

TERMS OF REFERENCE

**PROCUREMENT AND IMPLEMENTATION OF THE MAINTENANCE
AND REPAIR OF MAJOR ROAD AND SECONDARY ROADS**

Project Identification No. Infra-07-2020

I. INTRODUCTION.

In 1992, R.A. 7227 was passed into law, creating the Bases Conversion and Development Authority (BCDA) and transferring to it all former U.S. Military Bases, which includes Camp John Hay (CJH). By virtue of Executive Order numbered 103 series of 1993, the John Hay Development Corporation (now known as the John Hay Management Corporation) was established to be the administrator and implementing arm of the BCDA at Camp John Hay.

Presidential Proclamation numbered 420 series of 1992, created and designated Three Hundred One (301) hectares of Camp John Hay as the John Hay Special Economic Zone (JHSEZ).

In 2006, Presidential Proclamation numbered 1191 was issued declaring the JHSEZ as a Special Tourism Economic Zone.

II. OBJECTIVES.

The project aims to:

- a. To ensure that primary and selected secondary roads in the JHSEZ are well maintained considering that Camp John Hay is a major tourist destination in the Philippines; and
- b. Elevate the quality of service to locators and residents within the JHSEZ.

III. PROJECT SCOPE.

The works covered by this project shall consist of providing all plant, labor, equipment, supplies, material, transportation, handling, and storage, and performing all operations necessary to complete the project.

The project shall the following major works:

Item No.	Item Description
A.1.1	Offices and Laboratory for the Engineer
B.4(10)	Miscellaneous Survey and Staking
B.5	Project Billboard/Signboard
B.7(1)	Occupational Safety and Health Program
B.8(1)	Road Works Safety and Traffic Management
B.9	Mobilization/Demobilization
B.12	Removal and Relocation of Utilities
B.14	Environmental Management and Monitoring
101(1)	Removal of Actual Structures/Obstruction (Grouted Riprap)
101(3)b6	Removal of Actual Structures/Obstruction (PCCP, Unreinforced)
101(3)d	Removal of Actual Structures/Obstruction (0.1m Thick, Sidewalk)
101(4)b	Removal of Actual Structures/Obstruction (Curb)

102(2)	Surplus Common Excavation
104(2)	Embankment
201(1)	Aggregate Base Course
302(2)	Bituminous Tack Coat (Emulsified Asphalt: Csb-3)
310(1)c	Bituminous Concrete Surface Wearing Course, Hot-Laid, 50mm thick
311(1)e2	Portland Cement Concrete Pavement (Unreinforced, 0.28mm Thick, 14 days)
401(1)	Metal Railing
404(1)a	Reinforcing Steel (Grade 40)
405(1)a3	Structural Concrete (Class A, 20.68mpa, 30 Days)
500(1)	Pipe Culverts (610mmØ RCPC, Class II)
502(1)a1	Manholes (610mmØ, concrete)
502(2)a1	Inlet, Type (610mmØ)
502(4)a1	Concrete Cover (610mmØ)
503(2)	Drainage Steel Grating with Frame
505(2)	Grouted Riprap
508(1)	Hand-Laid Rock Embankment
600(4)	Curb and Gutter (Cast-In Place)
601(1)	Sidewalk
603(6)a	Guardrail (Metal Guardrail, W-Beam, Including Post)
605(1)	Road Sign (Warning Signs)
605(2)	Road Sign (Regulatory Signs)
605(3)	Road Sign (Guide or Informative Signs)
605(6)	Road Sign (Hazard Markers)
612(1)	Reflectorized Thermoplastic Pavement Markings White
612(2)	Reflectorized Thermoplastic Pavement Markings Yellow
807(1)	Site Development
807(9)	Paver Blocks

The major component of the project is the laying of Bituminous Concrete Surface Wearing Course, Hot-Laid, 50mm thick and shall be implemented in two (2) shifts, the first shift will start at 8 AM to 5 PM and the next shift will begin at 10 PM to 6 PM. The rest of the scope of works will be implemented on a day shift in parallel with the major component.

IV. MODE OF PROCUREMENT.

The mode of procurement for this project shall be Competitive Bidding. For purposes of, and throughout this TOR, the terms “Competitive Bidding” and “Public Bidding” shall have the same meaning and shall be used interchangeably.

