

**ANNEX "E"****CONTRACT IMPLEMENTATION GUIDELINES FOR THE PROCUREMENT OF  
INFRASTRUCTURE PROJECTS****1 - VARIATION ORDERS - CHANGE ORDER/EXTRA WORK ORDER/SUPPLEMENTAL AGREEMENT**

1. Variation Orders may be issued by the procuring entity to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the "as staked plans" or construction drawings prepared after a joint survey by the contractor and the Government after award of the contract, provided that the cumulative amount of the Variation Order does not exceed ten percent (10%) of the original project cost. The addition/deletion of works should be within the general scope of the project as bid and awarded. A Variation Order may either be in the form of a change order or extra work order.
  2. A Change Order may be issued by the implementing official to cover any increase/decrease in quantities of original work items in the contract.
  3. An Extra Work Order may be issued by the implementing official to cover the introduction of new work necessary for the completion, improvement or protection of the project which were not included as items of work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work or character provided for in the contract.
  4. Any cumulative Variation Order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the head of the procuring entity may authorize the variation order beyond ten percent (10%) but not more than twenty percent (20%) subject to the guidelines to be determined by the GPPB: *Provided, however,* That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).
  5. In claiming for any Variation Order, the contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within twenty-eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim. The preparation and submission of Variation Orders are as follows:
    - a. If the Project Engineer believes that a Change Order or Extra Work Order should be issued, he shall prepare the proposed Order accompanied with the notices submitted by the contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific
-

stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work, together with his justifications for the need of such Change Order or Extra Work Order, and shall submit the same to the Regional Director or equivalent official of office/agency/corporation/LGU concerned.

- b. The Regional Director or equivalent official concerned, upon receipt of the proposed Change Order or Extra Work Order shall immediately instruct the technical staff of the Region to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such verification shall be submitted directly to the Regional Director or equivalent official concerned.
- c. The Regional Director or equivalent official concerned, after being satisfied that such Change Order or Extra Work Order is justified and necessary, shall review the estimated quantities and prices and forward the proposal with the supporting documentation to the head of procuring entity for consideration.
- d. If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office of the procuring entity empowered to review and evaluate Change Orders or Extra Work Orders recommends approval thereof, the head of the procuring entity or his duly authorized representative, believing the Change Order or Extra Work Order to be in order, shall approve the same.
- e. The timeframe for the processing of Variation Orders from the preparation up to the approval by the procuring entity concerned shall not exceed thirty (30) calendar days.

## 2 - ADDITIONAL/EXTRA WORK COSTING

1. For Variation Orders, the contractor shall be paid for additional work items whose unit prices shall be derived based on the following:
  - a. For additional/extra works duly covered by Change Orders involving work items which are exactly the same or similar to those in the original contract, the applicable unit prices of work items original contract shall be used.
  - b. For additional/extra works duly covered by Extra Work Orders involving new work items that are not in the original contract, the unit prices of the new work items shall be based on the direct unit costs used in the original contract (e.g. unit cost of cement, rebars, form lumber, labor rate, equipment rental, etc.). All new components of the new work item shall be fixed prices, provided the same is acceptable to both the Government and the contractor, and provided further that the direct unit costs of new components shall be based on the contractor's estimate as validated by the procuring entity concerned via documented canvass in accordance with existing rules and regulations. The direct cost of the new work item shall then be combined with the mark-up factor (i.e. taxes and profit) used by the contractor in his bid to determine the unit price of the new work item.
2. Request for payment by the contractor for any extra work shall be accompanied by a statement, with the approved supporting forms, giving a detailed accounting and record

of amount for which he claims payment. Said request for payment shall be included with the contractor's statement for progress payment.

### 3 - CONDITIONS UNDER WHICH CONTRACTOR IS TO START WORK UNDER VARIATION ORDERS AND RECEIVE PAYMENTS

1. Under no circumstances shall a contractor proceed to commence work under any Change Order or Extra Work Order unless it has been approved by the head of the procuring entity or his duly authorized representative. Exceptions to the preceding rule are the following:

a. The Regional Director or equivalent official may, subject to the availability of funds, authorize the immediate start of work under any Change or Extra Work Order under any or all of the following conditions:

(1) In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or

(2) When time is of the essence;

*Provided, however,* That such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less;

*Provided, further,* That immediately after the start of work, the corresponding Change Order or Extra Work Order shall be prepared and submitted for approval in accordance with the above rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the head of the procuring entity or his duly authorized representative.

b. For a Change Order or Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract, no work thereon may be commenced unless said Change Order or Extra Work Order has been approved by the Secretary or his duly authorized representative.

