**Terms of Reference (TOR) for the Conduct of Survey of Camp Emilio Aguinaldo in Quezon City**

1. **BACKGROUND AND OBJECTIVES**

On 04 March 2019, the Department of Environment and Natural Resources and Department of National Defense entered into a Memorandum of Agreement for the survey and titling of DND/AFP’s real estate properties.

Included in the properties of DND/AFP in the National Capital Region is Camp Gen. Emilio Aguinaldo, located in Brgy. Murphy, Cubao, Quezon City. The 1,777,850 sqm property is composed of fifteen (15) distinct parcels donated or sold to the Republic of the Philippines.

This project requires the conduct and approval of survey of the 15 parcels in the name of the Department of National Defense - Armed Forces of the Philippines.

1. **SCOPE OF WORKS**

The scope of work for the project shall include, but not limited to the following:

|  |  |  |
| --- | --- | --- |
| **Project Component** | **Work items** | **Specific Activities** |
| Coordination with DND/ AFP and DENR-NCR | 1. Courtesy Call/ Meeting with DND/ AFP 2. Coordination meetings | 1. Courtesy Call/ Meeting with DND/AFP Officers 2. Coordination meetings with DENR-NCR |
| Research works | 1. Data/ document research | 1. Assistance in securing the necessary documents such as copies of titles, deeds of sale/ donation, etc. from DND/AFP and other offices/ agencies |
| Relocation/ Subdivision Survey | 1. Reconnaissance 2. Ground survey 3. Encoding and Data processing 4. Approval (IVAS) of plan | 1. Plotting and encoding 2. Reconnaissance 3. Ground survey 4. Monumenting 5. Office Works 6. Miscellaneous activities |
| Miscellaneous activities | 1. Clerical work 2. Permitting | 1. Preparation of notices & communication 2. Preparation of reports and transmittals 3. Securing the necessary permits |

1. **TIMELINES/ DELIVERABLES**

The contractor shall complete the project within a period of **sixty (60) calendar days**, commencing from the date of receipt of the Notice to Proceed (NTP). This includes the time allotted to DENR-NCR to review, evaluate, and approve the submitted plan, computation sheets, reports, etc.

Deliverables as indicated below shall be submitted to DENR-NCR in both in an electronic format for review and monitoring purposes.

**Table of deliverables**

|  |  |
| --- | --- |
| **Scope of Work** | **Deliverables** |
|
| Coordination with DND/ AFP and DENR-NCR | 1. At least one (1) Courtesy Call/ Meeting with DND/ AFP and DENR 2. Weekly coordination meetings with the JTWT. |
| Research works | 1. Assistance in research works in DENR, LRA and ROD 2. Copy of all reference documents |
| Consolidation Survey | 1. Complete survey returns of survey for approval (IVAS) 2. 1 sepia copy and 3 blueprint copy of approved plan |
| Miscellaneous activities | 1. Copy of permits 2. 15-day progress report 3. Project completion report |

1. **SPECIFICATION REQUIREMENTS**
   1. Qualifications of Project Chief

The project chief must have the following qualifications:

* + 1. Must be a licensed geodetic engineer per RA 8560, as amended;
    2. Has no pending or abandoned survey project previously contracted with the government; and
  1. Minimum requirement for project Geodetic Engineers

Consolidation survey must have at one (1) project chief who is a registered Geodetic Engineer.

* 1. Minimum requirement for major equipment

The required minimum requirement for major equipment (owned or leased) for the project shall be as follows:

* + 1. Two (2) Total Stations

The survey instruments to be used must be registered as prescribed under the existing Manual on Land Surveying.

In case of lease of equipment, current contract of lease of surveying instruments must be made available by the contractor of the project.

* 1. Specifications of all deliverables including the monument dimensions and markings, standards for accuracy, plotting and numbering standards, etc. shall be as prescribed by DMC 2010-13, DAO 2007-29, and DAO 1998-12.