V. RESERVATION CLAUSE.

The HoPE reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract at any time prior to contract award in accordance with Section 41 of RA 9184 and its IRR, without thereby incurring any liability to the affected bidder or bidders in the following situations:

- a) If there is prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- b) If the 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 HoPE; (ii) if the project is no longer necessary as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

VI. VIDEO CONFERENCING DURING THE PRE-BID CONFERENCE.

A pre-bid conference will be conducted in person or face-to-face through videoconferencing. A The Pre-Bid Conference is open to prospective bidders but attendance shall not be mandatory.

VII. ONLINE OR ELECTRONIC SUBMISSION OF BIDS.

- a) 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, or **two (2) password-protected Bidding Documents in compressed archive folders, in case of electronic bid submission**, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements, and the second shall contain the financial component of the bid.
- b) Bids, including the eligibility requirements submitted after the deadline, shall not be accepted by the BAC. The BAC shall record in the minutes of bid submission and opening, the bidder’s name, its representative and the time the late bid was submitted or **in case of online or electronic bid submission, generate a Bid receipt page for the official time of late submission which can be saved or printed by the bidder.**

- c) Unsealed or unmarked bid envelopes, or **in case of electronic bid submission, Bidding Documents, not in compressed archive folders and are not password-protected, shall be rejected.** However, bid envelopes that are not properly sealed and marked or not properly compressed and password-protected, as required in the Bidding Documents, shall be accepted, provided that the bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or improperly compressed or password-protected folder, or for its premature opening.
- d) A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. For manual submission and receipt of bids, where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid and marked as a “modification,” thereof, and stamped “received” by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened. For online or electronic bid submission, where a bidder modifies its Bid, it shall not be allowed to retrieve its original Bid, but shall only be allowed to send another Bid equally secured and properly identified. In the case of electronic submission, to be labeled as a “modification,” of the one previously submitted. The time indicated in the latest Bid receipt page generated shall be the official time of submission. Bids submitted after the deadline shall not be accepted. Prospective bidders, who submitted their bids electronically, shall not be allowed to submit bids manually.
- e) The BAC shall open the bids immediately after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents. For electronic bid submission, the passwords for accessing the Bidding Documents will be disclosed by the Bidders only during the actual bid opening which may be done in person or face-to-face through videoconferencing, webcasting or similar technology.

VIII. SITE INSPECTION AND INVESTIGATION.

At any time after the pre-bid conference and before the submission of bids, prospective bidders may request an inspection and investigation of the project site. The prospective bidders are responsible for the accuracy and applicability of all data gathered that it will use in its derivation of the bid amount.

IX. SUBCONTRACTING.

A prospective bidder/contractor may be allowed to subcontract a portion of the contract or project. However, the prospective bidder/contractor is not allowed to subcontract a material or significant portion of the contract or project, which portion must not exceed fifty percent (50%) of the total ABC/project cost.

Sub-contracting will be allowed subject to the following:

- a) The Bidder may identify the subcontractor to whom a portion of the Works will be subcontracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid;
- b) Bidders may subcontract portions of the works to an extent as may be approved by the Procuring Entity and stated in the Bidding Data Sheet, However, Subcontractors must submit the documentary requirements for eligibility and technical documents. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Works shall be disallowed; and
- c) Subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project.

X. INSPECTION AND TESTS.

All materials, plant/s, and workmanship shall be of the kind described in the contract and accordance with the Procuring Entity's representative's instructions. These materials, plant/s, and workmanship will be subjected, from time to time, to such tests as the Procuring Entity's representative may require. These tests must be at the place of manufacture, fabrication or preparation, or on-site or at such other place or places as may be specified in the contract, or at all or any of such places.

The Procuring Entity's representative, must, at all reasonable times, have access to the site and to all workshops and places where materials or plants are being manufactured, fabricated, or prepared for the works. The contractor, for its part, shall accord every facility for, and every assistance in, obtaining the right to such access.

The Procuring Entity's representative shall be entitled, during manufacture, fabrication, or preparation of materials to be used in the project, to inspect and test these materials and the plant or plants where these materials are being manufactured, fabricated, and/or prepared. If the materials are being manufactured, fabricated, or prepared in workshops or places other than those of the contractor, the contractor must obtain permission for the Procuring Entity's representative to carry out inspection and testing in those workshops or places. Such inspection or testing will not release the contractor from any obligation under the contract.

