
- (a) The detailed evaluation of the financial component of the bids, to establish the correct calculated prices of the bids; and
 - (b) The ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the Lowest Calculated Bid.
- 28.3 The Procuring Entity's BAC shall immediately conduct a detailed evaluation of all bids rated "passed," using non-discretionary pass/fail criteria. Unless otherwise specified in the **BDS**, the BAC shall consider the following in the evaluation of bids:
- (a) Completeness of the bid. Unless the ITB specifically allows partial bids, bids not addressing or providing all of the required items in the Schedule of Requirements including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) for the said item would mean that it is being offered for free to the Procuring Entity; and
 - (b) Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications, if allowed in the **BDS**. Any adjustment shall be calculated in monetary terms to determine the calculated prices.
- 28.4 Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall not be considered, unless otherwise indicated in the **BDS**.
- 28.5 The Procuring Entity's evaluation of bids shall only be based on the bid price quoted in the Financial Bid Form.
- 28.6 Bids shall be evaluated on an equal footing to ensure fair competition. For this purpose, all bidders shall be required to include in their bids the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.

29. Post-Qualification

- 29.1 The Procuring Entity shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Lowest Calculated Bid (LCB) complies with and is responsive to all the requirements and conditions specified in **ITB** Clauses 5, 12, and 13.
- 29.2 Within a non-extendible period of three (3) calendar days from receipt by the bidder of the notice from the BAC that it submitted the LCB, the Bidder shall submit the following documentary requirements:
- (a) Tax clearance per Executive Order 398, Series of 2005;
 - (b) Latest income and business tax returns in the form specified in the **BDS**;
 - (c) Certificate of PhilGEPS Registration; and
 - (d) Other appropriate licenses and permits required by law and stated in the **BDS**.

Failure of the Bidder declared as Lowest Calculated Bid to duly submit the requirements under this Clause or a finding against the veracity of such shall be ground for forfeiture of the bid security and disqualification of the Bidder for award.

- 29.3 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted pursuant to **ITB** Clauses 12 and 13, as well as other information as the Procuring Entity deems necessary and appropriate, using a non-discretionary "pass/fail" criterion.
- 29.4 If the BAC determines that the Bidder with the Lowest Calculated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid, and recommend to the Head of the Procuring Entity the award of contract to the said Bidder at its submitted price or its calculated bid price, whichever is lower.
- 29.5 A negative determination shall result in rejection of the Bidder's Bid, in which event the Procuring Entity shall proceed to the next Lowest Calculated Bid to make a similar determination of that Bidder's capabilities to perform satisfactorily. If the second Bidder, however, fails the post qualification, the procedure for post qualification shall be repeated for the Bidder with the next Lowest Calculated Bid, and so on until the Lowest Calculated Responsive Bid is determined for contract award.
- 29.6 Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the BAC, the Head of the Procuring Entity shall approve or disapprove the said recommendation. In the case of GOCCs and GFIs, the period provided herein shall be fifteen (15) calendar days.

30. Reservation Clause

- 30.1 Notwithstanding the eligibility or post-qualification of a Bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said Bidder, or that there has been a change in the Bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility and bidding requirements, statements or documents, or any changes in the situation of the Bidder which will affect its capability to undertake the project so that it fails the preset eligibility or bid evaluation criteria, the Procuring Entity shall consider the said Bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract.
- 30.2 Based on the following grounds, the Procuring Entity reserves the right to reject any and all bids, declare a failure of bidding at any time prior to the contract award, or not to award the contract, without thereby incurring any liability, and make no assurance that a contract shall be entered into as a result of the bidding:
- (a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the Bidders, or if the collusion is between or among the bidders themselves, or between a Bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
 - (b) If the Procuring Entity's BAC is found to have failed in following the prescribed bidding procedures; or
 - (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP as follows:
 - (i) If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity;
 - (ii) If the project is no longer necessary as determined by the head of the procuring entity; and
 - (iii) If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.
- 30.3 In addition, the Procuring Entity may likewise declare a failure of bidding when:
- (a) No bids are received;
 - (b) All prospective Bidders are declared ineligible;

- (c) All bids fail to comply with all the bid requirements or fail post-qualification; or
- (d) The Bidder with the Lowest Calculated Responsive Bid (LCRB) refuses, without justifiable cause to accept the award of contract, and no award is made.

F. Award of Contract

31. Contract Award

- 31.1 Subject to **ITB** Clause 29, the Procuring Entity shall award the contract to the Bidder whose bid has been determined to be the LCRB.
- 31.2 Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Bidder in writing that its bid has been accepted, through a Notice of Award received personally or sent by registered mail or electronically, receipt of which must be confirmed in writing within two (2) days by the Bidder with the LCRB and submitted personally or sent by registered mail or electronically to the Procuring Entity.
- 31.3 Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:
 - (a) Submission of the valid JVA, if applicable, within ten (10) calendar days from receipt by the Bidder of the notice from the BAC that the Bidder has the LCRB;
 - (b) Posting of the performance security in accordance with **ITB** Clause 33;
 - (c) Signing of the contract as provided in **ITB** Clause 32; and
 - (d) Approval by higher authority, if required.
- 31.4 At the time of contract award, the Procuring Entity shall not increase or decrease the quantity of goods originally specified in Section VI. Technical Specifications.

32. Signing of the Contract

- 32.1 At the same time as the Procuring Entity notifies the successful Bidder that its bid has been accepted, the Procuring Entity shall send the Contract Form to the Bidder, which contract has been provided in the Bidding Documents, incorporating therein all agreements between the parties.
- 32.2 Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall post the required performance security and sign and date the contract and return it to the Procuring Entity.
- 32.3 The Procuring Entity shall enter into contract with the successful Bidder within the same ten (10) calendar day period provided that all the documentary requirements are complied with.

32.4 The following documents shall form part of the contract:

- (a) Contract Agreement;
- (b) Bidding Documents;
- (c) Winning bidder's bid, including the Technical and Financial Proposals, and all other documents/statements submitted;
- (d) Performance Security;
- (e) Credit line in accordance with **ITB** Clause 5.5, if applicable;
- (f) Notice of Award of Contract; and
- (g) Other contract documents that may be required by existing laws and/or specified in the **BDS**.

33. Performance Security

33.1 To guarantee the faithful performance by the winning Bidder of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the contract.

33.2 The performance security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity in an amount equal to the percentage of the total contract price in accordance with the following schedule:

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

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

34. Notice to Proceed

34.1 Within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority, the Procuring Entity shall issue its Notice to Proceed to the Bidder.

34.2 The contract effectivity date shall be provided in the Notice to Proceed by the Procuring Entity, which date shall not be later than seven (7) calendar days from the issuance of the Notice to Proceed.

III. Bid Data Sheet

ITB Clause	
1.1	The Procuring Entity is Government Service Insurance System (GSIS)
1.2	The lot(s) and reference is/are: Not applicable
2	The Funding Source is: The Government of the Philippines (GOP) through the GSIS Corporate Budget for the Year 2012 in the amount of THIRTY TWO MILLION SEVEN HUNDRED THIRTY THOUSAND FOUR HUNDRED SIXTY ONE PESOS AND 55/100 (Php32,730,461.55) The name of the Project is: REINSURANCE OF THE INDUSTRIAL ALL RISKS POLICY OF THE BASES CONVERSION DEVELOPMENT AUTHORITY, SUBIC-CLARK-TARLAC EXPRESSWAY (BCDDA-SCTEX)
3.1	No further instructions.
4.2	The bidder should also not be related to any of the members of the GSIS Board of Trustees or the GSIS Insurance Bids and Awards Committee (GIBAC), by consanguinity or affinity up to the third civil degree.
5.1	No further instructions.
5.2	Except c. When the Goods sought to be procured are not available from local suppliers
5.4	In view of the determination by the Procuring Entity that imposition of the provisions of Section 23.5.1.3 of the IRR of RA 9184 will likely result in the failure of bidding or monopoly that will defeat the purpose of public bidding, the Bidder should comply with the following requirements: The Bidder must have an existing similar policy/ies or has issued at least one such policy in the last two years or that its lead security has issued such a policy.
7	No further instructions.
8.1	Subcontracting is not allowed.
8.2	Not applicable.

9.1	The Procuring Entity will hold a pre-bid conference for this Project on April 11, 2012, 10:00 A.M. at the Multi-Purpose Hall, Level 3, GSIS Building, Financial Center, Roxas Blvd., Pasay City
10.1	<p>The Procuring Entity's address is:</p> <p style="padding-left: 40px;">Ms. Catherine D. Sotto Secretariat Head, GSIS Insurance Bids and Awards Committee Claims Department, Insurance Group, Level 3, GSIS Building Financial Center, Roxas Blvd., Pasay City Contact no. 479-3654 Email Address: gibac@gsis.gov.ph</p>
12.1 (a)	<p>Eligibility Documents</p> <p>The first envelope shall contain the following eligibility documents:</p> <ol style="list-style-type: none"> 1. Notarized Application for Eligibility 2. Secretary's Certificate to include list of directors and major stockholders with their no. of shares subscribed and paid-up 3. Certified true copy of a valid and current Insurance License/ Reinsurance License/ Reinsurance Broker's License issued by the Insurance Commission; or, for Foreign Bidders, a certified true copy of a valid and current foreign insurance license/ reinsurance license/ Broker's License issued by the relevant authority of its country of origin, and a Certified true copy of a valid and current authority to engage in the Reinsurance Business in the Philippines issued by the Insurance Commission or authority of its <u>resident agent</u> to represent the bidder. 4. List of Local Affiliate/Subsidiary Company, if any 5. Registration certificate from SEC, <u>or equivalent registration or incorporation certificate for foreign bidders.</u> 6. Valid and current Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located, if applicable 7. Taxpayer's Identification Number 8. Audited financial statements, showing, among others, the prospective bidder's total and current assets and liabilities, stamped "received" by the BIR or its duly accredited and authorized institutions for the past two (2) years from date of bid submission. <p>Only financial statements audited by Accredited External Auditors</p>

for Universal Banks of the Bangko Sentral ng Pilipinas (BSP) will be accepted.

In case of foreign insurance/reinsurance entity or broker, audited financial statements showing, among others, the prospective bidder's total and current assets and liabilities, for the past two (2) years duly received by the equivalent local regulator in the country of origin and duly acknowledged or authenticated by the Philippine Consulate therein.

9. For Non Life Insurance Companies and Reinsurance Companies, Annual Statement duly received by the Insurance Commission showing the following required minimum statutory net worth as of 31 December 2010 per Department Order 27 – 2006, to wit:

P350M (with at least P175M paid up capital (PUC)) if Non Life Insurance company (NLIC) is 100% Filipino-owned company

P600M (with at least P300M PUC) if NLIC is not more than 40% foreign-owned

P700M (with at least P350M PUC) if NLIC is 40% to 60% foreign-owned

P1B (with at least P500M PUC) if NLIC is more than 60% foreign-owned

P2B (with at least P1B PUC) for reinsurance companies

Above may be waived in view of compliance to Insurance Commission (IC) Circular No IMC 7 – 2006 (Adoption of RBC Framework for Non-Life Insurance Industry), and IMC 10 – 2006 (Integrating Compliance Standards for Fixed Capitalization under DO No 27-06 (IMC 27-06) and RBC Framework).

10. For Insurance Brokers or Reinsurance Brokers, Annual Statement duly received by the Insurance Commission showing the following required minimum statutory net worth as of 31 December 2010 per Insurance Memorandum Circular No 1 – 2006, to wit:

P10M for Insurance Brokers or Reinsurance Brokers

P25M for entities operating both as an Insurance Broker and Reinsurance Broker

P50M for new entrants as of 1 July 2006

In lieu of the submission of the foregoing eligibility documents, a Certification may be issued by the Chairman GSIS Insurance Bids and Awards Committee (GIBAC) provided that the bidder has maintained a current and updated file of the above documents with the GIBAC.

