



NOTICE OF AWARD

30 April 2014

Sir:

Please be informed that, upon the recommendation of the Bids and Awards Committee (BAC) of the Department as contained in the approved Annual Procurement Plan for CY 2014, the Department of Foreign Affairs is awarding the procurement for the upgrade and immigration of the Department's E-mail Systems to your firm, **Ubaldo Reidenbach Solutions, Inc.**, in the amount of *One Hundred Sixty-One Thousand Two Hundred Eighty Pesos (Php 161,280.00)*, inclusive of all taxes and other lawful charges, subject to the signing of the Contract.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'L. Lacanlale'.

**LINGLINGAY F. LACANLALE**  
Undersecretary for Administration  
and Head of the Procuring Entity

**MR. LORENZO A. VALENTIN**

Marketing Officer

**UBALDO REIDENBACH SOLUTIONS, INC.**

7/F Lepanto Bldg. 8747

Paseo De Roxas, Salcedo Village

Makati City

Rev'd  
MAGS  
29 May 2014



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## NOTICE OF AWARD

30 April 2014

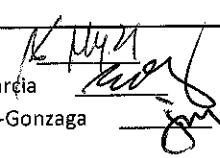
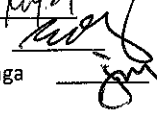
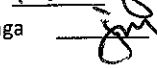

Sir:

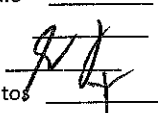
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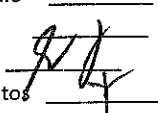
Very truly yours,

  
**LINGLINGAY F. LACANLALE**  
Undersecretary for Administration  
and Head of the Procuring Entity

**MR. LORENZO A. VALENTIN**  
Marketing Officer  
UBALDO REIDENBACH SOLUTIONS, INC.  
7/F Lepanto Bldg. 8747  
Paseo De Roxas, Salcedo Village  
Makati City

Sr. Sp. Asst. N. Servigon   
BAC Chairman E.D. Austria-Garcia   
BAC Vice-Chairman J.V.Chan-Gonzaga   
BAC Members: E.C. Yulo 

G.P. Abiog 


G.B. Musor 

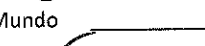
B.T. L. Santos 

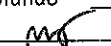
End-User Representative:

Dir. A.J.A. Estomo 

BAC Secretariat:

Head - A.O. Vallespin 

A. De Asis-Del Mundo 

S.P. Toledo 

G.C. Fernandez 

7877-14

DEPARTMENT OF FOREIGN AFFAIRS  
2330 Roxas Boulevard, Pasay City

[illegible]

DEPARTMENT OF FOREIGN AFFAIRS  
2330 Roxas Boulevard, Pasay City

ANNUAL PROCUREMENT PLAN FOR 2014

CODE (2-4)	PROGRAM / ACTIVITY / PROJECT	PMO / END-USER	MODE OF PROCUREMENT	SCHEDULE OF EACH PROCUREMENT ACTIVITY										ESTIMATED BUDGET (PHP)		REMARKS/ACTIVITY (BRIEF DESCRIPTION)
				PRE-PROC CONFERENCE	AOS / POSTING OF BID	PRE-BID CONF OF BIDS	SUB/OPENING BID EVAL	POST-QUAL CONF	NOTICE OF AWARD	CONTRACT SIGNING	NOTICE TO PROCEED	DELIVERY / COMPLETION	ACCEPTANCE / TURNOVER	SOURCE FUND	CO	

We hereby warrant that the total amount reflected in this Annual Procurement Plan (APP) for CY 2014 to procure the listed goods, services, consultancy and infrastructure projects has been included in or is within our

Prepared by:

Reviewed by:

Certified Funds Available /  
Certified Appropriate Funds Available

Bids and Awards Committee (BAC) - Secretariat

Head  
BAC

Assistant Secretary  
Office of Personnel and Administrative Services

Property/Supply Officer

Noted by:

Chairman, DFA-BAC

Vice-Chairman, DFA-BAC

Member, DFA-BAC

Member, DFA-BAC

Member, DFA-BAC

Member, DFA-BAC

Undersecretary for Administration and  
Head of the Procuring Entity

## ANNUAL PROCUREMENT PLAN FOR 2014

Page 14 of 40

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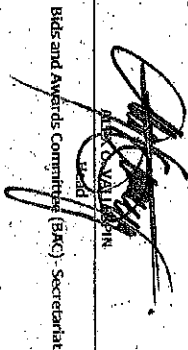
DEPARTMENT OF FOREIGN AFFAIRS  
2330 Roxas Boulevard, Pasay City