If at the time and place agreed above, the materials or plant are not ready for inspection or testing, the Procuring Entity's representative shall reject these materials or the plant and shall notify the contractor of such rejection immediately. The Procuring Entity's representative must also do so if, as a result of the inspection or testing, determines that the materials or plant are defective or otherwise not in accordance with the contract. A notice from the Procuring Entity's representative shall be issued immediately stating the objection and the reason(s) for the objection. The contractor, for its part, must then promptly make good the defect or ensure that rejected materials or plants comply with the

contract. If the Procuring Entity’s representative so requests, the test of rejected materials or plant shall be made or repeated under the same terms and conditions.

The Procuring Entity’s representative will, after consultation with the contractor, determine all the costs incurred in the repetition of the test or tests. These costs are recoverable from the contractor by the Procuring Entity and shall be deducted from any monies due to the contractor. The Procuring Entity’s representative shall notify the contractor accordingly, with a copy being furnished the Procuring Entity.

All test(s) required for this project shall be conducted by DOST/DPWH accredited laboratories.

XI. MEASUREMENT OF WORKS.

The quantities set out in the Bill of Quantities are the estimated quantities for the works. It should not, therefore, be taken as the actual and correct quantities of the works to be executed by the contractor in fulfillment of his obligations under the contract. The works may vary and will be adjusted accordingly as provided for in Annex E of the 2016 IRR.

The Procuring Entity’s representative shall measure the value of the works in-place in accordance with the contract. The Procuring Entity’s representative shall measure any part of the works, give reasonable notice to the contractor’s authorized agent, who must:

- a. Attend or send a qualified representative to assist the Procuring Entity’s representative in making such measurement; and
- b. Supply all particulars required by the Procuring Entity’s representative.

This measurement will be the basis for the payment that will be made to the contractor in accordance with the Statement of Work Accomplished.

XII. METHOD OF PAYMENT.

Progress billing shall be on a lump-sum payment based on the value of actual accomplished work in proportion to total contract cost.

- a) A fifteen (15) percent advance payment of the total contract price may be granted upon submission of a written request and 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. At the discretion of JHMC, the advance payment is to be made in a lump sum or, at the most, two installments;

Request for progress billings accompanied by a contractor’s Statement of Work Accomplished (SWA), Affidavit attesting that all Bills, Labor, Materials were paid, Updated S-Curve, and PERT/CPM Network Diagram. It shall be submitted upon actual completion of a specific portion, segment, milestone or phase of the infrastructure project following the schedule stated hereunder:

Progress Billing	Milestone
First	Thirty (30) percent completion

Second	Fifty (50) percent completion
Third	Seventy-Five (75) percent completion
Fourth	Ninety-Five (95) percent completion
Final	Last five (5) percent

Any kind of payment, including advance and progress payments, shall be made by the Procuring Entity as soon as possible, but in no case later than forty-five (45) days after the submission of an invoice or claim by the contractor, accompanied by documents submitted pursuant to the contract, and upon fulfillment of other obligations stipulated in the contract. The Procuring Entity shall commence inspection within three (3) working days after receipt of invoice or claim. The Procuring Entity has the right to deduct from the contractor's progress billing such amount as may be necessary to cover third party liabilities. The processing of any progress payment shall not be made unless the discovered defects are corrected.

- b) The contractor's approved Manpower and Equipment Utilization Schedule shall be strictly followed and implemented. Personnel, materials, and/or equipment not found to be on-site as required in the above-stated schedules shall cause the deduction of its corresponding amount from the statement of work accomplished (SWA) and progress billing. Any changes in personnel or equipment shall require the Procuring Entity's prior written approval.
- c) Final Payment. The final payment will be made upon acceptance by the Procuring Entity of the project. The final payment shall still be subject to retention of ten percent (10%) to cover for all defects that may be detected, including maintenance costs for one year after project completion. The final payment shall still be reduced by whatever balance remains of the amount that is needed in order to return to the government the 15% advance payment previously made to the contractor.
- d) The contractor shall be responsible for informing JHMC of its ninety-five percent (95%) accomplishment by submitting a request for a final inspection to the latter. Procuring Entity's inspectorate team to make a preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. This 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.
- e) No Acceptance and Final Payment shall be made on the project unless a core test for thickness determination is conducted. The number of core test samples shall be determined by the PEs Project Engineer.
- f) All excess, unused, and/or reusable materials paid for in the contract such as formworks, laboratory apparatus and equipment, field office, safety gadgets, and devices, etc. shall be turned over to the Procuring Entity. Equipment paid for by the Project should be in operating condition when turned over.