<p>12.1(b)</p>	<p>Technical Documents</p> <p>The first envelope shall likewise contain the following technical documents:</p> <ol style="list-style-type: none"> 1. Statement of at least one ongoing and at least one expired similar insurance/ reinsurance contract issued within the last two years with a separate list for unexpired contracts and contracts awarded but not yet started, if any, or Statement of at least one ongoing and at least one expired similar insurance/ reinsurance contract issued by its lead security within the last two years with a separate listing for unexpired contracts and contracts awarded but not yet started, if any. The statement shall include, for each contract, the following: <ul style="list-style-type: none"> - Name of the Assured/Reinsured - Period of cover of the Contract - Limit of the Cover - Premium - Certified true copy of the end user's acceptance or Official Receipts issued for the contract, if completed 2. Credit Line Commitment (CLC) in accordance with ITB Clause 5.5 or NFCC computation as follows: <p>The NFCC, computed using the following formula, must be at least equal to the ABC to be bid:</p> $\text{NFCC} = (\text{Current assets minus current liabilities}) (K)$ <p>Where:</p> <p>K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years.</p> <p>For Local companies, the current assets and current liabilities of a single shareholder holding more than 50% of its shares may be used in lieu of its own.</p> 3. Bid security in accordance with ITB Clause 18. If the Bidder opts to submit the bid security in the form of: <ol style="list-style-type: none"> a. Cash or cashier's/ manager's check issued by a Universal or Commercial Bank ; or b. A bank draft/ guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a
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	<p>Universal or Commercial Bank; or</p> <p>c. Surety Bond issued by any authorized insurance company and it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments. The surety bond shall be obtained from another insurance company other than the bidder. The sample wordings of the surety bond (Form 7).</p> <p>4. Conformity with technical specifications as enumerated and specified in Section VI of the Bidding Documents.</p> <p>5. Errors and Omission Policy – P 1M</p> <p>6. Certification, as of December 31, 2011 from the Insurance Commission, that it has no derogatory claims settlement record with the Claims Adjudication Division.</p> <p>7. The bidder must submit the following:</p> <p style="padding-left: 20px;"><u>a. Insurance & Reinsurance Companies</u></p> <ul style="list-style-type: none"> ▪ <u>If the terms and conditions are allowed under the bidder's reinsurance treaty agreement</u> 7.1a Sworn statement indicating the percentage retention, the amount retained and the Treaty limit. 7.2a Schedule of Treaty panel indicating the panel's respective shares. 7.3a Certification that its reinsurance placement in excess of its treaty facility is supported by securities rated at least "A" by the Standard & Poor's or AM Best and which securities are duly authorized to transact reinsurance business in the Philippines through their appointed resident agent. <p style="padding-left: 40px;">If the securities are domestic companies, the securities' rating is not required. Instead, a notarized undertaking that if the bidder qualifies as the lowest calculated bidder, it will submit the domestic securities' net retention or treaty showing maximum retention and panel of reinsurers and respective shares as a post-qualification requirement within fourteen (14) days from the declaration of the lowest calculated bidder.</p> <ul style="list-style-type: none"> ▪ <u>If the treaty terms and conditions are not allowed under the bidder's reinsurance treaty agreement</u> 7.4a Sworn statement indicating the company's net retention 7.5a Certification that its reinsurance placement in excess of its net retention is supported by securities rated at least
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“A” by the Standard & Poor’s and AM Best and which securities are duly authorized to transact reinsurance business in the Philippines through their appointed resident agent.

If the securities are domestic companies, the securities’ rating is not required. Instead, a notarized undertaking that if the bidder qualifies as the lowest calculated bidder, it will submit the domestic securities’ net retention or treaty showing maximum retention and panel of reinsurers and respective shares as a post-qualification requirement within fourteen (14) days from the declaration of the lowest calculated bidder.

b. Reinsurance Brokers

- 7.1b Certification that its reinsurance placement is supported by securities rated at least “A” by the Standard & Poor’s and AM Best and which securities are duly authorized to transact reinsurance business in the Philippines through their appointed resident agent. However, no Standard and Poor’s rating shall be required if the securities are domestic insurance companies.

If the securities are domestic companies, the securities’ rating is not required. Instead, a notarized undertaking that if the bidder qualifies as the lowest calculated bidder, it will submit the domestic securities’ net retention or treaty showing maximum retention and panel of treaty reinsurers and respective shares as a post-qualification requirement within fourteen (14) days from the opening of bids at the latest.

Certification by the bidder that the securities issued are either from an Authorized or “Unauthorized” Re-insurer.

8. Certification from the bidder that it will provide a lead line of at least 10% of the reinsured risk.
9. A notarized undertaking that the bidder, if appointed, shall furnish GSIS true copies of the Underwriters Acceptance Slips/ Cover Notes of all participating reinsurers included in the submitted written lines within 5 days from receipt of the award.

	<p>10. The bidder must certify that its reinsurance placement is in accordance with the Limits and Deductible provided under Section VI - Technical Specifications and shall remain as such for the duration of the Reinsurance contract.</p> <p>11. Sworn Statement in accordance with Section 25.2 (a)(iv) of the IRR of RA 9184 and using the form prescribed in Section VII. Bidding Forms including the duly notarized Secretary's Certificate providing the authorization to the signatory or its representative.</p> <p>12. The following <i>bidding documents</i>, signed on every page by the authorized signatory of the bidder, preferably in blue ink:</p> <ul style="list-style-type: none"> • Instructions to Bidders • Bid Data Sheet • General Conditions of Contract • Special Conditions of the Contract • Technical Requirements/Scope of Reinsurance • Supplemental/Bid Bulletins, if any <p>Correction of error/s made by the bidder must be initialed by the person or persons signing the bid.</p>
13.1	(b) If the Bidder claims preference as a Domestic Bidder or Domestic Entity, a certification from the DTI, SEC, or CDA issued in accordance with ITB Clause 27, unless otherwise provided in the BDS ;
13.1(b)	No further instructions.
13.2	The ABC is Thirty Two Million Seven Hundred Thirty Thousand Four Hundred Sixty One Pesos and 55/100 (Php32,730,461.55). Any bid with a financial component exceeding this amount shall not be accepted.
15.1	Bid Prices – The bidder shall complete the financial bid stating the bid for the contract If no price is indicated in a particular module, or specifying a “0” for a given module, the bid shall be considered unresponsive.
15.2	Not applicable
15.3	Not applicable
15.4	Not applicable.
16.1	Prices shall be quoted in Philippine Peso
16.3	Contract Price must be in Philippine Peso

17.1	Bids will be valid until One Hundred Twenty (120) Calendar days from the opening of Bids.
18.1	<p>The bid security shall be in the following amount:</p> <ol style="list-style-type: none"> 1. The amount of <i>2% of ABC</i> if bid security is in cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit; 2. The amount of <i>5% of ABC</i> if bid security is in Surety Bond to be issued by any authorized insurance company and it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments. The surety bond shall be obtained from another insurance company other than the bidder. Sample wordings of the surety bond (Form 7). 3. Any combination of the foregoing proportionate to the share of form with respect to total amount of security.
18.2	The bid security shall be valid until One Hundred Twenty (120) Calendar days from the opening of Bids.
20.3	Each Bidder shall submit 1 original and 2 copies of the first and second components of its bid.
21	<p>The address for submission of bids is:</p> <p style="text-align: center;">GIBAC Secretariat Multi-Purpose Hall, Level 3 GSIS Building, Financial Center, Roxas Blvd., Pasay City</p> <p>The deadline for submission of bids is May 24, 2012 at 9:30 AM</p>
24.1	<p>The place of bid opening is:</p> <p style="text-align: center;">Multi-Purpose Hall, Level 3 GSIS Building, Financial Center, Roxas Blvd., Pasay City</p> <p>The date and time of bid opening is May 24, 2012 at 10:00 AM</p>
24.2	No further instructions.
27.1	No further instructions.
28.3	The goods are grouped in a single lot and the lot shall not be divided into sub-lots for the purpose of bidding, evaluation, and contract award.

28.3(a)	Bid Prices – The bidder shall complete the financial bid stating the minimum deposit premium. If no price is indicated, or “0” is specified, the bid shall be considered unresponsive.
28.3(b)	Bid modification is not allowed.
28.4	No further instructions.
29.2(a)	No further instructions.
29.2(b)	<p>Bidders shall submit manually filed tax returns, or an equivalent document for foreign bidders issued by the appropriate government agency of the country of their origin.</p> <p><i>NOTE: The latest income and business tax returns (VAT or Percentage Tax Returns) are those within the last six months preceding the date of bid submission.</i></p>
29.2(d)	<p>Bidders shall also submit a certification of the list of securities supported by</p> <ol style="list-style-type: none"> 1. written lines to cover 100% of the risk in excess of the bidder’s retention within fourteen (14) days from the opening of bids 2. Treaty Slip showing maximum retention and panel of reinsurers and their respective share including full contractual wordings.

IV. General Conditions of the Contract

1. Definitions

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

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

- (n) "Verified Report" refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

2. Corrupt, Fraudulent, Collusive, and Coercive Practices

2.1 Unless otherwise provided in the **SCC**, the Procuring Entity as well as the bidders, contractors, or suppliers shall observe the highest standard of ethics during the procurement and execution of this Contract. In pursuance of this policy, the Procuring Entity:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019.
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
 - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings

or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or

(bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

2.2 Further the Funding Source, Borrower or Procuring Entity, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with any of the practices mentioned in **GCC** Clause 2.1(a).

3. Inspection and Audit by the Funding Source

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

4. Governing Law and Language

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

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

5. Notices

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

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

6 Scope of Contract

- 6.1 The GOODS and Related Services to be provided shall be as specified in Section VI Schedule of Requirements.
- 6.2 This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. Any additional requirements for the completion of this Contract shall be provided in the **SCC**.

7 Subcontracting

- 7.1 Subcontracting of any portion of the Goods, if allowed in the **BDS**, does not relieve the Supplier of any liability or obligation under this Contract. The Supplier will be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Supplier's own acts, defaults, or negligence, or those of its agents, servants or workmen.
- 7.2 Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the Procuring Entity.

8 Procuring Entity's Responsibilities

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

9 Prices

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

10 Payment

- 10.1 Payments shall be made only upon a certification by the Head of the Procuring Entity to the effect that the Goods have been rendered or delivered in accordance with the terms of this Contract and have been duly inspected and accepted. Except with the prior approval of the President no payment shall be made for services not yet rendered or for supplies and materials not yet delivered under this Contract. Ten percent (10%) of the amount of each payment shall be retained by the Procuring Entity to cover the Supplier's warranty obligations under this Contract as described in **GCC** Clause 17.
- 10.2 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and/or Services performed, and by documents submitted pursuant to the **SCC** provision for **GCC** Clause 6.2, and upon fulfillment of other obligations stipulated in this Contract.
- 10.3 Pursuant to **GCC** Clause 10.2, payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier.
- 10.4 Unless otherwise provided in the SCC, the currency in which payment is made to the Supplier under this Contract shall be in Philippine Pesos.

11 Advance Payment and Terms of Payment

- 11.1 Advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the Contract amount, unless otherwise directed by the President or in cases allowed under Annex "D" of RA 9184.
- 11.2 For Goods supplied from abroad, the terms of payment shall be as follows:
 - (a) On Contract Signature: Ten percent (10%) of the Contract Price shall be paid within sixty (60) days from signing of the Contract and upon submission of a claim and a bank guarantee for the equivalent amount valid until the Goods are delivered and in the form provided in Section VIII. Bidding Forms.
 - (b) On Delivery: Seventy percent (70%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of receipt of the Goods and upon submission of the documents (i) through (vi) specified in the **SCC** provision on Delivery and Documents.
 - (c) On Acceptance: The remaining twenty percent (20%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of submission of the acceptance and inspection certificate for the respective delivery issued by the Procuring Entity's authorized representative. In the event that no inspection or acceptance certificate is issued by the Procuring Entity's authorized representative within forty five (45) days of the date shown on the delivery receipt the Supplier shall have the right to claim payment of the remaining twenty percent (20%) subject to the Procuring Entity's own verification of the reason(s) for the failure to issue documents (vii) and (viii) as described in the **SCC** provision on Delivery and Documents.