1. **APPROVED BUDGET FOR THE CONTRACT (ABC)**

The ABC for the proposed undertaking is **Php 623,000.00**

1. **PAYMENT SCHEDULE**

Payment for the services rendered by the contractor shall be in progress payments. The contractor may submit a request for payment for work accomplished, based on the following schedule:

|  |  |
| --- | --- |
| **Deliverable/ Output/ Milestone** | **Payment** |
| Mobilization (upon submission of letter of credit) | 15% |
| Submission of CSR | 30% |
| Approval of survey plan | 50% |
| Contingency upon completion of project | 5% |
| **TOTAL** | **100%** |

Retention money, equal to TEN PERCENT (10%) of each payment shall be held by DENR-NCR. 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 DENR-NCR, 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 again be imposed using the rate specified therefore.

The total “retention money” shall be due for release upon final acceptance of the works.

1. **TERMS OF PAYMENT**

The contractor shall submit a written request for advance payment in an amount not to exceed FIFTEEN PERCENT (15%) of the total contract price as Mobilization fee, to be made in lump sum.

The advance payment shall be made only upon the submission to and acceptance by DENR-NCR of an amount (cash) to guarantee the faithful performance of the contract, and submission of letter of credit)

The advance payment shall be repaid by the contractor by deducting a percentage equal to that used for the advance payment from periodic progress payments to be made to the contractor.

The contractor may reduce amount (guarantee) by the amounts refunded by the Monthly Certificates in the advance payment.

DENR-NCR shall pay the balance to the contractor by Progress Billing based on S-curve submitted and the evaluation report of the Inspection Committee of this Office, to wit:

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| --- | --- |
| **ACTIVITY/ DESCRIPTIONS** | **NO. OF DAYS** |
| Courtesy Call/ Coordination meeting/s | 4 days |
| Reconnaissance | 4 days |
| Data Research | 15 days |
| Conduct of survey | 15 days |
| Preparation of CSR | 7 days |
| Approval of survey plan (IVAS) | 15 days |
| **TOTAL** | **30 days** |

DENR-NCR shall retain TEN PERCENT (10%) of every progress billing payments, referred to as the retention money. It covers any defects/ damages of the work from its completion to final acceptance by the agency.

The contractor is required to submit the COMPLETION REPORT duly certified by DENR-NCR – inspection and evaluation committee and the technical working group (TWG) before progress billing shall be paid.

DENR-NCR shall pay in full the contract price to the contractor after the work is fully complete and satisfactorily acceptable to the former.

1. **PERFORMANCE SECURITY**

The contractor shall post a performance security upon signing of this contract in the form of cash, certified check, cashier’s check, or manager’s check, equivalent to five percent (5%) of the total contract price which shall be co-terminus with the final completion of the contract as a guarantee to the faithful performance of the obligations and responsibilities of the contractor herein specified.

1. **WARRANTY SECURITY**

The contractor shall assume full responsibility for the works from the time project construction commenced up to the final acceptance by DENR-NCR and shall be held responsible for any damage or destruction of the works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation, and the like to be affected by his construction work.

The contractor shall be required to put up a warranty security in form of CASH DEPOSIT, CASH BOND OR LETTER OF CREDIT equivalent to five percent (5%) of the total contract price.

The warranty security shall be stated in Philippine Pesos and shall remain effective during the applicable warranty period.

1. **DELAY, LIQUIDATED AND OTHER DAMAGES**

Any error or defect in the survey or in the returns shall be corrected by the contractor at his own expense within such time as DENR-NCR may deem reasonable. DENR-NCR shall notify the contractor to undertake the correction of the survey and the specific period within such correction shall be completed. Failure of the contractor to comply shall subject him to pay LIQUIDATED DAMAGES, an amount to be determined in accordance with the formula provided by R.A. 9184 to be covered by the Retention Money, an amount equivalent to TEN PERCENT (10%) deducted from the Progress Billing Payments. Of the correction has exceeded the time duration equivalent to TEN PERCENT (10%) of the specified contract time, DENR-NCR may rescind the contract, forfeit the Performance Security and direct the blacklisting of the contractor.

For purposes of this contract, a project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the end-user.

To be entitled to such liquidated damages, DENR-NCR 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 DENR-NCR.