XIII. GUIDELINES FOR THE TERMINATION OF THE CONTRACT IN CASE OF NEGATIVE SLIPPAGE OF FIFTEEN PERCENT (15%) OR MORE.

- 1) Negative slippage of 5% (“Early Warning” Stage) – The contractor shall be given a warning and be guided to submit a detailed “catch-up” program on a fortnightly (two weeks) basis to eliminate the stoppage;
- 2) Negative slippage of 10% (“ICU” Stage) – The contractor shall be issued a final warning and be required to come up with a more detailed program of activities with weekly physical targets, together with the required additional input resources; and
- 3) Negative slippage of 15% or more (“Terminal” Stage) – The implementing office shall initiate termination of the contract and/or take-over of the remaining work by administration or assignment to another contractor/appropriate agency.

XIV. CONTRACTORS’ RESPONSIBILITIES.

All operations necessary for the execution and completion of the works and the remedying of any defects therein must, so far as compliance with the requirements of the contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- a. The flow of traffic;
- b. The convenience of the public; and
- c. The access to, use, and occupation of public or private roads and footpaths to or of properties whether in the possession of the Procuring Entity or any other entity or person.

During the execution of the works, the contractor must keep the site reasonably free from all unnecessary obstruction. It must also store or dispose of any equipment and surplus materials and clear away and remove from the site any wreckage, rubbish, or temporary works that are no longer required.

Upon the issuance of the Certificate of Completion, the contractor shall remove from that part of the site to which the certificate relates, all equipment, surplus material, rubbish, and temporary works of every kind. It must leave such part of the site and works clean and in a workmanlike condition to the satisfaction of the Procuring Entity’s engineer. However, the PE is entitled to retain until the end of the defect liability period such as materials, equipment, and temporary works it may need to fulfill the contractor’s obligations concerning the project.

XV. CONTRACT IMPLEMENTATION.

- a) The Contractor shall submit a detailed program of work within fourteen (14) calendar days upon the issuance of the Notice to Proceed for approval by the procuring entity that shall include, among others:
 - i. Construction Schedule and S-Curve. The order in which it intends to carry out the work including anticipated timing for each stage of design/detailed engineering and construction;

- ii. Periods for review of specific outputs and any other submissions and approvals;
 - iii. The sequence of timing for inspections and tests as specified in the contract/TOR documents;
 - iv. Construction Methodology. General description of the design and construction methods to be adopted;
 - v. Manpower Schedule. Number and names of personnel to be assigned for each stage of the work;
 - vi. Equipment Utilization Schedule. List of equipment required on-site for each major stage of the work;
 - vii. Description of the quality control system to be utilized for the project; and
 - viii. DOLE approved Construction Safety and Health Program.
- b) Progress billings shall be accompanied by As-Built Plans, updated Construction Schedule, and S-Curve.
 - c) Final billing shall be accompanied by an updated and effective Performance Security, if and when a suspension of work is issued by the Procuring Entity.
 - d) In cases of discrepancy between the JHMC approved plans against the result of the survey (Road Survey + Profile Leveling + CrossSection + Contour), adjustments shall be made in accordance with Annex "E" of the revised IRR of RA 9184.

XVI. CONSTRUCTION SAFETY GUIDELINES.

The Contractor is mandated to adhere to the construction safety guidelines of JHMC during the COVID-19 public health crisis. The guidelines are hereto attached as Annex "A".

XVII. OTHER GENERAL REQUIREMENTS.

- a) Engineer's Offices and workmen's rest and changing area.
The contractor shall provide and maintain such offices, latrines, and messing areas as necessary. These should be located in a compound, distinct and separate from the Engineer's work area. The location, dimensions, and layout of such buildings and places shall be subject to the approval of JHMC. The Contractor shall not be permitted to erect temporary buildings or structures on the site without the specific permission in writing of the PE's Engineer including approval of the dimensions of such buildings or structures. Before the commencement of the project, the Contractor shall fence off the Engineer's and workforce's area from the rest of the compound. By the end of the Period of Warranty, the Contractor shall remove this fence and all buildings shall be cleared and the area shall be graded as required by the Engineer.
- b) Cooking within the designated compound is not allowed.
- c) Medical room and first aid facilities.
 - i. The Contractor shall provide and maintain throughout the Contract, a medical room together with all necessary supplies to be sited in the Contractor's main area. The medical room shall be waterproof; it could be a building or room designated and

used exclusively for the purpose and have a floor area of at least 15 square meters and a glazed window area of at least 2 square meters.