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

12 Taxes and Duties

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

13 Performance Security

- 13.1 Within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity but in no case later than the signing of the contract by both parties, the successful Bidder shall furnish the performance security in any the forms prescribed in the **ITB** Clause 33.2.
- 13.2 The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.
- 13.3 The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.
- 13.4 The performance security may be released by the Procuring Entity and returned to the Supplier after the issuance of the Certificate of Final Acceptance subject to the following conditions:
- 13.4.1 There are no pending claims against the Supplier or the surety company filed by the Procuring Entity;
- 13.4.2 The Supplier has no pending claims for labor and materials filed against it; and
- 13.4.3 Other terms specified in the **SCC**.
- 13.5 In case of a reduction of the contract value, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

14 Use of Contract Documents and Information

- 14.1 The Supplier shall not, except for purposes of performing the obligations in this Contract, without the Procuring Entity's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

- 14.2 Any document, other than this Contract itself, enumerated in **GCC** Clause 14.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under this Contract if so required by the Procuring Entity.

15 Standards

The Goods provided under this Contract shall conform to the standards mentioned in the Section VII Technical Specifications; and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the institution concerned.

16 Inspection and Tests

- 16.1 The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. The **SCC** and Section VII Technical Specifications shall specify what inspections and/or tests the Procuring Entity requires and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 16.2 If applicable, the inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity. The Supplier shall provide the Procuring Entity with results of such inspections and tests.
- 16.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in this Clause provided that the Procuring Entity shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.
- 16.4 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to **GCC** Clause 5.
- 16.5 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, shall release the Supplier from any warranties or other obligations under this Contract.

17 Warranty

- 17.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by the Procuring Entity provides otherwise.
- 17.2 The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
- 17.3 In order to assure that manufacturing defects shall be corrected by the Supplier, a warranty shall be required from the Supplier for a minimum period specified in the **SCC**. The obligation for the warranty shall be covered by, at the Supplier's option, either retention money in an amount equivalent to at least ten percent (10%) of the final payment, or a special bank guarantee equivalent to at least ten percent (10%) of the Contract Price or other such amount if so specified in the **SCC**. The said amounts shall only be released after the lapse of the warranty period specified in the **SCC**; provided, however, that the Supplies delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.
- 17.4 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC** and with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to the Procuring Entity.
- 17.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in **GCC** Clause 17.4, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract and under the applicable law.

18 Delays in the Supplier's Performance

- 18.1 Delivery of the Goods and/or performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in Section VI Schedule of Requirements.
- 18.2 If at any time during the performance of this Contract, the Supplier or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and/or performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, and upon causes provided for under **GCC** Clause 22, the Procuring Entity shall evaluate the situation and may extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of Contract.
- 18.3 Except as provided under **GCC** Clause 22, a delay by the Supplier in the performance of its obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to **GCC** Clause 19, unless an extension of time is

agreed upon pursuant to **GCC** Clause 29 without the application of liquidated damages.

19 Liquidated Damages

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

20 Settlement of Disputes

- 20.1 If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 20.2 If after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 20.3 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under this Contract.
- 20.4 In the case of a dispute between the Procuring Entity and the Supplier, the dispute shall be resolved in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."
- 20.5 Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Supplier any monies due the Supplier.

21 Liability of the Supplier

- 21.1 The Supplier's liability under this Contract shall be as provided by the laws of the Republic of the Philippines, subject to additional provisions, if any, set forth in the **SCC**.
- 21.2 Except in cases of criminal negligence or willful misconduct, and in the case of infringement of patent rights, if applicable, the aggregate liability of the Supplier

to the Procuring Entity shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

22 Force Majeure

- 22.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that the Supplier's delay in performance or other failure to perform its obligations under the Contract is the result of a *force majeure*.
- 22.2 For purposes of this Contract the terms "*force majeure*" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or *force majeure* shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor. Such events may include, but not limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 22.3 If a *force majeure* situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the *force majeure*.

23 Termination for Default

- 23.1 The Procuring Entity shall terminate this Contract for default when any of the following conditions attends its implementation:
- 23.1.1 Outside of *force majeure*, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;
- 23.1.2 As a result of *force majeure*, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or
- 23.1.3 The Supplier fails to perform any other obligation under the Contract.
- 23.2 In the event the Procuring Entity terminates this Contract in whole or in part, for any of the reasons provided under **GCC** Clauses 23 to 26, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services.

However, the Supplier shall continue performance of this Contract to the extent not terminated.

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

24 Termination for Insolvency

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

25 Termination for Convenience

- 25.1 The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.
- 25.2 The Goods that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods not yet performed and/or ready for delivery, the Procuring Entity may elect:
- 25.2.1 to have any portion delivered and/or performed and paid at the contract terms and prices; and/or
- 25.2.2 to cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.
- 25.3 If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from this Contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity before recovery may be made.

26 Termination for Unlawful Acts

- 26.1 The Procuring Entity may terminate this Contract in case it is determined *prima facie* that the Supplier has engaged, before or during the implementation of this

Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

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

27 Procedures for Termination of Contracts

- 27.1 The following provisions shall govern the procedures for termination of this Contract:
 - 27.1.1 Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
 - 27.1.2 Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate this Contract only by a written notice to the Supplier conveying the termination of this Contract. The notice shall state:
 - 27.1.2.1 that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - 27.1.2.2 the extent of termination, whether in whole or in part;
 - 27.1.2.3 an instruction to the Supplier to show cause as to why this Contract should not be terminated; and
 - 27.1.2.4 special instructions of the Procuring Entity, if any.
 - 27.1.3 The Notice to Terminate shall be accompanied by a copy of the Verified Report;
 - 27.1.4 Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the Procuring Entity a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating this Contract;

- 27.1.5 The Procuring Entity may, at any time before receipt of the Supplier's verified position paper described in item (d) above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;
- 27.1.6 Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate;
- 27.1.7 The Head of the Procuring Entity may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Entity; and
- 27.1.8 The Supplier must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

28 Assignment of Rights

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

29 Contract Amendment

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

30 Application

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

V. Special Conditions of the Contract

GCC Clause	
1.1(a)	“The Contract” means the Facultative Reinsurance Treaty Slip signed by the GSIS and the Reinsurer including all its attachments, appendices as well as all the Bid documents which are deemed incorporated therein.
1.1(b)	“The Contract Price” means the reinsurance premium (net of Reinsurance Commission) to be paid by the GSIS to the Reinsurer under the Reinsurance Binder.
1.1(c)	“Goods” means the reinsurance cover.
1.1(g)	“The Procuring Entity” is <i>Government Service Insurance System</i>
1.1(i)	“The Supplier” means the winning bidder if it is a reinsurance company. If the winning bidder is a reinsurance broker, the Supplier means the reinsurance broker and/or its securities as appropriate.
1.1(j)	The Funding Source is The Government of the Philippines (GOP) through <i>GSIS Corporate Budget for the Year 2012</i> in the amount of <i>Thirty Two Million Seven Hundred Thirty Thousand Four Hundred Sixty One Pesos 55/100 (Php32,730,461.55)</i>
1.1(k)	Not applicable.
5.1	The Procuring Entity’s address for Notices is: Catherine D. Sotto Secretariat Head, GSIS Insurance Bids and Awards Committee Claims Department, Insurance Group, Level 3, GSIS Building Financial Center, Roxas Blvd., Pasay City Contact no. 479-3654 Email: gibac@gsis.gov.ph The Supplier’s address for Notices is:
6.1	The Goods and Related Services to be provided shall be specified in the Technical Specifications, in Section VI hereof.
6.2	Not Applicable
10	Full Payment of premium shall be made by the GSIS as stated in the Technical Specifications. Payment shall be made in Philippine Peso.
11	Not applicable.
15	Not applicable
16	Not applicable

17	Not applicable
21.1	All partners to the joint venture shall be jointly and severally liable to the Procuring Entity.
22	Not applicable
23.1(b)	Not applicable
25.2	Not applicable
25.3	Not applicable

Section VI. Technical Specifications

- ORIGINAL ASSURED** : Base s Co nve rsio n and De ve lo pme nt Autho rity
- REASSURED** : Go ve rnmme nt Se rvice In su ra nce Syste m
- ADDRESS** : BC DA Co rpo ra te Ctr., 2/F Bo nifa cio Te ch no lo gy
Ce nte r
31st co r. 2nd Ave nue , Bo nifa cio Glo ba l Ce nte r, Ta gu ig ,
MM
- SITUATION OF PROPERTIES** : Za mba le s, Ba ta an, Pa mpa nga & Ta ra c
- PERIOD OF INSURANCE** : Ju ly 01, 2012 to Ju ly 01, 2013
Bo th da ys inc lu sive
- ASSURED'S BUSINESS** : Hig hwa y & To ll Ope ra tio n
- INTEREST INSURED** : Sub ic -C la rk-Ta ra c Ex pre sswa y (SC TEX), To ll Ope ra tio n
Ce nte r Bu ild ing, To ll Pla za s/Bo oth s, Ma nu al To ll
Co lle ctio n Eq uip me nt & Ele ct ric al Syste m of Sub ic -
C la rk-Ta ra c Ex pre sswa y. Al l re al and pe rso na l
pe rty (o r pa rt o r sha re), fixe d, mo bi le o r in tra nsit o f
e ve ry kin d and de sc ri ptio n no t he re afte r ex cl ud ed
ei the r ow ne d, le as ed, hi re d o r bo rro we d by the
In su re d o r he ld in ca re , cu sto dy o r tru st o f the In su re d
o r fo r wh ic h the In su re d ha s as su me d le ga l
re sp on si bi li ty and /o r is le ga lly re sp on si ble wi th re sp ec t
to lo ss, de st ru ctio n o r da ma ge inc lu di ng the In su re d's
in te re st s in a ny su ch pe rty fo rmi ng pa rt o f a ny jo in t
ve ntu re o r pa rtn er sh ip o r si mi la r a rra nge me nt
wh er e by the In su re d sha re s in the co st o f lo ss o r
de st ru ctio n o r da ma ge to th at pe rty inc lu di ng
bu t no t li mi te d to bu ild ing s, eq uip me nt (inc lu di ng
mo bi le eq uip me nt), ma ch in e ry, pla nt, sto ck, va lu ab le
pa pe rs and re co rd s, and pe rty er ec te d, in st al le d
o r ac qu ir ed inc lu di ng pe rty wh il st in co ur se o f
co n st ru ctio n, re no va tio n, er ec tio n, in st al la tio n and
a sse m bly and e le ct ro nic da ta pr oc es si ng eq uip me nt
and me dia , pe rty in tra nsit.
- COVERAGE** : Su dde n and ac ci den ta l ph ys ic al de st ru ctio n o f o r
da ma ge to the pe rty mo re fu lly de sc ri be d in the
sc he du le he re to di re ct ly and wh ol ly at tri bu ta ble to

any cause, except as hereinafter excluded, occurring during the currency of the policy.

<u>DECLARED VALUES</u>	:	As per attached Schedule of Assets
<u>LIMITS OF LIABILITY</u>	:	As specified in the policy
<u>DEDUCTIBLE</u>	:	As per attached Schedule of Assets
<u>PREMIUM</u>	:	As Awarded
<u>DEDUCTIONS FROM REINSURANCE PREMIUM</u>	:	20% Reinsurance Commission
<u>REINSURER SHARE HEREON</u>	:	90% of 100% Total Sum Insured
<u>PREMIUM PAYMENT TERM</u>	:	Within One Hundred Twenty (120) days from the date of inception of the policy
<u>CONDITIONS</u>	:	As specified in the policy

PROPOSED POLICY WORDINGS

**BASES CONVERSION AND DEVELOPMENT
AUTHORITY**

INDUSTRIAL ALL RISKS POLICY

35. POLICY NO.: _____

PERIOD OF COVER: JUNE 15, 2012 TO JUNE 15, 2013

Whereas the Insured named in the Schedule has applied to the Insurer hereon (hereinafter called "the Insurer") for the insurance herein contained and has paid or agreed to pay the Premium in consideration for such insurance, the Insurer hereby agrees to compensate the Insured in respect of the happening during the Period of Insurance of any of the contingencies or events specified in this insurance.