ANNUAL PROCUREMENT PLAN FOR 2014

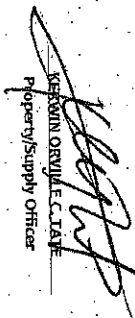
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				PRE-PROC CONFERENCE	ADS / POSTING OF ITB	PRE-BID CONF OF BIDS	SUB/ OPENING OF BIDS	BID EVAL CONF	POST-QUAL CONF	NOTICE OF AWARD	CONTRACT SIGNED	NOTICE TO PROCEED	DELIVERY / COMPLETION	ACCEPTANCE /TURN-OVER	SOURCE OF FUNDS	

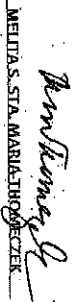
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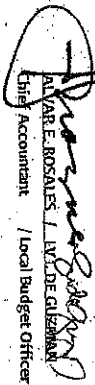
Prepared by:

  
ALEX C. VALLESPIN  
Head  
Bids and Awards Committee (BAC) - Secretariat

Reviewed by:

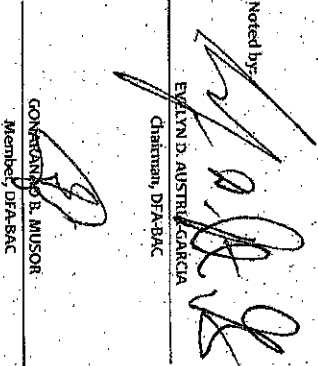
  
KEVIN ORVILLE C. TATE  
Property/Supply Officer


  
MELIA S. STA. MARIA THOMECEK  
Assistant Secretary  
Office of Personnel and Administrative Services

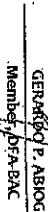
  
ALVAR E. ROSALES  
Chief Accountant / Local Budget Officer

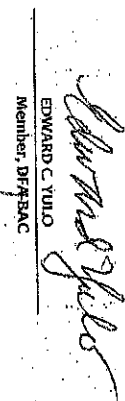
Certified Funds Available /  
Certified Appropriate Funds Available:

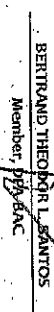
Noted by:

  
EVELYN D. ASTRU-GARCIA  
Chairman, DFA-BAC

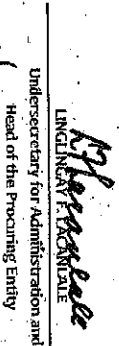
  
JOSEVICORY CHAN-GONZAGA  
Vice-Chairman, DFA-BAC

  
GERARDO P. ABIOG  
Member, DFA-BAC

  
EDWARD C. YULO  
Member, DFA-BAC

  
BERTRAND THEODORE L. SANTOS  
Member, DFA-BAC

Approved:

  
LINCINAY F. TACANALE  
Undersecretary for Administration and  
Head of the Procuring Entity



# PhilGEPS

Philippine Government Electronic Procurement System

Central Portal for  
Philippine Government  
Procurement Opportunities

[Help](#)

## Bid Notice Abstract

### Request for Quotation (RFQ)

**Reference Number** 2610149  
**Procuring Entity** DEPARTMENT OF FOREIGN AFFAIRS - MAIN  
**Title** Upgrade and Migration of the DFA E-mail System  
**Area of Delivery** Metro Manila


<b>Solicitation Number:</b>	BAC-116-2014	<b>Status</b>	<b>Closed</b>
<b>Trade Agreement:</b>	Implementing Rules and Regulations	<b>Associated Components</b>	1
<b>Procurement Mode:</b>	Negotiated Procurement - Small Value Procurement (Sec. 53.9)	<b>Bid Supplements</b>	0
<b>Classification:</b>	Goods	<b>Document Request List</b>	11
<b>Category:</b>	Information Technology	<b>Date Published</b>	08/04/2014
<b>Approved Budget for the Contract:</b>	PHP 200,000.00	<b>Last Updated / Time</b>	08/04/2014 00:00 AM
<b>Delivery Period:</b>	1 Year/s	<b>Closing Date / Time</b>	15/04/2014 00:00 AM
<b>Client Agency:</b>			
<b>Contact Person:</b>	Sherwin Toledo Secretariat 2330 Roxas Blvd, Pasay City Metro Manila Philippines 1300 63-02-8344621 63-02-8319584 bac.secretariat@dfa.gov.ph		
<b>Description</b>  For more information, kindly download the Terms of Reference of the project from the associated components of this posting.  For inquiries regarding the project, please contact the the Management Information Services (MIS) of the Department at Tel. No. 834-3388.			

