



PROJECT: Procurement of Testing Materials for Various 2024 Assessment Tests: Early Language, Literacy, and Numeracy Assessment (ELLNA)

(EARLY PROCUREMENT ACTIVITY)

CONTRACT NO.: 2024-BEA2(001to002&004to006)-BVI-CB001-C021

CONTRACT

12 JUL 2024

THIS CONTRACT made and entered into this _____ day of _____ 2024 by and between the **DEPARTMENT OF EDUCATION**, located at DepEd Complex, Meralco Avenue, Pasig City, represented herein by its Undersecretary for Curriculum and Teaching, **DR. GINA O. GONONG**, as per Office Order OO-OSEC-2023-267, dated 17 October, 2023 (hereinafter referred to as "**DEPED**"); and **XIMEX DELIVERY EXPRESS, INC.**, represented herein by its President, **FEDERICO O. CRUZ II**, with office address at 85 Agno Ext. Tatalon, Quezon City (hereinafter referred to as "**XIMEX**"), as per Omnibus Sworn Statement dated December 9, 2023 (hereto attached as Annex "A").

DEPED and **XIMEX** are collectively called **PARTIES**.

WHEREAS, DEPED invited bids for the Procurement of Testing Materials for Various 2024 Assessment Tests: Early Language, Literacy, and Numeracy Assessment (ELLNA) (EARLY PROCUREMENT ACTIVITY) consisting of three (3) lots, and received bids from the prospective bidders for Lot No. 3; **DEPED** opened, read, and evaluated the bid and declared **XIMEX** as having the Lowest Calculated Bid for Lot No. 3; after evaluation, **DEPED** post-qualified and declared the bid of **XIMEX** as the Lowest Calculated Responsive Bid for Lot No. 3 in the sum of **PHILIPPINE PESOS NINE MILLION, NINE HUNDRED SEVENTY-THREE THOUSAND, NINE HUNDRED FIFTY-TWO AND 00/100 (PHP9,973,952.00) ONLY**, (hereinafter called the "Contract Price"), detailed as follows:

| Lot No. | Description | Quantity | Amount (Php) |
|---------|--|---|--------------|
| 3 | Delivery and retrieval of ELLNA Test Materials | Delivery of Test Materials: 7,792,150 Retrieval of Test Materials: 7,792,150 | 9,973,952.00 |

NOW THIS CONTRACT WITNESSETH AS FOLLOWS:

- In this Contract, words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract referred to.
- The following documents as required by the 2016 revised Implementing Rules and Regulations of Republic Act No. 9184 shall be deemed to form and be read and construed as part of this Contract, *viz:*

[Signature]
ANITA A. EBRON
 XIMEX' Witness

[Signature]
FEDERICO O. CRUZ II
 XIMEX

[Signature]
DR. NELIA V. BENTO, CSCO IV
 Director IV
 DEPED's Witness

[Signature]
DR. GINA O. GONONG
 DEPED

[Handwritten mark]

- a. Resolution to Award No. **2024-BEA2(001to002&004to006)-BVI-CB-001**, dated 15 January, 2024;
- b. Notice of Award of Contract and **XIMEX**'s conforme thereto; and
- c. Bid Bulletin No.1 dated November 23, 2023 and Bid Bulletin No.2 dated December 5, 2023.


AMRITA A. EBRARA
 XIMEX' Witness

3. **XIMEX** shall post a Performance Security within (10) ten calendar days from receipt of the Notice of Award (NOA) by the bidder from the Procuring Entity but in no case later than prior to the signing of the Contract by both parties, in any forms prescribed in Section 39 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. The Performance Security shall be posted in favor of **DEPED**, and shall be forfeited in the event that it is established that **XIMEX** is in default of any of its obligations under this Contract. **XIMEX** shall be responsible for the extension of its performance security and/or undertake to renew its Performance Security whenever necessary, and without the need for prior notice of instruction from **DEPED**, to ensure that it is in force and effect for the whole duration of the Contract and until a Certificate of Final Acceptance is duly issued.