Provided that this insurance shall be subject to the terms conditions and exceptions contained in or endorsed on the Policy and that the liability of the Insurers shall not exceed during any one period of insurance the Sums Insured as more specifically stated herein, unless agreed herein to the contrary.

GOVERNMENT SERVICE INSURANCE SYSTEM:

MA. IS CONCEPCION J. HERNANDEZ

OIC -Senior Vice President

Insurance Group

PO LIC Y SC HEDULE

- Insured** : Base s Con ve rsion and De ve lopment Autho rity
- Property Insured** : Sub ic -C la rk-Ta rla c Expre ssw ay (SC TEX), To ll Ope ra tion Ce nter Building, To ll Pla za s/Bo oths, Manual To ll Co lle ction Equipment & Ele ct ric al System of Sub ic -C la rk-Ta rla c Expre ssw ay. All real and pe rsonal pe rpe rty (o r pa rt o r sha re), fixe d, mo bile o r in tra nsit of eve ry kind and de scription no t he re afte r ex clude d eithe r owne d, le ase d, hire d o r bo rrowe d by the Insure d o r he ld in ca re, cu stody o r tru st of the Insure d o r fo r whic h the Insure d ha s assume d le gal re spo nsibility and/o r is le gally re spo nsible with re spe ct to lo ss, de struc tion o r da ma ge in cluding the Insure d's inte re sts in any su ch pe rpe rty fo rming pa rt of any jo int ve ntu re o r pa rtne rship o r si mi la r a rra nge me nt whe re by the Insure d sha re s in the co st of lo ss o r de struc tion o f o r da ma ge to that pe rpe rty in cluding bu t no t li mi te d to bu ildings, equ ipme nt (in cluding mo bile equ ipme nt), ma chine ry, pla nt, sto ck, va luab le pa pe rs and re co rds, and pe rpe rty ere cte d, in sta lle d o r ac quire d in cluding pe rpe rty whi lst in co urse of co nstruc tion, re no va tion, ere ction, in sta lla tion and a sse mby and ele ctro nic da ta pro ce ssing equ ipme nt and me dia, pe rpe rty in tra nsit.
- Cove rage** : Sudden and ac cide nta l ph ysic al de struc tion o f o r da ma ge to the pe rpe rty mo re fu lly de scribe d in the sche du le he re to di re ctly and whol ly a ttri bu ta ble to any ca use, ex ce pt as he re in afte r ex clude d, o ccu rring du ring the cu rre ncy of the po lic y.
- Busine ss** : To llwa y Ope ra tio ns
- Situa tion** : Po rtion of Za mbales, Ba ta an, Pa mpanga and Ta rla c
- Pe riod of Insura nce** : July 01, 2012 to July 01, 2013
- Sum Insure d** : Se ction 1 – Pro pe rty Da ma ge – Php 16,540,866,557.95
Se ction 2 – Busine ss Inte rrup tio n - Php 1,770,000,000.00
- Lim its of Lia bility** : The a moun ts se t ou t he re u nde r re pre se nt the Insure r's ma ximu m Lim its of Lia bility fo r any o ne lo ss o r se ries of lo sse s a ris ing ou t of any o ne o riginal so urce o r ca use, sub je ct to

any Sub-Limits of Liability specified elsewhere in the Policy and the Schedule:

Section 1 – Property Damage Php 16,540,866,557.95

Section 2 – Business Interruption - Php 1,770,000,000.00

Sub-Limits of Liability: Php 9,200,000,000.00 in respect of each and every occurrence due to earthquake shock damage.

Extension of Cover : Machinery Breakdown – Php 50,000,000.00
Schedule Equipment Floater – Php 8,241,212.66
Electronic Equipment Insurance – Php 98,478,146.07
Interest Insured: On various electronic data processing equipment and its computer paraphernalia, accessories, and cables and portable electronic equipment.
Basis of Indemnity: Replacement Value
Business Interruption - Php 1,770,000,000.00
On Fixed Costs including Debt Servicing and Increased Cost of Working arising out of interruption of the business by the loss or damage under the Section I – Property Damage of the Policy.

Indemnity Period : Twelve (12) months

Deductibles : Section I - Material Damage

In respect of loss or damage arising from storm, tempest, flood, typhoon, earthquake, subsidence and landslide:

2% of actual replacement value (as provided by the Insured) of the affected item subject to a minimum of Php 4,000,000.00. Affected item shall be defined as each of the 18 stretches of toll road further broken down to:

1. Building
2. Mechanical & Electrical, Non-Operational Equipment
3. Fixed Operational Equipment
4. Bridges, Overpasses and Crossings
5. Viaducts
6. Interchanges and Toll Plaza s
7. Roadways, Carriageways and Ancillary Items

Note: "Stretch of toll road" is defined as from one interchange to the next i.e. Mabalacat to Dolores.

Php 4,000,000.00 all other losses

Php 500,000.00 per occurrence for Machinery Breakdown

Php 500,000.00 per occurrence for Electronic Equipment Insurance

2.5% of the Sum Insured any one loss for Schedule Equipment Floater

Section II - Business Interruption

The first fifteen (15) days of Interruption

Other Conditions : Applicable to Material Damage

Increased Cost of Working

Adjustment of Premium

Auditor's Clause

Culverts, Driveways, Pavements, Roads, Bridges

Departmental Clause

Prevention of Access (Within 1Km radius from Insured's Property)

Subsidence, Ground Heave or Landslip

Waiver of Material Damage Proviso for losses falling below the Property Damage Deductible

Applicable to Material Damage and Business interruption

Nominated Loss Adjuster

Breach of Conditions and Warranties

Change of Interest

Claims Preparation Costs - Php 5,000,000 any one occurrence

Deductible

Documentary Stamp Tax Payment Warranty

Inadvertent Errors and Omissions including Claims Reporting

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons

Exclusion Clause

Law and Jurisdiction Clause

Natural Catastrophe
No Control
Other Insurance
Other Interests
Payment of Loss
Permits and Agreements
Political Risk Exclusion Clause
See page and/or Pollution and/or Contamination
War & Terrorism Exclusion
Lenders Special Conditions including but not limited to:

- Loss Payee Clause
- Waiver of Subrogation
- 30 Days Notice of Change/Cancellation Clause
- Notices and Communications
- Waiver of Contribution
- Waiver of Rights to Set-off or Counterclaim
- Multiple Insured Clause

SECTION I - PROPERTY DAMAGE

INSURING CLAUSE

Subject to the terms, conditions and exclusions hereinafter contained, this Section of this Policy insures the Property Insured as specified below against All Risks of Physical Loss, Destruction or Damage occurring during the Period of Insurance as stated in the Schedule.

PROPERTY INSURED

Subic-Clarke-Tarlac Expressway (SC/TEX), Toll Operation Center Building, Toll Plaza/s/Booths, Manual Toll Collection Equipment & Electrical System of Subic-Clarke-Tarlac Expressway. All real and personal property (or part or share), fixed, mobile or in transit of every kind and description not hereafter excluded either owned, leased, hired or borrowed by the Insured or held in care, custody or trust of the Insured or for which the Insured has assumed legal responsibility and/or is legally responsible with respect to loss, destruction or damage including the Insured's interests in any such property forming part of any joint venture or partnership or similar arrangement whereby the Insured shares in the cost of loss or destruction of or damage to that property including but not limited to buildings, equipment (including mobile equipment), machinery, plant, stock, valuable papers and records, and property erected, installed or acquired including property whilst in course of construction, renovation, erection, installation and assembly and electronic data processing equipment and media, property in transit.

Perils Covered : “All Risks” of physical loss or damage including, but not limited to :

- Fire and/or Lightning
- Wind storm, Storm, Typhoon, Hailstorm, Hurricane, Tornado
- Flood
- Earthquake
- Volcanic Eruption
- Explosion, Falling aircraft, Impact by road vehicles, Smoke
- Broad Water Damage, Water damage caused by the overflowing or bursting of water tanks, pipes or other apparatus, backing up of Sewers and Pipes
- Subsidence, Collapse, Landslide and/or Landslip
- Riot and Strike, Civil Commotion, Malicious Acts
- Mechanical or electrical derangement, failure or breakdown
- Electrical injury being the overheating of electrical and electronic equipment without actual ignition
- Bush Fire
- Spontaneous Combustion
- Sprinkler and related fire fighting apparatus leakage
- Tidal wave and tsunami

BASIS OF SETTLEMENT

In the event of any physical loss destruction or damage the basis of settlement under this section shall be as follows:

- For stocks, goods in process, finished goods, raw materials and supplies, the costs required to replace the lost or damaged material at the same premises by material of a similar kind and quality to that immediately before the loss.
- For plans, drawings records, data & programs for electronic and electromechanical data-processing equipment the cost of reproducing the same from duplicates or from original source material.
- For all other property the Reinstatement or Replacement

Reinstatement or Replacement shall mean:

- a. where an item is in whole affected, the rebuilding of a building or in the case of other property, its replacement by similar property, in either case to a condition equal to but not better or more extensive than its condition when new.

- b. where an item is partially affected, the repair of such damage and the restoration of the affected portion to a condition substantially the same as but not better or more extensive than its condition when new.

The replacement, repair or rebuilding may be carried out upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer not being thereby increased.

Where any property insured is damaged in part only. The liability of the Insurer shall not exceed the sum representing the cost, which the Insurer could have been called upon to pay by way of reinstatement value if such property had been totally destroyed.

G. PERILS EXCLUDED

This Section of this Policy does not insure against :-

1. Loss, destruction or damage caused by or resulting from moth, vermin, termites, or other insects, inherent vice, latent defect, wear, tear or gradual deterioration, contamination, rust, wet or dry rot, dampness of atmosphere, smog or extremes of temperature, or loss, destruction or damage by normal settling, shrinkage or expansion in building or foundation, unless loss, destruction or damage from a peril not otherwise excluded herein ensues and then this Section of this Policy shall cover for such ensuing loss, destruction or damage.
2. Loss of use, delay or loss of markets.
3. Infidelity, or any dishonesty on the part of the Insured or any of his employees; inventory shortage or unexplained disappearance.
4. The cost of making good defective design or specifications, faulty material, or faulty workmanship; however, this exclusion shall not apply to loss, destruction or damage resulting from such defective design or specifications, faulty material, or faulty workmanship.
5. Loss, destruction or damage to personal property resulting from shrinkage, evaporation, loss of weight, marring, scratching, exposure to light, or change in color, texture or flavor unless physical loss, destruction or damage not excluded by this Section of this Policy results in which event this Section of this Policy shall insure only such resulting loss, destruction or damage.
6. Electrical injury or disturbance to electrical appliances, devices, or wiring caused by electrical currents artificially generated unless loss, destruction or damage from a peril not otherwise excluded herein ensues and then this Section of this Policy shall insure such ensuing loss, destruction or damage.

7. Mechanical breakdown unless loss, destruction or damage from a peril not otherwise excluded herein ensues and then this Section of this Policy shall insure such ensuing loss, destruction or damage.
8. Explosion, rupture, or bursting of steam pipes, steam turbines, or steam engines owned or operated by the Insured unless loss, destruction or damage from a peril not otherwise excluded herein ensues and then this Section of this Policy shall insure such ensuing loss, destruction or damage. However it is agreed that direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the fire box (or combustion chamber) of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom shall be insured hereunder.
9. Loss, destruction or damage caused by exposure to weather conditions where any personal property insured is left in the open and not contained in buildings on permanent foundations.

