

Section II

INSTRUCTIONS TO BIDDERS Contract for Security Services 2016

1. Scope of Bid

- 1.1. The Maritime Industry Authority (hereinafter referred to as the "MARINA") wishes to receive Bids for supply and delivery of the goods as defined in the R-IRR of R.A. 9184 and described in Section I hereof (hereinafter referred to as the "GOODS").
- 1.2. The name, identification, and number of lots specific to this bidding are provided in the **BDS**.

2. Source of Funds

- 2.1. The MARINA has a budget or has applied for or received financing (hereinafter called "funds") from the source indicated in the **BDS** (hereinafter called the "Funding Source") toward the cost of the project named in the **BDS**. The MARINA intends to apply a portion or the whole of the funds to payments under the contract for which this Bidding Documents is issued.
- 2.2. Unless otherwise provided in the **BDS**, payments will be made only at the request of the MARINA and upon approval by its Head in accordance with the provisions, terms, and conditions of existing and applicable law. No party other than the MARINA shall have a right or claim over the budget specifically appropriated for the project.

3. Corrupt, Fraudulent, and Coercive Practices

- 3.1. The MARINA as well as the bidders, contractors, manufacturers, suppliers or distributors shall observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the MARINA:
 - (a) defines, for purposes of this provision, the terms set forth below as follows:
 1. "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 Republic Act 3019.

2. “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 MARINA, 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 MARINA of the benefits of free and open competition.
 3. “collusive practices” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the MARINA, designed to establish Bid prices at artificial, non-competitive levels.
 4. “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;
- (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 MARINA 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 MARINA reserve the right to inspect and audit records and accounts of a supplier or contractor in the bidding for and performance of a contract themselves or through independent auditors.

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 MARINA 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 R-IRR of R.A. 9184, all Bids shall be accompanied by a sworn affidavit of the Bidder that it is not related to the head of the MARINA, members of the BAC, the TWG, and the BAC Secretariat, Head of the PMO or the end-user unit, and the Project Consultants, by consanguinity or affinity up to the third civil degree. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of MARINA. On the part of the bidder, this provision 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.

5. Eligible Bidders

5.1. Unless otherwise indicated 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%) belongs to citizens of the Philippines;
- (e) Persons/entities forming themselves into a joint venture (JV), i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%); For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

5.2. Foreign bidders may be eligible to participate under any of the following circumstances:

- (a) When provided for under any Treaty or International or Executive Agreement as provided in Section 4 of RA 9184 and its R-IRR;
- (b) When the foreign supplier is a citizen, corporation or association of a country, included in Annex "I" to be 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 supplier; or
- (d) When there is a need to prevent situations that defeat competition or restrain trade.

5.3. A Joint Venture (JV) of two or more firms as partners shall comply with the following requirements:

- (a) the Joint Venture Agreement (JVA) shall be signed so as to be legally binding on all partners, unless otherwise indicated in the **BDS**;
- (b) one of the partners shall be authorized to be in charge; and this authorization shall be evidenced by submitting a special power of attorney signed by legally authorized signatories of all the partners;
- (c) the partner in charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the JV;
- (d) all partners of the JV shall be jointly and severally liable for adherence to this ITB and performance of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Bid Form and the Form of Contract Agreement (in case of a successful Bid);
- (e) a copy of the notarized JVA entered into by the JV partners shall be submitted with the Bid.

5.4. If the prospective bidder submit a computation of its NFCC, the NFCC must be at least equal to the ABC to be bid, calculated as follows:

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

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.

If the prospective bidder submits a CLC, the CLC must be at least equal to ten percent (10%) of the ABC to be bid as indicated in the **BDS**. If the CLC is issued by a foreign Universal or Commercial Bank, it shall be confirmed or authenticated by a Universal or Commercial Bank.

6. Origin of GOODS and Services

Unless otherwise indicated in the **BDS**, there is no restriction on the origin of GOODS and services 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 7.

7. Domestic Preference

If the **BDS** so specifies and for the purpose of comparison of Bids, the MARINA will grant a margin of preference in accordance with the procedures outlined in the **BDS**.