FEDERICO O. CRUZ II
 XIMEX

4. The goods referred to in this Contract shall be delivered by **XIMEX** in accordance with the delivery site indicated in the Schedule of Requirements and as to the contract duration as follows:

Test Booklets, Scannable Answer Sheets and Non-classified Materials:


Delivery Period: May 20 - June 19, 2024 **(30 calendar days)**

Test Administration: June 25, 2024

Retrieval Period: June 2 – August 08, 2024 **(35 calendar days)**

XIMEX shall ensure that the goods will be delivered in accordance with the Schedule of Requirements, which is hereto attached as Annex "B" and made an integral part thereof

Violation of this provision, based on documents and reports submitted and validated by the authorized receiving personnel is a cause for the termination of the Contract and forfeiture of the performance Security in favor of **DEPED**.


DR. NELIA V. BENITO, CESO IV
 Director IV
 DEPED's Witness

5. **DEPED** shall have the right to visit and inspect **XIMEX**' premises covered by the Contract at any time or stage of the contract implementation to monitor and assess **XIMEX**' capacity to discharge its contractual obligations.

Pre-Contract Implementation Conferences shall be conducted by **DEPED** with the Supplier, as may be applicable.


DR. GINA O. GOMBONG
 DEPED MD

6. **DEPED** shall have the right to inspect and test or cause the testing of the goods covered by the Contract, at any time or stage of contract implementation. Prior to and for purposes of inspection, **XIMEX** shall ensure convenient access to the goods for inspection. **XIMEX** shall assign personnel to undertake the handling, unpacking, assembly, commissioning, disassembly, repacking, resealing, and sorting of the goods prior to, during, and after inspection.


AMITA A. EBROV
XIMEX' Witness


FEDERICO O. CRUZ II
XIMEX


Dr. NELJA V. BENITO, CEO IV
Director IV
DEPED's Witness


DR. GINA O. GONONG
DEPED

7. The goods shall be inspected by the designated Inspectorate Team prior to delivery in accordance with the provisions of the Special Conditions of the Contract, the Schedule of Requirements, or otherwise indicated in other parts of the Bidding Documents. **XIMEX** shall coordinate with **DEPED**, through the Procurement Management Service-Contract Management Division (ProcMS-CMD), on the conduct of inspection or pre-delivery inspection (PDI). Any request for inspection shall be done in writing and contain the following information:
- a. Project Title and Contract Number;
 - b. Specific goods for inspection;
 - c. Quantity of goods for inspection;
 - d. Venue/Address of inspection site; and
 - e. Proposed schedule of inspection which must be at least 10 calendar days from the submission of the written request.

The request for inspection must be submitted to **DEPED** through ProcMS-CMD or by email at procms.cmd@deped.gov.ph.

8. The goods must conform to and comply with the standards mentioned in Section VI. Schedule of Requirements of the Bidding Documents, and must be in accordance with the final technical specifications as approved by the Bids and Awards Committee, or as amended by subsequently issued Bid Bulletin, if any, based on the samples submitted by **XIMEX**, and reflected in the post-qualification report, which is hereto attached as Annex "C" and made an integral part hereof.
9. Goods with defects or non-compliant with the required technical specifications upon delivery shall be rejected, orally or in writing, by **DEPED** and replaced by **XIMEX** in accordance with the warranty provisions in the bidding documents. The replacement of the goods shall be subject to re-inspection.
10. In case **XIMEX** encounters condition(s) impeding timely delivery of the goods, **XIMEX** shall promptly notify **DEPED** in writing within five (5) calendar days from notice of such condition(s). Any request for work suspension and/or contract period extension shall be promptly done in writing as soon as circumstances for such request have become apparent. **XIMEX** must provide sufficient proof to support any request for work suspension and/or contract period extension.