In case 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, DENR-NCR concerned may rescind the contract, forfeit the contractor’s Performance Security and takeover the prosecution of the works or award the same to a qualified contractor through negotiated contract.

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 DENR-NCR 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 and impose other appropriate sanctions.

1. **TERMINATION FOR DEFAULT**

DENR-NCR shall terminate this contract for default when any of the following conditions attend its implementation:

* 1. Due to the contractor’s fault and while the project is on-going, it has incurred negative slippage of FIFTEEN PERCENT (15%) or more in accordance with PD 1870, regardless of whether or not previous warnings and notices have been issued for the contractor to improve his performance.
  2. Due to its own fault and after this contract time has expired, the contractor incurs delay in the completion of the works after this contract has expired; or
  3. The contractor
     1. Abandons the contract works, refuses or fails to comply with a valid instruction of DENR-NCR or fails to proceed expeditiously and without delay despite a written notice by DENR-NCR;
     2. Does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the works in accordance with the Approved program of Work and Equipment deployment schedule as required for the project;
     3. Does not execute works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under this contract;
     4. Neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
     5. Sub-lets any part of this contract without approval by DENR-NCR.

1. **TERMINATION FOR OTHER CAUSES**

DENR-NCR may terminate this contract, in whole or in part, at any time for its convenience. The head of DENR-NCR may terminate this contract for the convenience of DENR-NCR 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.

DENR-NCR or the contractor shall include, but shall not be limited to the following:

1. The contractor stops work for TWENTY-EIGHT (28) calendar days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by DENR-NCR’s representative;
2. DENR-NCR 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 pf action or remedy which has accrued or will accrue thereafter to DENR-NCR and/or the contractor. In the case of the contractor’s insolvency, any contractor’s equipment which DENR-NCR instructs in the notice is to be used until the completion of the works;
3. DENR-NCR gives notice that failure to correct a particular defect is a fundamental breach of contract and the contractor fails to correct it within a reasonable period of time determined by DENR-NCR’s representative;
4. The contractor does not maintain a Security, which is required;
5. The contractor has delayed the completion of the WORKS by the number of days for which the maximum amount of liquidated damages can be paid; and
6. In case it is determined prima facie by DENR-NCR that the contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as but not limited to the following:
   1. Corrupt, fraudulent, collusive and coercive practices;
   2. Drawing up or using forged documents;
   3. Using adulterated materials, means or methods, or engaging in production contrary to rules of science and trade; and
   4. Any other act analogous to the foregoing.

DENR-NCR 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 corrupt, fraudulent, or coercive practices.

If this contract is terminated, the contractor shall stop work immediately, make the site safe and secure, and leave the site as soon as reasonably possible.

1. **FORCE MAJEURE, RELEASE FROM PERFORMANCE**

For purposed of this Contract the terms “force majeure” and “fortuitous event” may be used interchangeably. In this regard, a fortuitous event of 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.

If this contract is discontinued by an outbreak of war or by any other event entirely outside the control of either DENR-NCR or the contractor, DENR-NCR’s representative shall certify that is contract has been discontinued. The contractor shall make the site safe and stop work as quickly as possible after receiving the certificate and shall be paid for all works carried out before receiving it and for any work carried out afterwards to which a commitment was made.

1. **INSTRUCTIONS, INSPECTIONS, AND AUDITS**

DENR-NCR’s personnel shall at all reasonable times during the implementation of the PROJECTS be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the construction.

1. **DEFECTS**

DENR-NCR shall check the contractor’s work and notify the latter of any defects that are found. Such checking shall not affect the contractor’s responsibilities. DENR-NCR may instruct the contractor to search uncover defects and test any work that DENR-NCR considers below standards and defective.

DENR-NCR shall give notice to the contractor of any defects before the end of the Defects Liability Period, which begins at the completion date up to final acceptance by DENR-NCR. The Defects Liability Period shall be extended for as long as the defects remain.

Every time notice of a defect is given, the contractor shall correct the notified defect within the length of time specified in DENR-NCR’s notice.

The contractor shall correct the defects which he notices himself before the end of the Defects Liability Period.