**Created by** Sherwin Toledo  
**Date Created** 07/04/2014

The PhilGEPS team is not responsible for any typographical errors or misinformation presented in the system. PhilGEPS only displays information provided for by its clients, and any queries regarding the postings should be directed to the contact person/s of the concerned party.



Office of the Secretary  
Communications (CORATEL) and Management Information Systems Division**EXTREMELY URGENT****MEMORANDUM FOR THE CHAIRPERSON, BIDS AND AWARDS COMMITTEE**

  
**FROM :** ALEXANDER JOSEPH A. ESTOMO  
Acting Director

**SUBJECT :** Request for Issuance of BAC Resolution

**DATE :** 25 April 2014

The Bids and Awards Committee (BAC) is respectfully requested to issue a resolution awarding the service contract for the Upgrade and Migration of the DFA E-mail Systems to Ubaldo Reidenbach Solutions, Incorporated.

The Terms of Reference of the aforementioned service contract was posted in the Philippine Government Electronic Procurement System (PhilGEPS) from 08 to 15 April 2014. The summary of the submitted proposals is as follows:

Service Provider	Proposed Amount (Php)
Ubaldo Reidenbach Solutions, Inc.	161,280.00
Pacificsun Solutions	200,000.00
AMTI	210,000.00

The current version of the Zimbra Collaboration Suite – Community Edition platform, which runs the DFA Internal E-mail System, is already obsolete and is, therefore, vulnerable to hacking and malicious software infiltration. Upgrading the aforementioned platform to its most current version ensures that it has the latest security updates and patches, thereby minimizing, if not eliminating, the risks posed by cybersecurity threats.

The DFA External E-mail System, on the other hand, is being programmed for migration to the GovMail infrastructure of the Department of Science and Technology (DOST), the objective of which is to improve the performance and security of the Department's primary means of electronic communication. Under this scheme, the Department will be provided with professional and standard versions of the Zimbra Collaboration Suite, which offers account holders a communications platform with more features, better security, and higher storage capacity. In order to ensure a smooth transition from the DFA-hosted platform to the GovMail-hosted system, there is a need to migrate existing external e-mail accounts and their respective contents.

Attached for your reference are the quotations, Terms of Reference, purchase request, and the 2014 Project Procurement Management Plan of CMISD.

For the BAC Chairperson's kind consideration.



April 15, 2014

**DEPARTMENT OF FOREIGN AFFAIRS (DFA)**

Department of Foreign Affairs Building, 2330 Roxas Boulevard,  
Pasay City 1300

Attention: **BIDS and AWARDS COMMITTEE (BAC)**

Dear Sir/Madam;

Thank you for your interest in our company's products and services. We are pleased to submit quotation to your establishment as follows:

Description	Qty	Unit Price (Vat-Inc)	Total Price (Vat-Inc)
<b>SERVICES</b>			
Upgrade Services for Zimbra Internal mail system to the current version	1 lot	Php 80,640.00	Php 80,640.00
Implementation to transfer External mail system to GovMail Zimbra system Inclusive of: 1. Listing of all accounts (emailAddress,firstName,lastName,COS) 2. Listing of all alias and target account (aliasAddress,emailAddress) 3. Listing of Distribution List and respective members 4. Listing of Forwarding Address and target account (forwardAddress,emailAddress) 5. Logo 6. List of restriction rules and members 7. Coordinate with ASTI re change in DNS Address 8. Migration of mail/calendar/contacts of Tier 3 executives (on demand) 9. Transition training/orientation of mail admins that will now be sub-admins and IT help desk.	1 lot	Php 80,640.00	Php 80,640.00
<b>TOTAL INVESTMENT (VAT-INCLUSIVE)</b>			Php 161,280.00

# **TERMS & CONDITIONS:**

- The prices quoted above are valid for Fifteen (15) days only and may change without prior notice;
- Payment Schedule:
  - For the Upgrade Service: within 45 days upon completion of the service
  - For the Migration Service: within 45 days upon completion of the service
- Requirements that necessitate the provisioning of URSI Services, such as Implementation, Consultancy, etc., shall require detailed scoping and submission of a Project Proposal. Project Proposal shall be submitted separately;
- Any additional service charges when not specified in the above proposal will then be based on the man-hours required. Standard technical services rate is PHP 3,000.00 per man-hour inclusive of travel time to and from venue. A special rate of PHP 4,000.00 per hour will be charged for weekends, holidays and outside office hours as well as per diem for projects outside Metro Manila;
- All incidental expenses for outside Metro Manila (travel expenses, meals, accommodation, etc.) must likewise be shouldered by the Client;

We hope this proposal merits your approval.