- ii. The Contractor shall employ permanently on the site a fully trained Medical Aide who shall be engaged solely from medical duties.
- iii. The location of the medical room and any other arrangements shall be made known to all employees by posting on prominent locations suitable notices in the Site.
- iv. The Contractor's arrangement to comply with this Section shall be subject to the approval of the Engineer and also to the approval of any qualified Medical Officer designated by the Government to supervise medical arrangements on the Site.

XVIII. CONTRACTOR'S PERFORMANCE EVALUATION.

The contractor shall be subjected to the Contractor's Performance Evaluation System (CPES) and shall be conducted during construction and upon completion of the project using the NEDA-Approved CPES Guidelines.

XIX. INDEMNIFICATION.

The contractor shall save harmless and indemnify the Procuring Entity in all claims, proceedings, damages, costs, charges and expenses arising out of, or in relation to, any such matters insofar as the contractor is responsible for them.

XX. BANK TO BANK PAYMENT OF BIDDING DOCUMENTS.

Prospective bidders who opt to purchase the bidding documents through bank to bank payments may do so subject to the procedures of the Finance Department of JHMC.

XXI. GUIDELINES IN PREPARING THE DETAILED UNIT PRICE ANALYSIS (DUPA).

1. All items of work to be used in preparing the DUPA shall be consistent with the design, plans, and specifications for the project.
2. For uniformity in the preparation of the Financial Proposal, the DUPA shall be an integral part of the Bidding Documents.
3. All bids shall be composed of the Direct Cost and Indirect Cost.

3.1. DIRECT COST.

3.1.1. MATERIAL COST. Cost of materials to be used in doing the work item called for, which shall include, among others, the following:

- a) Cost at source, including processing, crushing, stockpiling, loading, royalties, local taxes, construction and/or maintenance of haul roads, etc.
- b) Expenses for hauling to the project site.
- c) Handling expenses.
- d) Storage expenses.

3.1.2. LABOR COST.

- a) Salaries and wages, as authorized by the Department of Labor and Employment.

- b) Fringe benefits, such as vacation and sick leaves, benefits under the Workmen's Compensation Act, SSS contributions, allowances, 13th-month pay, bonuses, etc.

3.1.3. EQUIPMENT EXPENSES.

- a) Rental rates of equipment shall be based on the prevailing "Association of Carriers and Equipment Lessors, (ACEL) Inc." approved for use by the DPWH-CAR. Rental rates of equipment not indicated in the ACEL booklet shall be taken from the rental rates used by the proponent. The make, model, and capacity of the equipment should be indicated in the detailed unit cost analysis.
- b) Mobilization and demobilization shall be treated as a separate pay item. It shall be computed based on the equipment requirements of the project stipulated in the bidder's proposal.

3.2. INDIRECT COST.

3.2.1. Overhead.

- a) Cost to cover power and water consumption and office supplies.
- b) A premium on Contractors All Risk Insurance (CARI).
- c) A premium on Bid Security (except for Bid Securing Declaration)
- d) A premium on Performance Security
- e) A premium on Surety for Advance Payment
- f) A premium on Warranty Bond (one year)
- g) JHMC Permits and Fees

3.2.2. Contingencies.

3.2.3. Miscellaneous Expenses. Expenses for laboratory tests for quality control.

3.2.4. Contractors Profit.

3.2.5. Applicable Taxes.

Notes:

- a) The following items shall not be subjected to OCM and Profit mark-up:
 - i. Mobilization and demobilization
 - ii. Permits and Clearances
- b) The following non-civil works items shall not be subjected to OCM mark-up:
 - i. Field/Laboratory Office & Medical Quarters (Rental Basis)
 - ii. Furnishing of Furniture, Laboratory Equipment, Survey Equipment, and Consumables
 - iii. Photographs
 - iv. Health and Safety
 - v. Traffic Management
 - vi. Environmental Compliance
 - vii. Communication Equipment, etc.