This exclusion does not apply to property designed to exist or operate in the open.

10. Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature, directly or indirectly caused by contributed to by or arising from:
 - a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,
 - b. The radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

PROPERTY EXCLUDED

This Section of the policy does not cover:

1. land including water or any other substance in land and water on land; however, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements as described hereunder are defined as any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, as well as additions to land such as pavements, roadways, or similar works,
2. vehicles or trailers registered or licensed to travel on a public road, provided that this exclusion shall not apply to motor vehicles, mobile plant and equipment

which are so registered or licensed (to the extent that they are not otherwise insured) whilst parked/garaged on any premises occupied by the Insured.

3. a. aircraft, watercraft, jewelry, precious stones, furs or garments trimmed with fur, standing timber, growing crops and animals,
b. securities,
4. property in the course of construction or assembly, except as set forth elsewhere herein;
5. property in course of transit, except as set forth elsewhere herein.
6. (i). Physical loss, destruction, loss or damage to transmission and distribution lines including but not limited to transformers, poles, towers, wiring and equipment connected therewith except within 1000 feet of the Insured's premises.
(ii). underground water and sewerage distribution pipes and fittings except within 1000 feet of the Insured's premises.

SECTION II: BUSINESS INTERRUPTION

INSURING CLAUSE

In the event of any building or other property or part thereof used by the Insured at their Premises for the purpose of their Business being lost, destroyed or damaged by any of the contingencies insured against under Section I of this Policy or any other policy covering similar risks (loss, destruction or damage so caused being hereinafter in this Section of this policy termed "Damage") and the Business carried on by the Insured at their Premises (hereinafter termed "the Business") being in consequence thereof interrupted or interfered with.

The Insurer will pay to the Insured in respect of each item in the Specification to this Section of this Policy the amount of loss resulting from such interruption or interference in accordance with the provisions therein contained.

DEFINITIONS

For the purpose of Section II of this policy the following definitions shall apply :

Indemnity Period

The period beginning with the occurrence of the damage and ending not later than the number of months specified in the Schedule during which the results of the business shall have been affected in consequence of the damage.

Debt Service

The total debt service obligations of Bases Conversion and Development Authority to the Lenders, including principal, interest and other charges due to the Lenders under the relevant loan agreements.

Fixed Costs

Includes salaries, rents, insurance premium, performance bond, regulatory cost and systems cost.

Finance Agreement

The Finance Agreement between Bases Conversion and Development Authority and the Financiers.

Lease Interest

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the lease.

Net Lease Interest

That sum which placed at 8% interest compounded annually would equal the lease interest (less any amounts otherwise payable under this provision).

Revenue

The amount of money (less discounts allowed) received or receivable by the Insured for goods sold and delivered and for services rendered in the course of the business.

SPECIAL CONDITIONS APPLICABLE TO SECTION II

1. Insurer will not be liable under this Section of this Policy should the Business Insured be permanently discontinued.
2. It shall not be a condition precedent to liability in respect of interruption or interference in consequence of destruction or damage (as within defined) that payment shall have been made or liability admitted under the insurance covering the interest of the Insured in the property at the premises against such, destruction or damage if no such payment shall have been made nor liability admitted solely owing to the operation of proviso in
3. such insurance excluding liability for losses below a specified amount.

SPECIFICATION TO SECTION II

ITEM NO.	SUM INSURED/ LIMIT OF LIABILITY
1. Fixed Cost	Php 420,000,000.00
2. Debt Service	<u>Php 1,350,000,000.00</u>
	Php 1,770,000,000.00

Item 1. The Insurance under Item 1 is limited to those payments for salaries, rent, insurance, premium for performance bond, regulatory cost and systems cost.

Item 2. The Insurance under Item 2 is limited to those payments which continue to be made to the Lenders under the Loan Agreement. The amount payable as indemnity thereunder shall be:

- a. the principal and the Interest payable to the Lenders under the Loan Agreement less:
 - i) any interest commitment which is permanently waived or otherwise saved;
 - ii) the interest earned on monies invested which would not have been available for investment but for the delay.

Provided that if the Value (as declared) for this Item be less than the interest actually payable to the Lenders under the Loan Agreement during the Indemnity Period immediately following the date of the occurrence of Damage, the amount payable shall be proportionately reduced.

- b. In respect of Increase in Cost of Working: the additional expenditure necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the sole purpose of resuming or maintaining normal business operations and/or avoiding or diminishing a reduction in revenue, but not exceeding the sum insured by this item, less any sum saved during the Indemnity

Period in respect of the charges and expenses of the Business Insured payable out of Revenue as may cease or be reduced in consequence of the Damage.

CLAUSES APPLICABLE TO SECTION I- MATERIAL DAMAGE

Increased Cost of Working

And the amount payable as indemnity there under shall be:

- (i) IN RESPECT OF REDUCTION IN TURNOVER: the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall in consequence of the damage, fall short of the Standard Turnover.
- (ii) IN RESPECT OF INCREASE ON COST OF WORKING, the additional expenditure (subject to the provisions of the uninsured standing charges clause) necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which but for that expenditure would have taken place during the Indemnity Period in consequence of the damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;
- (iii) ADDITIONAL INCREASE IN COST OF WORKING – the insurance is limited to any additional increase cost of working and additional expenses necessarily and reasonably incurred by or on behalf of the Insured in consequence of the Interruption for the purpose of avoiding or diminishing any loss or under this section. It is noted that this Item is not to cover any amount relating to Item (ii) above.

Less any sum saved during the indemnity period in respect of such of the charges and expenses of the business payable out of Gross Profit as may cease or be reduced in consequence of the damage.

Provided that if the sum insured by this item be less than the sum produced by applying the Rate Gross Profit to the annual Turnover (or to a proportionately increased multiple thereof where the maximum indemnity period exceeds twelve months) the amount payable shall be proportionately reduced.

Adjustment of Premium

The premium paid hereon is a provisional premium being calculated based on the declared value for Fixed Cost and Debt Service and upon expiry the Insured undertakes to declare to the Insurers the actual Fixed Cost and Debt Service cost as certified by the Insured's Auditors for the financial year most nearly concurrent with the period of insurance and if the resultant premium be less than the provisional premium paid a return of premium not exceeding 50% of the premium paid will be made in respect of the difference. Should it be more then the Insured shall pay the difference to the Insurer. However, if any damage shall have occurred giving rise to a claim under this insurance, the return premium shall be made only of so much of the difference as is not due to such damage.

Auditor's Clause

The liability of Underwriters is limited to the reasonable charges payable by the Assured to their Auditors for producing and certifying any particulars or details contained in the Assured books of account or other business books or documents or such other proofs, information or evidence as may be required by the Underwriters in connection with a claim under in Section of the Policy, but in no case shall this exceed, in any one period of insurance, the sum insured stated in The Schedule.

Prevention of Access (Within 1Km radius from Insured's Property)

In consideration of the premium charged and subject to the provisions and stipulations of the Policy, liability is assumed hereunder resulting from an insured event to property within the 1-kilometer vicinity of the Insured Location (whether the Insured Location shall be damaged or not) which shall prevent or hinder the use of the Insured Location or access thereto and any such loss shall be deemed to be loss resulting from Damage to the Insured Location.

Waiver of Material Damage Proviso for losses falling below the Property Damage Deductible

It shall not be a condition precedent to the Company's liability under this Section that payment shall have been made or liability admitted under Section One of this policy if no such payment shall have been made or liability admitted solely due to the application of any Deductible under Section One.

CLAUSES APPLICABLE TO SECTION I & II - MATERIAL DAMAGE & BUSINESS INTERRUPTION

Nominate d Loss Adjuster

It is hereby declared and agreed that the primary nominated loss adjuster is as follows:

1. Crawford and Company Philippines Inc .
2. Cunningham Lindsey Philippines, Inc .
3. BA Insight International Inc .

Breach of Conditions and Warranties

The conditions and warranties of this Policy shall apply individually to each of the risks insured and not collectively to them. Thus a breach of any condition or warranty shall void the Policy only in respect of all the risks to which that breach applied and does not affect the Policy in respect of the other risks.

Change of Risk

In case of change of risk, the Insured shall as soon as reasonably practicable give notice to the Leading Insurer of such change with full particulars thereof.

It is agreed that disclosure or notification to inspectors or surveyors employed by or acting on behalf of the Insurers is considered notice to the Insurers. In case of change of risk, the Insurers shall have the right to vary in a reasonable way and in agreement with the Insured, the terms of the policy, which consent shall not be reasonably withheld.

Claims Preparation Costs - Php 5,000,000 anyone occurrence

The Insurance under this clause is to cover such reasonable fees as may be payable by the Insured and such other reasonable expenses necessarily incurred by the insured and not otherwise recoverable/or preparation, establishment and negotiation of progress and/or final claims.

Departmental Clause

If the business be conducted in departments the independent trading results of which are ascertainable, the provisions of clauses (a) and (b) of the item on Gross Profit shall apply separately to each department affected by the incident [except that if the sum insured by the said item be less than the aggregate of the sums produced by applying the Rate of Gross Profit for each department of the Business (whether affected by the incident or not) to its relative Annual Turnover (or to a proportionately increased multiple thereof where the maximum indemnity period exceeds twelve months) the amount payable shall be proportionately reduced].

Errors and Omissions

If physical loss or damage is not payable under this Policy solely because of an error or unintentional omission by the Insured:

- In the description of where insured property is physically located; or
- To include any location purchased, owned, rented, leased or used by the Insured;
 1. On the effective date of this policy; or
 2. During the term of this policy;
- That results in the cancellation of the property insured under this Policy;

This Policy will cover to the extent it would have provided coverage had such error or unintentional omission not been made.

However, this coverage does not apply:

- If the coverage is found in whole or in part elsewhere in the policy,
- If coverage is found in whole or in part in any other insurance policy.

It is a condition of this coverage that any error or unintentional omission be reported by the Insured to the Insurers when discovered and be corrected.

The Insured's limit of liability under this clause is Php 50,000,000.00 per occurrence.

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

1. In no case shall the insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

ionizing radiations from or contamination by radioactivity from any nuclear fuel or from nuclear waste or from the combustion of nuclear fuel,

the radioactive toxic, explosive or other hazardous or contaminating properties of any nuclear, installation, reactor or other nuclear assembly or nuclear component thereof,

any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,

the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes

are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purpose,

any chemical biological, bio-chemical, or electromagnetic weapon.

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Law and Jurisdiction Clause

This Contract shall be governed by and construed in accordance with the law of the Philippines and each party agrees to submit to the exclusive jurisdiction of the Courts of the Philippines.

However, the jurisdiction provision does not override or alter the parties' obligation to refer any dispute to arbitration in accordance with the provisions of the arbitration clause.

No Control Clause

This insurance shall not be affected by failure of any Insured to comply with any warranties or conditions of this Policy or endorsed hereon over which such Insured has no control.

Other Insurance

It is expressly agreed that this insurance provides primary cover for the risks insured hereunder and in the event that any risks which is insured hereunder is also insured under any other policy of insurance effected by the Insured or any party comprising the Insured, the Insurer agrees to indemnify the Insured as if such other policy of insurance did not exist.

The Insurer agrees to settle claims hereunder without reference to or reduction for the existence of any other insurance in the interest of the Insured.

Other Interests

It is agreed that the policy Insured that the interest of any other party that has a right in law due to the terms of any Act, by-laws agreement, legal document or instrument whereby the party has a financial or other interest in any Property Insured hereby.

Provided that:

- a. The Interest or such other party are not more specifically insured.

- b. Any act or neglect of the Insured will not prejudice the rights of such other party provided that they shall upon becoming aware of any act or neglect whereby the risk of loss, destruction or damage has increased, give notice in writing to Insurer and pay any additional premium that insurer may require.

Payment of Loss

Payment of loss as insured by the policy shall be made when the total amount has been agreed or at the request of the Insured at intervals of not less than one month commencing 30 days after receipt of written notice of the loss by the Insurers provided that monthly accounts of the loss be submitted by the Insured to the Insurers; subject always to the concurrence of the surveyors and/or loss adjusters involved and the approval of the Insurers.