DENR-NCR shall certify that all defects have been corrected. If DENR-NCR considers that correction of a defect is not essential, he can request the contractor to submit a quotation for the corresponding reduction in the Contract price. If DENR-NCR accepts the quotation, the corresponding change is a variation.

DENR-NCR shall give the contractor at least FOURTEEN (14) DAYS notice of his intention to use a third party to correct a defect. If the contractor does not correct the defect himself within the period, DENR-NCR may have the defect corrected by a third party. The cost of the correction will be deducted from the contract price.

The use of a third party to correct defects that are uncorrected by the contractor will in no way relieve the contractor of its liabilities and warrants under the contract.

1. **COST OF REPAIRS**

Loss or damage to the works or materials to be incorporated in the works between the start date and the end of the warranty period shall be remedied by the contractor at the contractor’s cost if the loss or damage arises from the contractor’s acts or omissions.

1. **CHANGE ORDERS/ DELAY IN THE EXECUTION OF THE WORKS**

DENR-NCR may order changes or revisions in the works. In such eventuality, increase or decrease in the contract price shall be discussed and agreed upon by the parties including adjustment in the time and completion. In no case shall the contractor implement any change or revision without a written order from DENR-NCR.

1. **SUSPENSION OF WORK**

DENR-NCR shall have the authority to suspend the works 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 DENR-NCR 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 works wholly or partly.

The contractor 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 DENR-NCR, as the case may be, due to the following:

1. There exist a right-of-way problems which prohibit the contractor from performing work in accordance with the Approved Construction Schedule.
2. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.
3. 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.
4. There is failure on the part of DENR-NCR to deliver government-furnished materials and equipment as stipulated in the contract.
5. Delay in the payment of the contractor’s claim for progress billing beyond forty-five (45) calendar days from the time the contractor’s claim has been certified to by DENR-NCR that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the time elapsed between the effective order of suspending operation and the order to resume work shall be allowed the contractor by adjusting the contract time accordingly.

1. **PAYMENT ON TERMINATION**

If the contract is terminated because of a fundamental breach of contract by the contractor, DENR-NCR shall issue a certificate for the value of the work done and materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed. Additional Liquidated Damages shall not apply. If the total amount due to the first party exceeds any payment due to the contractor, the difference shall be a debt payable to DENR-NCR.

If the contact is terminated for DENR-NCR’s convenience or because of a fundamental breach of contract by DENR-NCR, it shall issue a certificate for the value of the work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the contractor’s personnel employed solely on the WORKS, and the contractor’S costs of protecting and securing the WORKS, and less advance payments received up to the date of the certificate.

The net balance due shall be paid or repaid within TWENTY-EIGHT (28) days from the notice of termination.

1. **EXTENSION OF CONTRACT TIME**

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, DENR-NCR shall determine the amount of such extension; provided that DENR-NCR 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 clam have arisen, delivered to DENR-NCR 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, DENR-NCR shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in DENR-NCR’s opinion, the findings of facts justify an extension.

No extension of contract time shall be granted the contractor due to (a) ordinary unfavorable weather conditions; and (b) inexcusable failure or negligence of the contractor to provide the required equipment, supplies, or materials.

Extension of contract time may be granted only when the affected activities fall within the critical path of the PERT/CPM network.

No extension of contract time may be granted only 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.

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 DENR-NCR 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 DENR-NCR, non-acquisition of permit to enter private properties within right-of-way resulting in complete paralysation of construction activities, and other meritorious cases as determined by DENR-NCR and approved by the Head of the said FIRST PARTY. Shortage of construction materials, general labor strikes, and peace and order problems that disrupt construction operation 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 DENR-NCR for consideration and the validity of the Performance Security shall be correspondingly extended.

1. **PRICE ADJUSTMENT**

Except for extraordinary circumstances as determined by NEDA and approved by the GPPB, no price adjustment shall be allowed.

1. **COMPLETION**

The contractor shall request DENR-NCR to issue a Certificate of Completion of the Works, and DENR-NCR will do so upon deciding that the work is completed.