8. Subcontracts

The Bidder shall specify in its Bid all portions of the GOODS that will be subcontracted, if any, including the entity(ies) to whom each portion will be subcontracted to, subject to the maximum allowable limit for subcontracting of GOODS specified in the **BDS**. Subcontracting of any portion of the GOODS shall not relieve the Bidder from any liability or obligation that may arise from its performance.

Subcontractors must comply with the provisions of **ITB** Clause 5. For this purpose, the Bidder shall include in its Technical Proposal all the documents required under **ITB** Clause 14 for any subcontractor. If the MARINA determines that a subcontractor is ineligible, the subcontracting of such portion of the GOODS assigned to the ineligible subcontractor shall be disallowed.

9. Documents Establishing Bidder's Eligibility and Qualification

9.1. The documentary evidence of the Bidder's qualifications to perform the contract if its Bid is accepted shall establish to the MARINA's satisfaction that:

- (a) in the case of a Bidder offering to supply GOODS under the Contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the GOODS' Manufacturer or producer to supply the GOODS in the MARINA's country;
- (b) the Bidder has the financial, technical, and production capability necessary to perform the Contract; and
- (c) in the case of a Bidder not doing business in the Philippines or foreign Bidders eligible in accordance with **ITB** Clause 5, the Bidder is or will be (if awarded the contract) represented by an agent in the Philippines equipped and able to carry out the Supplier's maintenance, repair, and spare parts, stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

9.2. To establish their eligibility in accordance with this Clause, Bidders shall:

- (a) complete the eligibility declarations in the Bid Submission Sheet, included in Section VIII. Sample Forms; and
- (b) if the Bidder is an existing or intended JV in accordance with **ITB** Clause 5.3, submit a copy of the JVA, unless otherwise indicated in the **BDS**. The respective document shall be signed by all legally authorized signatories of all the parties to the existing or intended JV, as appropriate.

9.3. The documentary evidence of the Bidder's eligibility to Bid shall establish to the MARINA's satisfaction that the Bidder, at the time of submission of its Bid, is eligible as defined under **ITB** Clause 5.

10. Content of the Bidding Documents

10.1. The Bidding Documents consist of Sections I to VIII which include all the Sections indicated below, and should be read in conjunction with any Addendum issued in accordance with **ITB** Clause 11.

Section I. Invitation to Apply for Eligibility and to Bid

Section II. Instruction to Bidders

Section III. Bid Data Sheet

Section IV. General Conditions of Contract

Section V. Special Conditions of Contract

Section VI. Schedule of Requirements

Section VII. Technical Specifications

Section VIII. Sample Forms

- 10.2. Bidders should note that the MARINA will only accept Bids from Bidders that have purchased the Bidding Documents from the office indicated in the IAEB.
- 10.3. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Unless otherwise indicated in the **BDS**, failure to furnish all information or documentation required in the Bidding Documents shall result in the rejection of the Bid and the disqualification of the Bidder.

11. Pre-Bid Conference

- 11.1. To clarify and address the Bidders' questions on the requirements, terms and conditions, and specifications stipulated in the Bidding Documents, the pre-bid conference shall discuss, among other things, the eligibility requirements and the technical and financial components of the contract to be bid. It shall be held at the venue and on the date indicated in the **BDS**. Bidders are encouraged to attend the Pre-Bid Conference to ensure that they fully understand the MARINA's requirements. However, only those who have purchased the Bidding Documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications. 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. 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.

11.2. Supplemental/Bid Bulletins

A prospective Bidder seeking any clarification on the Bidding Documents shall submit their request for clarification in writing to the BAC of the MARINA at the MARINA's address indicated in the **BDS**. The MARINA's BAC will respond in writing to any request for

clarification by issuing a Supplemental/Bid Bulletin, provided that such request is received at least ten (10) calendar days before the deadline for submission and receipt of Bids. The MARINA's BAC shall issue its response not later than seven (7) calendar days before the deadline for the submission and receipt of Bids, to be made available to all Bidders who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the MARINA deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under **ITB Clause 11**.