### 4 - ADVANCE PAYMENT

1. The procuring entity shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most two, installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

2. The advance payment shall be made only upon the submission to and acceptance by the procuring entity of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by the procuring entity.

3. The advance payment shall be repaid by the contractor by deducting fifteen percent (15%) from his periodic progress payments.
4. The contractor may reduce his standby letter of credit or guarantee instrument by the amounts refunded by the Monthly Certificates in the advance payment.

#### 5 - PROGRESS PAYMENT

1. Once a month, the contractor may submit a request for payment for work accomplished. Such request for payment shall be verified and certified by the Government project engineer concerned. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.
2. The procuring entity shall have the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the project.

#### 6 - RETENTION MONEY

1. Progress payments are subject to retention of ten percent (10%) referred to as the "retention money." Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the procuring entity, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.
2. The total "retention money" shall be due for release upon final acceptance of the works. The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit of from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to Government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the concerned implementing office/agency or procuring entity and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

#### 7 - CONTRACT COMPLETION

Once the project reaches an accomplishment of ninety five (95%) of the total contract amount, the procuring entity may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time. This, however, shall not preclude the procuring entity's claim for liquidated damages.

#### 8 - LIQUIDATED DAMAGES

1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the procuring entity for liquidated damages, and not by way of penalty, an amount to be determined in accordance with the following formula until the work is completed and accepted or taken over by the procuring entity:

$$\text{TLD} = \text{VUUP} \times [(1 + \text{OCC})^n - 1] \times \text{K}$$

$$\text{VUUP} = \text{TCP} - \text{VCUP}$$

WHERE:

TLD = Total Liquidated Damages, In Pesos

VUUP = value of the uncompleted and unusable portions of the contract work, as of the expiry date of the contract, in pesos

TCP = Total Contract Price, In Pesos

VCUP = value of the completed and usable portion of the contract work, as of the expiry date of the contract, in pesos

OCC = prevailing opportunity cost of capital for government projects set by NEDA, which is currently pegged at 15%

n = total number of years that the contract work is delayed after the expiry date of the contract

K = adjustment factor to cover additional losses

$$= 1 + C + (i \times n)$$

WHERE:

C = cost of construction supervision as a percentage, not exceeding 10%, of construction cost

i = annual inflation rate as defined by NEDA

The head of procuring entity may also impose additional liquidated damages on the contractor provided such is prescribed in the Instructions to Bidders.

2. A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned procuring entity.
3. To be entitled to such liquidated damages, the procuring entity does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor whichever is convenient to the procuring entity.
4. In case that the delay in the completion of the work 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 concerned may rescind the contract, forfeit the contractor's performance security and takeover the prosecution of the project or award the same to a qualified contractor through negotiated contract.

5. In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by the procuring entity concerned or award the same to a qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause and impose other appropriate sanctions.
6. For terminated contracts where negotiation shall be undertaken, the procedures prescribed in the IRR shall be adopted.

## 9 - SUSPENSION OF WORK

1. The procuring entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.
2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:
  - a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.
  - b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
  - c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.
  - d. There is failure on the part of the procuring entity to deliver government-furnished materials and equipment as stipulated in the contract.
  - e. Delay in the payment of contractor's claim for progress billing beyond forty-five (45) calendar days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.
3. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the elapsed time between the effective order of

suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

## 10 - EXTENSION OF CONTRACT TIME

1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the procuring entity shall determine the amount of such extension; provided that the procuring entity is not bound to take into account any claim for an extension of time unless the contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the procuring entity notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the contractor of any claim. Upon receipt of full and detailed particulars, the procuring entity shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in the procuring entity's opinion, the findings of facts justify an extension.
2. No extension of contract time shall be granted the contractor due to (a) ordinary unfavorable weather conditions and (b) inexcusable failure or negligence of contractor to provide the required equipment, supplies or materials.
3. Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.
4. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.
5. Extension of contract time shall be granted for rainy/unworkable days considered unfavorable for the prosecution of the works at the site, based on the actual conditions obtained at the site, in excess of the number of rainy/unworkable days pre-determined by the government in relation to the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection, and/or for equivalent period of delay due to major calamities such as exceptionally destructive typhoons, floods and earthquakes, and epidemics, and for causes such as non-delivery on time of materials, working drawings, or written information to be furnished by the procuring entity, non-acquisition of permit to enter private properties within the right-of-way resulting in complete paralyzation of construction activities, and other meritorious causes as determined by the Government's authorized Engineer and approved by the procuring entity. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operations through no fault of the contractor may be considered as additional grounds for extension of contract time provided they are publicly felt and certified by appropriate government agencies such as DTI, DOLE, DILG, and DND, among others. The written consent of bondsmen must be attached to any request of the contractor for extension of contract time and submitted to the procuring entity for consideration and the validity of the performance security shall be correspondingly extended.

## 11 - ACCREDITATION OF TESTING LABORATORIES

1. To help ensure the quality of materials being used in infrastructure projects, the Bureau of Research and Standards (BRS) of the DPWH, Department of Science and Technology (DOST), or Department of Trade and Industry (DTI) shall accredit, in accordance with industry guidelines, the testing laboratories whose services are engaged or to be engaged in infrastructure projects. All government infrastructure project owners must accept results of material test(s) coming only from DOST/BRS/ accredited laboratories.

## 12 - EVALUATION OF CONTRACTORS PERFORMANCE

### 1. SUBJECT AND SCOPE

All procuring entities implementing government infrastructure projects are mandated to evaluate the performance of their contractors using the NEDA-Approved Constructors Performance Evaluation System (CPES) Guidelines for the type of project being implemented. These guidelines cover all infrastructure projects awarded by the government regardless of contract amount and funding source. CPES evaluation shall be done during construction and upon completion of each government project. To ensure continuous implementation of CPES, all procuring entities concerned are required to include in their Projects' Engineering and Administrative Overhead Cost the budget for the implementation of CPES pursuant to NEDA Board Resolution No. 18 (s.2002).

### 2. EVALUATION GUIDELINES

For project types which do not have specific CPES Guidelines, the procuring entities concerned may formulate and adopt their own implementing Guidelines specific to their needs provided the NEDA-INFRACOM poses no objections to their adoption, and provided further that said Guidelines are made known to all prospective bidders.

### 3. IMPLEMENTATION MECHANISM FOR CPES

All procuring entities implementing infrastructure projects are required to establish CPES Implementing Units (IUs) in their respective offices/agencies/corporations. The CPES Implementing Units shall be responsible for the implementation of the CPES Implementing guidelines, including but not limited to, the supervision of Constructors Performance Evaluators (CPEs) to be accredited by the Construction Industry Authority of the Philippines (CIAP). The procuring entity's CPES IU shall be responsible for the following: a) pre-screening of applications of CPEs, b) funding for CPEs accreditation training and seminars; and c) yearly evaluation of CPEs.

### 4. SUBMISSION AND DISSEMINATION OF EVALUATION RESULTS

All procuring entities implementing CPES shall submit the results of their performance evaluation to the CIAP on a monthly basis or as often as necessary. The procuring entity's CPES-IU shall likewise develop and maintain a databank and disseminate the CPES reports to the concerned units/departments within the procuring entity and to other interested users.

### 5. UTILIZATION OF EVALUATION RESULTS

The CIAP shall consolidate all of the CPES evaluation results received and shall disseminate the same to all procuring entities concerned. The CPES rating and other information shall be used by the concerned government agencies for the following purposes: a) pre qualification/eligibility screening of constructors; b) awarding of contracts; c) project monitoring and control; d) issuance of Certificate of Completion; e) policy formulation/review;

f) industry planning; g) granting of Incentives/Awards, and, in adopting measure to further improve performance of contractors in the prosecution of government projects.

### 13 – OTHER RULES AND GUIDELINES

The rules and regulations for the other aspects of contract implementation shall be included in the manuals to be issued by the GPPB, such as, but not limited to, the following:

1. Sub-contracting;
2. Interference with Traffic and Adjoining Properties;
3. Clearance of Project Site of Obstruction;
4. Inspection and Testing;
5. Daywork;
6. Measurement of Works; and
7. Other Implementation Aspects.