Thank you very much!

Sincerely,

**UR SOLUTIONS, INC.**



**LORENZO A. VALENTIN**  
Marketing Officer



The ICT Infrastructure Expert

8th Floor, East Tower  
Philippine Stock Exchange Center  
Exchange Road, Ortigas Center  
Barangay San Antonio, Pasig City 1600  
Tel: (+632) 714 7388 / 988 9788  
Fax: (+632) 988 9788  
Email: info@amti.com.ph

Date:	April 12, 2014
Contact Person:	Bid and Awards Committee (BAC)
Quotation:	DFA Mail Servers – Upgrade and Migration Services

Dear Sir/Maam,

We are pleased to submit to you our quotation for your service requirement. Please details below:

Description	Qty	Total Price
For Internal Mail Server: Upgrade Services of Zimbra CS (Community Edition) to current version	1	Php 100,000.00
For External Email Server: Migration of Zimbra CS (Community Edition) to GovMail Server in DOST	1	Php 110,000.00
Grand Total		Php 210,000.00

**Terms and Conditions:**

1. All prices are in Philippine Peso and inclusive of 12% VAT;
2. Price is valid until April 30, 2014 and may change without prior notice;
3. Payment should be made within Fifteen (15) days upon purchase order;
4. On-Site support service is only applicable within Metro Manila area only;
5. Services to be conducted outside Metro Manila are subject for a separate billing.

Should you need further information regarding this quotation, please feel free to contact us. We look forward to be of your service.

Thank you

Sincerely,

Account Manager  
Edna Aplan  
AMTI

Date : April 11, 2014

To : Bid and Awards Committee (BAC)

Subject: Quotation - Upgrade and Migration of the DFA Email Systems

Dear Sir/Maam:

We are pleased to submit our proposal to your establishment. Please see details below as follows:

QTY	DESCRIPTION	TOTAL PRICE
1 lot	Upgrade Services of Zimbra Collaboration Suite (Community Edition) - Internal Mail Server to current version	P 95,000.00
1 lot	Migration of Zimbra Collaboration Suite (Community Edition) - External Email Server to GovMail Server in DOST	P 105,000.00
TOTAL		P 200,000.00

**Terms and Conditions:**


- All Prices are in Philippine Peso and **VAT INCLUSIVE**;
- Prices are subject to change without prior notice;
- Quotation is valid for Thirty (30) days only and may change without prior notice;
- Payment should be made within Ten (10) days upon receipt of Purchase Order;

Should you have any concerns, feel free to contact us at (02) 721-0405 or email us at [contact@pacificsun.ph](mailto:contact@pacificsun.ph)

We hope this proposal merits your approval.

Thanks you very much!

Sincerely,

  
**JOENAH MAE A. NONO**  
 Marketing Staff  
 Pacific Sun Solutions, Inc.

**CONFORME:**

(Signature over Printed Name)  
**DEPARTMENT OF FOREIGN AFFAIRS**

# PURCHASE REQUEST

Department of Foreign Affairs  
Agency

Department

OSEC

PR NO.

04 - 00114

Date: 1 April 2014

**APR 1, 2014**

Section

CMISD

SAI NO.

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

Stock No.	Unit	Item/Description	Quantity	Unit Cost	Total Cost
	Lot	Upgrade of the ZIMBRA Collaboration Suite - Community Edition of the DFA Internal Email System.	1	100,000.00	100,000.00
	Lot	Migration of the ZIMBRA Collaboration Suite - Community Edition Accounts, and existing Contents, of the DFA External Email System.	1	100,000.00	100,000.00
		xxxxxxNothing Followsxxxxxxx			

Purpose:

*For official use of DFA*

Signature

Requested by:

*Alex Estomo*  
**ALEXANDER JOSEPH A. ESTOMO**  
Acting Director

Approved by:

*Melita Sta. Maria-Thomeczek*  
**MELITA STA. MARIA-THOMECZEK**  
Assistant Secretary, OPAS

Printed name:  
Designation:

DEPARTMENT OF FOREIGN AFFAIRS

PROJECT PROCUREMENT MANAGEMENT PLAN (PPMP), FY 2014

As of 14 March 2014

END USER/UNIT: CMISD

Code	General Description	Quantity/Size	Estimated Budget	Schedule/Milestone of Activities											
				Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	Travelling Expenses (Local)														
	Regional Consular Offices	16 / 2 Pax	268,800.00						X	X	X	X	X		
	Travelling Expenses (Foreign)														
	Abuja PE	1 / 2 Pax	237,079.92		X										
	Canberra PE	1 / 2 Pax	255,735.92		X										
	Mairori PE	1 / 2 Pax	240,599.92		X										
	Pretoria PE	1 / 2 Pax	215,959.92		X										
	Wellington PE	1 / 2 Pax	264,183.92		X										
	Sydney PCG	1 / 2 Pax	228,015.92		X										
	Tripoli PE	1 / 2 Pax	218,775.92		X										
	Training and Scholarship Expenses														
	Network Administration	5	15,000.00					X	X	X	X	X	X		
	Database Management	2	6,000.00							X			X		
	General Information and Communications Technology (ICT) Training	3	9,000.00					X			X			X	
	Supplies and Materials	See Annex A	318,832.66	X	X	X	X	X	X	X	X	X	X	X	X
	Advertising Expenses	3	30,000.00		X					X			X		
	Representation Expenses														
	Meetings/Conferences (Snacks and Refreshments)	40	40,000.00	X	X	X	X	X	X	X	X	X	X	X	X
	Subscription Expenses														
	Newspaper	1 lot	20,000.00	X	X	X	X	X	X	X	X	X	X	X	X
	Communication Services														
	Anti-Virus license	800 Licences	500,000.00									X			
	CMISD Direct Lines	1 lot	200,000.00	X	X	X	X	X	X	X	X	X	X	X	X
	DFA Main-OCA Lease Line	1 lot	300,000.00	X	X	X	X	X	X	X	X	X	X	X	X
	Primary Internet Service	1 lot	2,800,000.00				X								
	Secondary Internet Service	1 lot	500,000.00										X		
	UTM Appliance license (DFA Main Building)	2 Licences	800,000.00											X	
	UTM Appliance license (ASEANA Building)	1 license	180,000.00			X								X	





# Upgrade and Migration of the DFA E-mail Systems

## Terms of Reference

### A. SCOPE OF WORK

1. The Contractor shall upgrade to the most current version the Zimbra Collaboration Suite – Community Edition platforms installed in Internal mail server of the Department of Foreign Affairs (hereinafter referred to as the Procuring Entity).
2. The Contractor shall migrate the Zimbra Collaboration Suite – Community Edition accounts, and all their existing contents, hosted in the external mail server of the Procuring Entity to the GovMail Servers of the Department of Science and Technology (DOST).

### B. WARRANTY

1. The Contractor shall guarantee, for a duration of one (1) year, the reinstallation of the most current version of the Zimbra Collaboration Suite – Community Edition platforms in any event that would require such action in order to restore or maintain the operational status of the Procuring Entity's Internal e-mail system.
2. The Contractor shall guarantee, for a duration of one (1) year, the remigration of the Zimbra Collaboration Suite – Community Edition accounts, and all their existing contents, hosted in the external mail server of the Procuring Entity to the GovMail Servers of the Department of Science and Technology (DOST) in any event that would require such action in order to restore or maintain the operational status of the Procuring Entity's external e-mail system.

### C. PAYMENT

1. The Procuring Entity shall pay the Contractor in two (2) tranches – after the completion of the upgrade work described in Section A(1) and after the completion of the migration work described in Section A(2).
2. Each payment shall be made within forty-five (45) working days commencing upon the Contractor's submission of the Sales Invoice and other documents that may be required by the Procuring Entity.
3. All amount payable under the ensuing contract shall be inclusive of Value Added Tax and other lawful charges.

#### D. TERMS

1. The Contractor must complete the upgrade work described in Section A(1) within thirty (30) calendar days upon signing of the Contract.
2. The Contractor must complete the migration work described in Section A(2) within thirty (30) calendar days upon signing of the Memorandum of Agreement between the Department of Foreign Affairs and the Department of Science and Technology for the former's access to GovMail Services.
3. The Contractor shall agree with the definitions and provisions found in the attached General Conditions of Contract (GCC) and Special Conditions of Contract (SCC).
4. The contractor must be a certified VM Ware Partner.