12. Amendment of Bid Documents

12.1. Supplemental/Bid Bulletins may be issued upon the MARINA'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. It is the responsibility of the MARINA to notify in writing and through posting in the website of the MARINA or on the PhilGEPS the said documents. It shall be the responsibility of all those who have properly secured the Bidding Documents to inquire and secure Supplemental /Bid Bulletins that may be issued by the BAC. Any modification to the Bidding Documents shall be identified as an amendment. Bidders who have submitted Bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their Bids.

12.2. It shall be the responsibility of all Bidders who secure the Bidding Documents to ensure that they are aware of and secure any Bid Bulletins that may be issued.

13. Language of Bid

The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the MARINA, 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 of the relevant passages in English, in which case, for purposes of interpretation of the Bid, the English translation shall govern.

14. Eligibility Requirements

14.1. For purposes of determining the eligibility of bidders using the criteria stated in Section 23 of the IRR of RA 9184, the following documents shall be required:

- a. Class "A" Documents

Legal Documents (ORIGINAL/ AUTHENTICATED / CERTIFIED TRUE COPY BY THE ISSUING AGENCY/ENTITY, i.e. SEC, DTI, etc.)

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

Technical Documents

- iii. Statement of the prospective Bidder of all its ongoing and completed government and private contracts, where applicable, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the last five (5) years as provided in the Bidding Documents. The statement shall include all information required in the PBDs prescribed by the GPPB.
 - (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.

Financial Documents

- iv. The prospective Bidder's 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 preceding calendar year which should not be earlier than two (2) years from the date of bid submission.
- v. The prospective bidder's computation of its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial Bank to extend a credit line in favor of the prospective bidder if awarded the contract to be bid (CLC)

b. Class “B” documents

Valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, a duly notarized statement 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 shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.

- 14.2 The MARINA’s eligibility check will be limited to establishing the completeness of each prospective Bidder’s eligibility requirement by determining the presence or absence of the documents required against a checklist of requirements using non-discretionary pass/fail criteria. The eligibility check will not examine the substance of the contents of the documents. If a prospective Bidder submits the specific eligibility document required, it shall be rated as “passed” for that particular requirement. However, failure to submit a requirement or an incomplete or patently insufficient submission shall be considered “failed” for the particular eligibility requirement concerned.

15. Submission and Receipt of Bids

Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents 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 Section 23.1 of the R-IRR of RA 9184, and the second shall contain the financial component of the bid.

A. The first envelope shall contain the following technical information/documents:

1. Eligibility Requirements under ITB Clause 14
2. The bid security in the prescribed form, amount and validity period;

3. Technical specifications, as enumerated and specified in Sec. VII of this Bidding Documents, which include the following:
 - (a) Number of licensed firearms
 - (b) Number and kind of communication devices
 - (c) Number and kind of metal detector, handcuff and medical kit
 - (d) List and number of licensed security guards
 - (e) List and number of firearms to be used by the assigned security guards with corresponding photo copies of their valid firearms licenses
 - (f) Recruitment/selection criteria and training program
 - (g) Security plan

4. Omnibus Sworn statement by the prospective bidder or its duly authorized representative in the form prescribed by the GPPB as to the following:
 - (a) 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) 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) It is authorizing the MARINA Administrator or his duly authorized representative/s to verify all the documents submitted;
 - (d) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary’s Certificate attesting to such fact, if the prospective bidder is a corporation, partnership, cooperative, or joint venture;
 - (e) It complies with the disclosure provision under Section 47 of the Act in relation to other provisions of R.A. 3019;
 - (f) It complies with the responsibilities of a prospective or eligible bidder provided in PBDs; and
 - (g) It complies with existing labor laws and standards, in the case of procurement of services.

B. The second envelope shall contain the financial bid proposal as specified in the PBDs.

The Financial Proposal shall contain the bid price in accordance with ITB Clauses 16 and 17.

The bidder shall bear all costs associated with the preparation and submission of its Bid, and the MARINA shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

16. Alternative Bids

Alternative Bids shall be rejected.

17. Bid Prices

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, unless otherwise specified in the **BDS**. A Bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected.

All bids that exceed the ABC shall be automatically disqualified.

18. Bid Currencies

Prices shall be quoted in Philippine Peso.