Political Risk Exclusion Clause

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

“confiscation. Expropriation, nationalization, commandeering, requisition or destruction of or damage to property by order of the Government de jure or de facto or any public, municipal or local authority of the country or area in which the property is situated; seizure or destruction under quarantine of customs regulation”

This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

If the Insurer alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

Seepage and/or Pollution and/or Contamination Industries, Seepage, Pollution and Contamination Clause (NMA 1685)

This policy does not cover any liability for:

1. personal injury or bodily injury or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph 1, shall not apply to liability for personal injury or bodily injury or loss of or physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this insurance.
2. The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this insurance.
3. Fines, penalties, punitive or exemplary damages.

This Clause shall not extend this insurance to cover any liability which would not have covered under this insurance had this Clause not been attached.

35.1. **Terrorism & Sabotage Exclusion**

The Insurer will not indemnify the Insured for loss or damage due to Sabotage or Terrorism in any form. For the purpose of this Clause Sabotage and Terrorism are defined as follows:

1. "Sabotage" means any act of deliberate subversion that causes damage to or destruction of real or personal property incidental to or arising out of an incident otherwise covered under this extension.
2. "Terrorism" means the use of violence for political ends and includes any act by any person or persons acting on behalf of or in connection with any organization with activities directed towards the overthrowing of any government de jure or de facto or violence. It also includes the use of violence for the purpose of putting the public or any section of the public in fear. In any action suit or other proceedings where the Insurer alleges that by reason of this exclusion, any damage is not covered by this Policy, the burden of proving that such damage is covered shall be upon the Insured.

35.2. **War Exclusion**

35.3.

- 35.4. Notwithstanding anything to the contrary contained herein this policy does not cover loss or Damage directly or indirectly occasioned by, happening or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.

Lenders Special Conditions including but not limited to:

- **Loss Payee Clause**

Loss, if any, is payable to _____ (as Trustee) on behalf of the lenders of Bases Conversion and Development Authority as their interest may appear.

- **Waiver of Subrogation**

It is hereby declared and agreed that in the event of a claim under this policy the Insurer agrees to waive any rights, remedies or relief to which they might become subrogated against

1. any company standing in the relation of parent to subsidiary or subsidiary to parent to the Insured or any Insurer who is a subsidiary or a parent Insurer which the Insured are themselves a subsidiary,
2. the other Co-Insureds and
3. Lenders.

Subject to the wise to the Terms of this Policy.

- **Changes in Policy -**

None of the provisions, conditions and terms of this policy shall be waived or altered except by endorsement signed or initialed by an authorized official of the company and issued whenever applicable in accordance with the provisions of Section 50 of the Insurance Code.

- **30 Days Cancellation Clause**

The Insurance may be terminated at any time at the request of the Insured. In which case, the Company shall retain or be entitled to recover the customary short-period rate for the time during which the Policy has been in force.

The Company may at any time by giving 30 days written notice to the Insured cancel this Policy, notice of cancellation may be delivered personally or posted to the Insured at the address last notified to the Company, and the cancellation as aforesaid, the Company will, on delivery of the Policy to the Company, refund to the Insured the amount of unearned, calculated on a pro-rata basis.

- **Waiver of Contribution**

The Company agrees that this Insurance shall be primary to the Insured parties and shall not be brought in to contribution with any other insurance maintained by the Insured. The amount of the Company's liability shall not be reduced by the existence of other insurance maintained by any Insured of the same risk.

With respect to losses to the Non-power assets, the insurers shall be entitled to claim any amounts paid from the funds available from the Trust Fund and/or reimbursements from other sources.

- **Waiver of Rights to Set-off or Counterclaim**

The Insurer shall waive any right to any set-off, counterclaim or any other deduction (except deductibles specified under this policy) whether by attachment or otherwise against the Insured.

- **Multiple Insured Clause**

It is noted and agreed that if the Insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity, then (except as provided in this Multiple Insureds Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurer to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the policy.

It is understood and agreed that any payment or payments by the Insurer to any one or more such insured parties shall reduce to the extent of that payment Insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

It is further understood that the insured parties will at all times preserve and enforce the various contractual agreements entered into by the insured parties and the contractual remedies of such parties in the event of Damage.

It is further understood and agreed that the Insurer shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of the insured parties in circumstances of fraud, misrepresentation, non-disclosure or breach of any warranty or condition of this policy each referred to in this clause as a Vitiating Act.

It is agreed that (except as provided in this Multiple Insureds Clause) a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.

The Insurer hereby agrees to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act in which circumstances Insurer may enforce such rights notwithstanding the continuing or former status of the vitiating party as an Insured.

Designation of Property

For the purpose of ascertaining the classification under which any property insured belongs, the Insurer agrees to accept the designation under which such property has been classified in the books of the Insured.

Outside Buildings

The insurance of this item under building is understood to include walls, gates, fences, small outside buildings, extensions, annexes, exterior staircase, fuel installations, steel or iron framework and tanks in the said premises and the insurance by each item under contents extends to include all the contents of each buildings.

Small outside buildings, annexes and conveniences are held to be insured with buildings to which such property is attached or belongs.

Property Damage Clarification Clause

Physical damage to the item(s) insured shall not include loss of or damage :

- A. to data or software, e.g. any detrimental change in data, software or computer programs caused by deletion, corruption or deformation of the original structure. Notwithstanding this, however, loss of or damage to data or software which is the direct consequence of insured physical damage to the substance of the item(s) shall be covered.
- B. Resulting from impairment in the function availability, range of use or accessibility of data, software or computer programs of the item(s) insured.

GENERAL CONDITIONS

Arbitration

All differences as to the amount of any loss or damage covered by this Policy shall be referred to the decision of an arbitrator to be appointed by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators, one to be appointed in writing by each of the parties within thirty (30) days after having been required in writing to do so by either of the parties or in case of disagreement between the arbitrators to the decision of an umpire to be appointed in writing by the arbitrators before entering on the reference and an award by the arbitrator or arbitrators or umpire shall be a condition precedent to any right of action against the Insurer(s).

Assignment

Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon.

Contractual Waiver of Liability

In the event of any rights of recovery having been waived by the Insured under any Contract, Agreement, Lease or other undertaking entered into the ordinary course of business prior to the occurrence of any loss or damage, this insurance shall not be prejudiced.

Diligence

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimize any interruption or interference with the business and to avoid or diminish the loss whether by taking other premises or by other means.

Identification

This Policy and Schedule (which forms an integral part of this Policy) shall be read together as one contract and the words and expressions to which specific meanings have been attached in any part of this Policy or of the Schedule shall bear such specific meanings wherever they shall appear.

Insurers' Rights

On the happening of any destruction or damage to any of the property insured by this Policy, the Insurer may –

- a. take possession of or require to be delivered to it any property of the Insured on the Premises at the time of the destruction or damage;
- a. keep possession of any such property and examine, sort, arrange, remove, or otherwise deal with the same;
- b. with the consent of the Insured, sell any such property or dispose of the same for account of whom it may concern.

The power conferred by this Condition shall be exercisable by the Insurer at any time until notice in writing is given by the Insured that he makes no claims under the Policy or, if any claim is made, until such claim is finally determined or withdrawn, and the Insurer(s) shall not by any act done in the exercise or purported exercise of their power hereunder, incur any liability to the Insured or diminish the Insurer's right to rely upon any of the conditions of this Policy in answer to any claim.

If the Insured or any person on their behalf shall not without valid grounds comply with the requirements of the Insurer(s) or shall hinder or obstruct the Insurer(s) in the exercise of their powers hereunder, all benefit under this Policy shall be forfeited except as provided under the Multiple Insureds Clause.

The Insured shall not in any case be entitled to abandon any property to the Insurer(s) whether taken possession of by the Insured or not.

Misdescription

This insurance shall not be prejudiced by any alteration or misdescription of occupancy. Notice to be given to Insurer immediately when the Insured become aware of the same and, if required, an additional premium to be paid from the date of the inception of the increased fire hazard.

Observance and Fulfillment

The due observance and fulfillment of the terms of this Policy in so far as they relate to anything to be done or complied with by the Insured shall be condition precedent to any liability of the Insurers except as provided in the provisions of the Multiple Insureds Clause.

Payment of Loss

Payment of loss as insured by the policy shall be made when the total amount has been agreed or at the request of the Insured at intervals of not less than one month commencing thirty (30) days after receipt of written notice of the loss by the Insurers provided that monthly accounts of the loss be submitted by the Insured to the Insurers; subject always to the concurrence of the surveyors and/or loss adjusters involved and the approval of the Insurers.

Payment on Account Clause

Insurer agrees to make a payment on account of up to 50% of the claim subject to:

- a. the loss being established to be indemnifiable under the policy
- b. documents being produced by the Insured to support the claim
- c. the payment on account is supported by the Appointed Adjuster

Prescription

In no case whatsoever shall the Insurer(s) be liable for any destruction or damage after the expiration of twelve (12) months from the happening of the destruction or damage unless the claim is the subject of pending action or arbitration and in no case whatever shall the Insurer(s) be liable in respect of any claim under this Policy after the expiration of one (1) year from the end of the Indemnity Period;

GENERAL EXCLUSIONS

35.5.

35.6.

35.7. **Nuclear Exclusion**

35.8.

35.9. This policy does not cover loss or damage directly or indirectly occasioned by, happening or in consequence of nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled or due to any act or condition incident to any of the foregoing, and whether such damage be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the perils Insured against in this Policy.

35.10.

35.11.

35.12. **Electronic Data Recognition Clause**

35.13.

This Policy does not provide cover in respect of any –

1. loss or destruction of or damage to property or any loss or expense resulting or arising from such damage or any other consequential losses sustained by the Insured and/or
2. liability for damages attaching to the Insured directly or indirectly caused by or contributed to by or arising from or consisting of the failure or inability at any time of any computer, electronic equipment, data processing equipment or media, microchip, embedded chip, integrated circuit or similar device or any computer software, whether the property of the Insured or not, to:
 - a. recognize correctly or treat any date as its true calendar date and/or
 - b. capture save retain process manipulate or interpret correctly any data information command or instruction as a result of
 - (i) its failing to treat any calendar date as its true date or
 - (ii) the operation of any programmed command which by reason of a failure or inability to treat any date as its true calendar date causes the loss of data or an inability to capture save retain or process correctly such data at any time

but provision shall not exclude subsequent loss or destruction of or damage to property or consequential loss not otherwise excluded which itself results from fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labor disturbances, malicious persons (other than thieves) earthquake, storm, flood, escape of water from any tank apparatus or pipe (including sprinkler installations) or impact by any road vehicle or animal where such loss, destruction, damage or consequential loss is insured by the Policy.

SPECIAL EXTENSION CLAUSE

Should the renewal of this policy have not been concluded after the expiration of this policy, the period of this policy shall be automatically extended until the renewal of this policy has been concluded.

As consideration for any extension under this clause there will be an additional premium which shall be calculated at daily pro rata of the annual premium for this policy and added to the premium for the original 12 month period for this policy.

MAC HINERY BREAKDOWN ENDORSEMENT

For the purpose of this cover, physical loss, destruction of or damage shall include loss, destruction of or damage resulting from machinery Breakdown. Breakdown shall mean sudden and unforeseen damage necessitating repair or replacement before working can be resumed resulting from:

- Defects in material, design, construction, erection or assembly
- Fortuitous working accidents such as vibration, maladjustment, loosening of part, molecular fatigue, centrifugal force, abnormal stress, defective or accidental lack of lubrication, water hammer or local overheating, failure or faults in protection devices
- Excessive or insufficient electrical pressure, failure of insulation circuits or arcing or the effect of static electricity
- Incomplete or lack of skill or negligent acts of employees or third parties
- Falling, impact, collision or similar occurrences, obstruction or the entry of foreign bodies
- Any other causes not hereinafter excluded

The Insurance applies whilst the machinery is working or at rest or being dismantled or moved for the purpose of cleaning, inspection, overhauling or of being shifted within the said premises, or in the course of the aforesaid operation themselves, or in the course of subsequent re-erection, but in any case only after successful commissioning.