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

### **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 the GCC, SCC, and Terms of Reference.
- 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 does not relieve the Contractor of any liability or obligation under this Contract. The Contractor will be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Contractor's own acts, defaults, or negligence, or those of its agents, servants or workmen.
- 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 Contractor obtain permits, approvals, import, and other licenses from local public authorities, the Procuring Entity shall, if so needed by the Contractor, make its best effort to assist the Contractor

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 Contractor for Goods delivered and/or services performed under this Contract shall not vary from the prices quoted by the Contractor 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 Contractor's warranty obligations under this Contract as described in **GCC Clause 17**.
- 10.2. The Contractor'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 thirty (30) calendar days after submission of an invoice or claim by the Contractor.
- 10.4. Unless otherwise provided in the **SCC**, the currency in which payment is made to the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor shall furnish the performance security in any of the forms prescribed below.

Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
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(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Goods and Consulting Services - 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.	Infrastructure Projects - Ten percent (10%)
(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

13.2. The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the Contractor 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 Contractor after the issuance of the Certificate of Final Acceptance subject to the following conditions:

- (a) There are no pending claims against the Contractor or the surety company filed by the Procuring Entity;
- (b) The Contractor has no pending claims for labor and materials filed against it; and
- (c) Other terms specified in the SCC.

13.5. In case of a reduction of the contract value, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

#### 14. Use of Contract Documents and Information

14.1. The Contractor 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 Contractor'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 **Terms of Reference**; 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 **Terms of Reference** shall specify what inspections and/or tests the Procuring Entity requires and where they are to be conducted. The Procuring Entity shall notify the Contractor 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 Contractor or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor from any warranties or other obligations under this Contract.

## **17. Warranty**

- 17.1. The Contractor 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 Contractor 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 Contractor 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 Contractor, a warranty shall be required from the Contractor for a minimum period specified in the **SCC**. The obligation for the warranty shall be covered by, at the Contractor'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 Contractor in writing of any claims arising under this warranty. Upon receipt of such notice, the Contractor 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 Contractor, 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 Contractor's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Contractor under the Contract and under the applicable law.

## **18. Delays in the Contractor's Performance**

- 18.1. Delivery of the Goods and/or performance of Services shall be made by the Contractor in accordance with the time schedule prescribed by the Procuring Entity in the **Terms of Reference**.

- 18.2. If at any time during the performance of this Contract, the Contractor or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and/or performance of Services, the Contractor 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 Contractor's notice, and upon causes provided for under **GCC Clause 22**, the Procuring Entity shall evaluate the situation and may extend the Contractor'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 Contractor in the performance of its obligations shall render the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor any monies due the Contractor.

## **21. Liability of the Contractor**

- 21.1. The Contractor'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 Contractor 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 Contractor shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that the Contractor'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 Contractor 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 Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the *force majeure*.

## **23. Termination for Default**

- 23.1. The Procuring Entity shall terminate this Contract for default when any of the following conditions attends its implementation:

- (a) Outside of *force majeure*, the Contractor 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 Contractor prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;
- (b) As a result of *force majeure*, the Contractor is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or
- (c) The Contractor 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 Contractor shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Contractor 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 Contractor, the Procuring Entity may terminate this Contract, forfeit the Contractor's performance security and award the same to a qualified Contractor.

## **24. Termination for Insolvency**

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

## **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 Contractor's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods not yet performed and/or ready for delivery, the Procuring Entity may elect:

- (a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or
- (b) to cancel the remainder and pay to the Contractor an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Contractor.

25.3. If the Contractor 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 Contractor 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 Contractor has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- (a) Corrupt, fraudulent, and coercive practices as defined in the following:

- (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

(1) 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

(2) 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) Drawing up or using forged documents;

(c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and

(d) Any other act analogous to the foregoing.

## **27. Procedures for Termination of Contracts**

27.1. The following provisions shall govern the procedures for termination of this Contract:

(a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of

seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;

- (b) Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate this Contract only by a written notice to the Contractor conveying the termination of this Contract. The notice shall state:
  - (I) that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
  - (II) the extent of termination, whether in whole or in part;
  - (III) an instruction to the Contractor to show cause as to why this Contract should not be terminated; and
  - (IV) special instructions of the Procuring Entity, if any.
- (c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;
- (d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the Head of the Procuring Entity a verified position paper stating why this Contract should not be terminated. If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating this Contract;
- (e) The Procuring Entity may, at any time before receipt of the Contractor'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 Contractor's receipt of the notice;
- (f) 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 Contractor of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate;
- (g) 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