19. Bid Security

19.1. All bids shall be accompanied by a bid security, payable to MARINA as a guarantee that the successful bidder shall, within 10 calendar days or less, from receipt of the notice of award, enter into contract with the MARINA and furnish the performance security required in Sec. 39 of the IRR of RA 9184, except when Sec. 37.1 of the IRR allows a longer period. Failure to enclose the required bid security in the form and amount prescribed herein shall automatically disqualify the bid concerned.

19.2. The bid security shall be an amount equal to a percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Equal to Percentage of ABC)
-----------------------------	--

a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank	
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.	Two percent (2%) of ABC or P90,000.00
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%) of ABC or P225,000.00

In case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in Section VIII. Sample Forms or another form acceptable to the MARINA. The form must include the complete name of the Bidder.

- 19.3. The bid security shall be denominated in Philippine Pesos and posted in favor of the MARINA.
- 19.4. No Bid Securities shall be returned to bidders after the opening of bids and before contract signing, except to those that failed to comply with any of the requirements to be submitted in the first bid envelope of the bid. Without prejudice on its forfeiture, Bid Securities shall be returned only after the bidder with the Lowest Calculated 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 the **BDS**, unless it has been extended in accordance with Sec. 28.2 of the IRR of RA 9184.

19.5. Forfeiture of Bid Security

If the bidder with the Lowest Calculated Responsive Bid or the Bidder with the Single Calculated/Rated Responsive Bid, fails, refuses or is unable to submit the documents required under Sec. 37.1 of the IRR of RA 9184 or to make good its bid by entering into a contract with MARINA or post the required Performance Security within the period stipulated in the IRR or in the Bidding Documents, the bid security shall be forfeited and the appropriate sanctions provided in the IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder.

20. Bid Validity

- 20.1. Bids and bid securities shall be valid for a reasonable period as determined by the MARINA Administrator, which shall be indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids.
- 20.2. Should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, MARINA shall request in writing all those who submitted bids for such extension before the expiration date therefore. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.

21. Sealing and Marking of Bids

- 21.1. Bidders shall enclose the original of their Technical Proposal in one sealed envelope marked "**ORIGINAL - TECHNICAL PROPOSAL**" and the original of their Financial Proposal in another sealed envelope marked "**ORIGINAL- FINANCIAL PROPOSAL**" sealing them all in an outer envelope marked "**ORIGINAL BID DOCUMENTS**".

Each copy of the technical proposal and financial proposal shall be similarly sealed in a single envelope marked as "**COPY NO. 1 - TECHNICAL PROPOSAL**" and "**COPY NO. 1 - FINANCIAL**

PROPOSAL” and the outer envelope as **“COPY OF THE ORIGINAL BID DOCUMENTS”**, respectively.

These envelopes containing the original and copies shall then be enclosed in a single sealed envelope.

21.2. 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 MARINA’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 25.

21.3. If all envelopes are not sealed and marked as required, the MARINA will assume no responsibility for the misplacement or premature opening of the Bid.

22. Deadline for Submission of Bids

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

23. Late Bids

Any Bid submitted after the deadline for submission and receipt of Bids prescribed by the MARINA, pursuant to **ITB** Clause 22, shall be declared **“Late”** and shall not be accepted by the MARINA.

24. Modification and Withdrawal of Bids

24.1. The Bidder may modify its Bid after it has been submitted; provided that the modification is received by the MARINA 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 Secretariat. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

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 MARINA prior to the deadline prescribed for submission and receipt of Bids.

24.2. Bids requested to be withdrawn in accordance with **ITB** Clause 24.1 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 Secretariat 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.

24.3. 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 Bid Form. Withdrawal of a Bid during this interval shall result in the forfeiture of the Bidder's Bid Security, pursuant to **ITB** Clause 18.6, and the imposition of administrative, civil and criminal sanctions as prescribed by the R-IRR of R.A. 9184.

25. Bid Opening

The BAC shall open the bids immediately after the deadline for the submission and receipt of the bids. The time, date and place of the opening of bids, as indicated in the **BDS**. The bidders or their duly authorized representative may attend the opening of the bids. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.