The limit of liability of the Insurer shall not exceed Php 50,000,000 each and every loss and in the annual aggregate.

SC HEDULED EQ UIPMENT FLO ATER

1. PRO PERTY INSURED -

Covering upon the equipment described in the policy including appurtenances thereof, attached hereto and /or contained thereon, for an amount not exceeding that shown with respect of each scheduled item.

Warranted by the Assured that the property insured hereunder is in sound condition at the time of attachment of this policy.

2. LIMIT OF LIABILITY-

It is agreed that the limit of liability for which the Fund may be liable for any one loss, disaster or casualty including salvage charges, sue and labor, or other expenses, or all combined, shall not exceed the sum insured specified in the schedule.

3. **THIS POLICY INSURES AGAINST**

ALL RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE FROM ANY EXTERNAL CAUSE TO THE INSURED PROPERTY (INCLUDING GENERAL AVERAGE AND SALVAGE CHARGES FOR WHICH THE ASSURED BECOMES LEGALLY LIABLE) EXCEPT AS HEREINAFTER PROVIDED.

THIS POLICY DOES NOT INSURE AGAINST

- a) Loss or damage to the property insured caused by or resulting from wear and tear, gradual deterioration, inherent vice, latent defect, mechanical breakdown, corrosion, dust, dampness, of the atmosphere or freezing unless damage is the result of other loss covered by this Policy;
- b) Loss or damage to electrical appliances or devices of any kind including wiring caused by electrical currents, artificially generated unless fire ensues, and then only for the Fund's proportion of loss caused by such ensuing fire;
- c) Loss or damage caused by repairing, adjusting, servicing or maintenance operation, unless fire or explosion ensues and then only for the loss or damage by such ensuing fire or explosion;
- d) Theft, wrongful conversion or embezzlement by Assured's employees or by any person to whom the insured property is entrusted.
- e) Loss or damage to tires or tubes due and confined to blowout, bruises, cuts or other causes inherent in the use of the equipment, unless such damage is the result of the loss covered by this Policy;
- f) Loss or damage occasioned by weight of a load exceeding the registered lifting or supporting capacity of any machine;
- g) Loss or damage caused by or resulting from strikes, lockouts, labor disturbances, riots, civil commotions or the acts of any person or persons taking part in any such occurrence or disorder.
- h) Loss or damage caused directly or indirectly, by : (a) enemy attack by armed forces, including action taken by military, naval or air forces, in resisting an actual or an immediately impending enemy attack; or (b) invasion, insurrection, rebellion, revolution, civil war, usurped power; or (c) seizure or destruction under quarantine of Customs regulations, confiscation by order of any government Public Authority, or risk of contraband or illegal transportation or trade;
- i) Loss if, at the time of damage, there is any other valid and collectible insurance which would attach if this insurance had not been effected, except that this insurance shall apply only as excess and in no events as contributing insurance and then only after all such insurance has been exhausted;

- j) Consequential loss or damage of any kind or description whatever including (a) delay in completing negotiation and loss of contracts (b) deterioration and loss of market.
4. Notwithstanding and other conditions contained therein shall be optional with the Fund; in the event of loss or damage to the property insured to take delivery of such property; and also repair or replace the property lost or damage with other or like kind and quality within reasonable time, provided notice of such intension is given within reasonable time, provided notice of such intension is given within fifteen days after receipt of satisfactory proof of loss.
- 5. DEDUCTIBLE-**
- Each claim for loss or damage shall be adjusted separately from the amount of each adjusted claim or the applicable limit of liability, whichever is less, the sum corresponding to of the insured value shall be deducted.
- 6. CO-INSURANCE-**
- The Fund shall not be liable for a greater proportion of any loss or damage to the property scheduled herein than the total sum insured under said schedule bears to ONE HUNDRED (100%) percent of the actual cash value of said property at the time such loss or damage shall happen.
- 7. VALUATION-**
- The Fund shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation however caused but in no event to exceed the amount of insurance; each item scheduled herein to be deemed separately insured.
- 8. OTHER MATTERS-**
- All matters not provided for herein or any endorsement herein, shall be governed by the terms and conditions of the Fund's printed policy form to which these provisions are attached and which have been issued in conjunction herewith. The foregoing clauses shall, however, be considered to supersede and annual clauses therein which may be of the same or similar effect.

ELECTRONIC EQUIPMENT INSURANCE POLICY

NOW THIS POLICY OF INSURANCE WITNESSETH that subject to the Insured having paid to the Insurers the terms, exclusions, provisions and conditions contained herein or endorsed hereon, the Insurers shall indemnify the Insured in the manner and to the extent hereinafter provided.

This insurance applies whether the Insured items are at work or rest or being dismantled for the purpose of cleaning overhauling or of being shifted within the Premises or in the course of the aforesaid operations themselves, or in the course of subsequent re-erection, but in any case only after successful commissioning.

General Exclusions

The Insurers will not indemnify the Insured in respect of loss or damage directly or indirectly caused by, or arising out of

- a) War, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, riot, strike, lock-out, civil commotion, military or usurped power, a group of malicious persons or persons acting on behalf of or in connection with any political organization, conspiracy, confiscation, commandeering, requisition, or destruction or damage by order of any government de jure or de facto or by any public authority;
- b) Nuclear reaction, nuclear radiation or radioactive contamination;
- c) Willful act or willful negligence of the Insured or his representatives.

In any action, suit or other proceeding where the Insurers allege that by reason of the provision of Exclusion a) above any loss, destruction or damage is not covered by this insurance, the burden of proving that such loss, destruction or damage is covered shall be upon the Insured.

General Conditions

1. The due observance and fulfillment of the terms of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the Questionnaire and Proposal made by the Insured shall be a condition precedent to any liability of the Insurers.
2. The Schedule and the Sections(s) shall be deemed to be incorporated in and form part of this Policy and the expression "this Policy" wherever used in this contract shall be read as including the Schedule and the Section(s). Any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule or of the Sections(s) shall bear such meaning wherever it may appear.

3. The Insured shall at his own expense take all reasonable precautions and comply with all reasonable recommendations of the Insurers to prevent loss or damage and comply with statutory requirements and manufacturers recommendations.
4.
 - a) Representatives of the Insurers shall at any reasonable time have the right to inspect and examine the risk and the Insured shall provide the representatives of the insurers with all details and information necessary for the assessment of the risk.
 - b) The Insured shall immediately notify the Insurers by telegram and in writing of any material change in the risk and cause at his own expense such additional precautions to be taken as circumstances may require to ensure safe operation of the insured items and the scope of cover and/or premium shall, if necessary, be adjusted accordingly.
5. In the event of any occurrence which might give rise to a claim under this Policy, the Insured shall
 - a) immediately notify the Insurers by telephone or telegram as well as in writing, giving an indication as to the nature and extent of loss or damage;
 - b) take all steps within his power to minimize the extent of the loss or damage;
 - c) preserve the parts affected and make them available for inspection by a representative or surveyor of the Insurers;
 - d) furnish all such information and documentary evidence as the Insurers may require;
 - e) inform the police authorities in case of loss or damage due to burglary or sabotage;

The Insurers shall not in any case be liable for loss, damage or liability of which no notice has been received by the Insurers within 30 days of its occurrence. Upon notification being given to the Insurers under this condition, the Insured may carry out the repairs or replacement of any minor damage; in all other cases a representative of the Insurers shall have the opportunity of inspecting the loss or damage before any repairs or alterations are effected. If a representative of the Insurers does not carry out the inspection within a period of time which could be considered adequate under the circumstances, the Insured is entitled to proceed with the repairs or replacement.

The liability of the Insurers under this Policy in respect of any insured item shall cease if said item is kept in operation after a claim without being repaired to the satisfaction of the Insurers, or if temporary repairs are carried out without the Insurers consent.

The Amount of any loss or damage for which an Insurer may be liable, under this Policy, shall be paid within thirty days after proof of loss is received by the Insurer and ascertainment of the loss or damage is made either by agreement between the Insured and the Insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the Insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the Assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

6. The Insured shall at the expense of the Insurers do and concur in doing and permit to be done all such acts and things as may be necessary or required by the Insurers in the interest of any rights or remedies, or of obtaining relief, or indemnity from parties (other than those insured under this policy) to which the Insurers shall be or would become entitled or subrogated upon their paying for or making good any loss or damage under this Policy, whether such acts and things shall be or become necessary or required before or after the Insured's indemnification by the Insurers.
7. All differences as to the amount of any loss or damage covered by this Policy shall be referred to the decision of an arbitrator to be appointed by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators one to be appointed in writing by each of the parties within thirty (30) days after having been required in writing so to do by either of the parties or in case of disagreement between the arbitrators to the decision of an umpire to be appointed in writing by the arbitrators before entering on the reference and an award by the arbitrator or arbitrators or umpire shall be a condition precedent to any right of action against the company.
8. If the proposal or declaration of the Insured is not true in any material respect, or if a claim is in any respect fraudulent, or if any false declaration is made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy, or if a claim be made and rejected and an action or suit be not commenced either in the Insurance Commission or any Court of competent jurisdiction within twelve (12) months from receipt of notice of such rejection, or in case of arbitration taking place as provided herein, within twelve (12) months after due notice of the award made by the arbitrator or arbitrators or umpire, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
9. If at the time any claim arises under this Policy there be any other insurance covering the same loss, damage or liability, Insurers shall not be liable to pay or contribute more than their ratable proportion of any claim for such loss, damage or liability. If such other insurance is subject to any condition of advantage to the Insurers this Policy shall be subject to such condition in like manner.

10. This insurance may be terminated at the request of the Insured at anytime, in which case the Insurers will retain the customary short-period rate for the time this Policy has been in force. This insurance may equally be terminated at the option of the Insurers by seven days' notice to the effect being given to the Insured in which case the Insurers shall be liable to repay a table proportion of the premium for the unexpired term from the date of cancellation.

However, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more the following:

- a. conviction of a crime arising out of acts increasing the hazard insured against;
- b. discovery of fraud or material misrepresentation;
- c. discovery of willful or reckless acts of commission increasing the hazard insured against;
- d. physical changes in the property insured which result in the property becoming uninsurable; or
- e. a determination by the Commissioner that the continuation of the policy would violate or would place the Insurer in violation of this Code.

All notices of cancellation shall be in writing, mailed or delivered to the named insured at the address shown in the Policy, and shall state (a) which of the grounds set forth above is relied upon and (b) that, upon written request of the named Insured, the Insurer will furnish the facts on which the cancellation is based.

Unless the Insurer at least forty-five days in advance of the end of the policy period mails or delivers to the named Insured at the address shown in the policy notice of its intention not to renew the policy or to condition its renewal upon reduction of limits or elimination of coverages the named Insured shall be entitled to renew the policy upon payment of the premium due on the effective date of the renewal. Any policy written for a term of less than one year shall be considered as if written for a term of one year.

11. Under an insurance for a third party's account the Beneficiary shall be entitled to exercise, in his own name, the rights of the Insured, without obtaining the Insured's approval, the Beneficiary shall further have the right to receive under indemnity paid under this Policy and to transfer the Insured's rights even if the Beneficiary is not in possession of this Policy. Upon payment of an indemnity the Insurers may require evidence of the Beneficiary having given his consent to the insurance and of the Insured having given his consent to the receipt of an indemnity by the Beneficiary.
12. The indemnity shall be payable one month after determination by the Insurer's of the full amount due. Notwithstanding the above the insured may, one month after the Insurer's have been duly notified of the loss and have been acknowledge their liability, claim as an installment the minimum payable under the prevailing circumstances. The running of the periods shall be suspended for

the time during which the indemnity is unascertainable or not payable due to reason within the Insured's control.