26. Post-Qualification

Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit the following documentary requirements to the BAC:

- (a) Tax clearance per Executive Order 398, Series of 2005, as finally reviewed and approved by the BIR;
- (b) Only tax returns filed and taxes paid through the BIR Electronic Filing and Payment System (EFPS) shall be accepted. The latest

income and business tax returns are those within the last six months preceding the date of bid submission;

- (c) Certificate of PhilGEPS Registration; and
- (d) Other appropriate licenses and permits required by law and stated in the Bidding Documents.

Failure to submit the above requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award.

27. Contacting the MARINA

- 27.1. Subject to **ITB** Clause 30, no Bidder shall contact the MARINA on any matter relating to its Bid, from the time of Bid opening to the time the Contract is awarded.
- 27.2. 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 indicated in the **BDS**.
- 27.3. Any effort by a bidder to influence the MARINA in the MARINA's decision in respect of Bid evaluation, Bid comparison or contract award will result in the rejection of the Bidder's Bid.

28. Contract Signing

- 28.1. The winning bidder shall post the required Performance Security and enter into contract with MARINA within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.
- 28.2. The following documents shall form part of the contract:
 - (a) Contract Agreement;
 - (b) Bidding Documents;
 - (c) Winning bidder's bid, including the eligibility requirements, technical and financial proposals, and all other documents/statements submitted;
 - (d) Performance Security;
 - (e) Credit Line in accordance with the provisions of IRR, if applicable;
 - (f) Notice of Award of Contract; and
 - (g) Other contract documents that may be required by existing laws and/or MARINA concerned in the Bidding Documents.

29. Performance Security

- 29.1. Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the MARINA and in no case later than the signing of the contract between the successful Bidder and the MARINA, the successful Bidder shall furnish to the MARINA the Performance Security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents.
- 29.2. The performance security shall be in amount equal to a percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Equal 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	Five percent (5%)
c) Surety Bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security	Thirty percent (30%)

- 29.3. The performance security shall be denominated in Philippine Pesos and posted in favor of MARINA, which shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.

29.4. The performance security shall remain valid until issuance by the MARINA of the Final Certificate of Acceptance.

30. Notice to Proceed

30.1. Within seven (7) calendar days from the date of approval of the Contract by the appropriate government approving authority, the MARINA shall issue its Notice to Proceed to the successful Bidder.

30.2. The date of the Bidder's receipt of the Notice to Proceed will be regarded as the effective date of the Contract, as specified in the **BDS**.

31. Reservation Clause

31.1. The MARINA Administrator 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, in the following situations:

- (a) If there is a *prima facie* evidence of collusion between appropriate public officers or employees of MARINA, 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 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 MARINA;
 - ii. If the project is no longer necessary as determined by the head of MARINA; and
 - iii. If the source of funds for the project has been withheld or reduced through no fault of MARINA.

31.2. In addition, the BAC 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.

32. Protest Mechanism

32.1. Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. 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 request for reconsideration, the BAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.

32.2. In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing to the Head of MARINA: Provided, however, That a prior request for reconsideration should have been filed by the party concerned in accordance with the preceding Section, and the same has been resolved.

32.3. The protest must be filed within seven (7) calendar days from receipt of the party concerned of the resolution of the BAC denying its request for reconsideration. A protest may be made by filing a verified position paper with the Head of MARINA, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the ABC.

33. Administrative Sanctions

33.1. In addition to the provisions of Rules XXI and XXII of the IRR, the Head of MARINA, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, as well as

disqualification from further participating in the public bidding being undertaken by the MARINA, where applicable, for the following variations:

- (a) Submission of eligibility requirements containing false information or falsified documents;
- (b) 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.
- (c) Allowing the use of one's name, or using the name of another for purposes of public bidding.
- (d) Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
- (e) Refusal or failure to post the required performance security within the prescribed time.
- (f) Termination of the contract due to the default of the bidder.
- (g) 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.
- (h) Any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor.
- (i) 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.

33.2. In addition to the penalty of suspension, the bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

33.3. The MARINA Administrator may delegate to the BAC the authority to impose the aforementioned administrative penalties.

33.4. The procedures for the suspension or blacklisting of suppliers, contractors, or consultants for GOP projects shall be undertaken in accordance with the guidelines issued by the GPPB.