The Insurer's shall be entitled to withhold indemnification

- a. If there are doubts regarding the Insured's right to receive the indemnity, pending receipts by the Insurer's of the necessary proof;
- b. If in connection with the claim an examination by police or an inquiry under criminal law has been instituted against the Insured, pending against the Insured, pending completion of such examination or inquiry.

SECTION 1-MATERIAL DAMAGE

Scope Cover

The Insurer's hereby agree with the Insured that if at anytime during the period of insurance stated in the Schedule or during any subsequent period for which the Insured pays the premium for the renewal of this Policy, the items or any parts thereof entered in the Schedule shall suffer any unforeseen and sudden physical loss or damage from any cause, other than those specifically excluded, in a manner necessitating repair or replacement, the Insurer's will indemnify the Insured in respect of such loss or damage as herein after provided by payment in cash, replacement on repair (at their own option) up to an amount not exceeding in anyone year of insurance in respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in all the total sum expressed in the Schedule as Insured hereby.

Special Exclusion to Section 1

The Insurers shall not, however, be liable for

- a. the deductible stated in the Schedule to be borne by the Insured in any one occurrence; if more than one items is lost or damaged in one occurrence, the insured, shall not, however, be called upon to bear more than the highest single deductible applicable to such items;
- b. loss or damage directly or indirectly caused by or arising out of earthquake, volcanic eruption, tsunami, storm, typhoon, cyclone or hurricane;
- c. Loss or damage directly or indirectly caused by the ft;
- d. loss or damage caused by any faults or defects existing at the time of commencement of the present insurance within the knowledge of the Insured, or his representative, whether such faults or defects were known to the Insurer's or not;
- e. loss or damage directly or indirectly caused by the failure or interruption of any gas, water or electricity service or supply;

- f. loss or damaged as a direct consequence of the continual influence of operation (e.g. wear and tear, cavitations, erosion, corrosion, incrustation) or of gradual deterioration due to atmospheric conditions; g) any cost incurred in connection with the elimination of functional failures were caused by an indemnifiable loss or damage to the Insured items;
- g. any cost incurred in connection with the elimination of functional failure unless such failure were caused by an indemnifiable loss or damage to the insured items;
- h. any costs incurred in connection with the maintenance of the insured items, such inclusion also applying to parts exchange in the course of such maintenance operations;
- i. loss or damaged for which the manufacturer or supplier of the insured items is responsible either by law or under contract;
- j. loss of or damage to rented or hired equipment for which the owner is responsible either by law or under a lease and/or maintenance agreement;
- k. consequential loss or liability of any kind or description;
- l. loss or damage to bulbs, valves, tubes, ribbons, fuses, seals belts, wires, chains, rubber, tires, exchangeable tools, engraved cylinders, objects made of glass, porcelains or ceramics, sieves or fabrics or any operating media (e.g. lubricating oil, fuel, chemicals);
- m. aesthetic defects, such as scratches on fainted polish or enameled surfaces.

In respect of the parts mentioned under l) and m) above the Insurer's shall be liable to provide compensation in the event that such parts are effected by an indemnifiable loss of or damaged to the insured items.

Provisions Applying to Section 1

Memo 1 – Sum Insured

It is a requirement of this insurance that the sum insured shall be equal to the cost of the replacement of the insured items by new items of the same kind and same capacity which shall mean their replacement cost including e.g. freight, customs duties and dues, if any, and erection costs. If the sum insured is less than the amount required to be insured, the Insurers will pay only in such proportion as the sum insured bears to the amount required to be insured. Every item if more than one shall be subject to this condition separately.

Memo 2 – Basis of Indemnity

- a. In case where damage to the insured item can be repaired, the Insurer's will pay expenses necessarily incurred to restore the damaged items to its former state of serviceability plus the cost of dismantling re-erection incurred for the purpose of effecting the repairs as well as ordinary freight to and from repairshop, custom duties and dues, if any, to the extent such expenses have been included in the sum insured. If the repairs are executed at a workshop owned by the Insured, the Insurers will pay the cost of materials and wages incurred for the purpose of the repairs plus a reasonable percentage to cover overhead charges. No deduction shall be made for the depreciation in respects of parts replaced, but the value of any salvage will be taken into account. If the costs of the repairs as detailed herein above equal or exceed the equal value of the insured items immediately before the occurrence of the damage, the settlement shall be made on the basis provided for in b) below.

- b. In cases where an insured item is destroyed, the Insurers will pay the actual value of the item immediately before the occurrence of the loss, including cost for ordinary freight, erection, customs duties and dues, if any, to the extent such expenses have been included in the sum insured, such actual value to be calculated by deducting proper depreciation from the replacement value of the item. The Insurers will also pay any normal charges for dismantling of the item destroyed, but the value of any salvage will be taken into account. The destroyed item shall no longer be covered under this Policy, and all necessary data on the relevant substitute item shall be indicated for its inclusion in the Schedule (The Insurers may agree – by application of the relevant endorsement – to extend this insurance to cover reimbursement of the full replacement value).

As from the date of an indemnifiable occurrence the sum insured shall be reduced for the remaining period of the insurance by the amount of indemnity paid, unless the sum insured reinstated.

Any extra charges incurred for overtime, night-work, work on public holidays, or express freight are covered by this insurance only if especially agreed in writing.

The costs of any alterations, additions, improvements or overhaul shall not be covered under this Policy.

The costs of any provisional repairs will be borne by the Insurers if such repairs constitute part of the final repairs and do not increase the total repair expenses.

The Insurers will make payment only after being satisfied by production of necessary bills and documents that the repairs have been effected or replacement has taken place, as the case may be.

SECTION 2 – EXTERNAL DATA MEDIA

Scope of Cover

The Insurers hereby agree with the Insured that if the external data media entered in the Schedule inclusive of the information stored thereon, which can be directly processed in EDP systems, shall suffer any material damage indemnifiable under Section 1 of this Policy, the Insurers will indemnify the Insured as herein after provided in respect of such loss or damage up to an amount not exceeding in any one year of insurance in respect of each of the data media specified in the Schedule the sum set opposite thereto and not exceeding in all the total sum insured hereby, provided always that such loss or damage occurs during the period of insurance stated in the Schedule or during any subsequent period for which the Insured pays the premium for renewal of this Policy. This cover applies while the insured data media are kept on the Premises.

Special Exclusions to Section 2

The Insurers shall, however, not be liable for

- a. the deductible stated in the Schedule to be borne by the Insured in any one occurrence;
- b. any cost arising from false programming, punching, labeling or inserting, inadvertent cancelling of information or discarding of data media, and from loss of information caused by magnetic field;
- c) consequential loss of any kind or description or whatsoever.

Provisions Applying to Section 2

Memo 1 – Sum insured

It is requirement of this insurance that the sum insured shall be the amount required for restoring the insured external data media by replacing loss or damage data media by new material and reproducing loss information.

Memo 2 – Basis of Indemnity

The Insurers will indemnify any expenses that can be proved to have been incurred by the Insured within the period of 12 months as from the date of the occurrence strictly for the purpose of restoring the insured external data media to a condition equivalent to that existing prior to the occurrence and necessary for the permitting data processing operations to be continue in the normal manner.

If it is not necessary to reproduced loss data or information or if such reproduction is not effected within 12 months after the occurrence, the Insurers shall be only liable to

indemnify the expenses incurred for replacing the lost or damaged data media themselves by new material.

As from the date of indemnifiable occurrence the sum insured shall be reduced for the remaining period of insurance by the amount of indemnity paid, unless the sum insured is reinstated.

SECTION 3 INCREASED COST OF WORKING

Scope Cover

The Insurers hereby agree with the Insured that if material damage indemnifiable under Section 1 of this Policy give rise to a total or partial interruption of operation of the EDP equipment entered in the Schedule, the Insurer will indemnify the Insured as herein after provided for additional expenditure incurred for the use of substitute EDP equipment not covered under this Policy up to an amount not exceeding the agreed indemnification per day and not exceeding in all the sum insured in any one year of insurance provided always that such interruptions occurs during the period of insurance stated in the Schedule or during any subsequent period for which the Insured pays the premium for the renewal of this Policy.

Special Exclusion to Section 3

The Insurers shall, however, not be liable for any additional expenditure incurred as result of

- a. restriction imposed by public authorities concerning the reconstruction or operation of the EDP equipment insured;
- b. the necessary funds not being available to the Insured in time for repairing or replacing damaged or destroyed equipment.

Provisions Applying to Section 3

Memo 1 – Sum Insured

It is a requirement of this insurance that the sum insured stated in the Schedule shall be the amount which the Insured should have to pay as additional expenditures for 12 months' use of substitute EDP equipment of similar performance to the EDP equipment insured. The sum insured is to be based on the amounts agreed per day and per month as specified in the Schedule.

Memo 2 – Basis of Indemnity

In the event of failure of the EDP equipment insured the Insurers shall be liable for the additional expenditure that can be proved to have been incurred for the period during which the use of substitute EDP equipment is essential, but at the most for the indemnity period agreed.

The indemnity period shall commence as soon as the substitute equipment is put into use.

The Insured shall bear the proportion of each claim which corresponds to the time excess agreed.

If it is found following an interruption of the operation of the EDP equipment insured that the additional expenditure incurred during the period of interruption is higher than the proportionate share of the annual sum insured, which is applicable to this period, the Insurers shall only be liable to indemnify the Insured in respect of that proportion of the agreed annual sum insured which is applicable to the period of interruption, duly taking into account the indemnity period agreed.

Any savings in cost shall be taken into account when calculating the indemnity amount to be paid by the Insurers.

As from the date of an indemnifiable occurrence the sum shall be reduced for the remaining period of insurance by the amount of indemnity paid, unless the sum insured is reinstated.

CIVIL CODE ARTICLE 1250 WAIVER CLAUSE

IT IS HEREBY DECLARED AND AGREED that the provisions of Article 1250 of the Civil Code of the Philippines (Republic Act No. 386) which reads

“In case an extraordinary inflation or deflation of the currency stipulated should supervene the value of the currency at the time of the establishment of the obligation shall be basis of payment,” shall not apply in determining the extent of liability under the provision of this Policy.

OMNIBUS CLAUSE

All applicable provisions of Presidential Decree No. 612 otherwise known as the “The Insurance Code” are deemed to have been incorporated into this Policy and will supersede any agreement/condition of the Policy inconsistent therewith:

SHORT PERIOD RATE SCALE

IT IS HERBY AGREED that in the event of this Policy being surrendered by the Assured for cancellation, the Company shall retain the premium in accordance with the following scale for the time the policy has been in force:

1 mo. or less	20% of the Annual Rate
2 mos.	30% of the Annual Rate
3 mos.	40% of the Annual Rate
4 mos.	50% of the Annual Rate
5 mos.	60% of the Annual Rate
6 mos.	70 5 of the Annual Rate
7 mos.	75% of the Annual Rate
8 mos.	80% of the Annual Rate
9 mos.	85% of the Annual Rate
10 mos.	90% of the Annual Rate
11 mos.	95% of the Annual Rate

CHANGES IN POLICY CLAUSE

None of the provisions conditions and terms on the Policy shall be waived or altered except by endorsement signed or initial by an authorized officials of the Insurers and issued with the accordance with the provisions of Section 50 of the Insurance Code, as amended.

All applicable of the provisions of Presidential Decree No. 1460, otherwise known as the Insurance Code of 1978, as amended, as of the date of effectivity latest renewal or latest reinstatement of this Policy/certificate/contract of insurance, as the case maybe, and all existing laws obligatory upon insurance companies as may be pertinent are deemed incorporated in this policy/certificate/contract of insurance and will supersede any agreement/contract inconsistent therewith.

IN WITNESS WHEREOF, the System has caused this policy to be signed by its duly authorized officer/representative at Financial Center, Pasay City as of the date of issue.

MA. IS CONCEPCION J. HERNANDEZ
OIC -Senior Vice President
Insurance Group