DEPED accepts no liability for the damage of goods during transit. Risk and title to the goods will not be deemed to have passed to **DEPED** until its receipt and acceptance at the final destination through its authorized receiving personnel.

11. The Contract Price shall be paid to **XIMEX** in accordance with the following disbursement procedures:
- a. **XIMEX** may submit a request for payment based on the following:
 - i. Supplier's invoice showing goods' description, actual quantity of goods delivered based on the schedule of delivery and other relevant terms and conditions of the contract, unit price, and total amount;


AMITA A. EBRANI
XIMEX' Witness


FEDERICO O. CRUZ II
XIMEX


Dr. NELIA V. BENITO, CESO IV
Director IV
DEPED's Witness


DR. GINA S. GONORZA
DEPED 

- ii. Duly signed Delivery Receipt/s;
- iii. Duly signed Inspection and Acceptance Report/s (IAR/s), including certification by **XIMEX**, duly signed and dated by the authorized representative of **DEPED** indicating that the goods have been delivered in accordance with the Contract; and
- iv. Warranty Certificate.

Other documents in support of a request for payment may be required by **DEPED** pursuant to existing disbursement, accounting, and auditing rules and procedures.

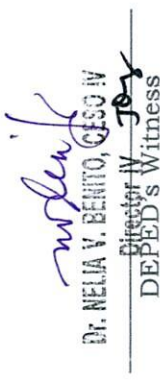
- b. Payment shall be made to **XIMEX** within **Sixty (60)** days from submission of the documents specified in SCC Clause 2.2 and other documents as may be prescribed by **DEPED** in the following manner:
 - i. 50% of the Contract Price shall be paid to **XIMEX** upon complete delivery of test materials; and
 - ii. 50% of the Contract Price shall be paid to **XIMEX** upon completion of retrieval of test materials.
- 12. Payment shall be subject to the "Warranty" provision in the form of either retention money in an amount equivalent to five percent (5%) of the payment or a Special Bank Guarantee in an amount equal to five percent (5%) of the Contract Price required under Section 62 of RA 9184 and its revised IRR, which shall cover the following;
 - a. A three-month comprehensive and onsite warranty for the delivered goods shall reckon from the date of the issuance of the Certificate of Final Acceptance by the **DEPED** that the delivered goods have been duly inspected and accepted.
 - b. Defects, min-sent-incomplete delivery and retrieval.
 - c. **XIMEX** shall replace or repair all rejected goods within five (5) calendar days from receipt of the Notice of Rejection. Replacement or repair of the goods shall only be applicable if printing defects and/or non-compliance with the technical specifications are discovered prior to test administration. The replacement goods shall be subject to re-inspection.

In case **XIMEX** opts for retention money, the amount shall be released at the expiration of the warranty period or the remaining amount in case it has been utilized pursuant to the warranty provision unless, during the remainder of the warranty period, the retention money is substituted with a special bank guarantee.

- 13. Ownership, title, rights, and interest with respect to the contents of the test booklets, including all resources, records, or materials used or obtained in the course of this Contract shall vest exclusively with **DEPED**, in accordance with the law. **XIMEX** hereby irrevocably waives any claim thereto. **XIMEX** shall not, in any manner or for any purpose, use the contents of the test booklets beyond what is expressly allowed for the purpose of accomplishing the terms under this Contract unless express permission of **DEPED** in writing is obtained.


AMITA A. EBRUN
XIMEX Witness


FEDERICO O. CRUZ II
XIMEX


DR. NELIA V. BENITO, CISCO IV
Director IV
DEPED's Witness


DR. GINA O. GOMBONG
DEPED

14. Each party in the performance of their respective duties and responsibilities under this Contract and in the implementation thereof shall adhere to Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012" and its Implementing Rules and Regulations and applicable National Privacy Commission issuances. Any gathered data and information should be protected and inspected during the term and even after the termination of this Contract. The processing of any gathered data and information should be in compliance with the confidentiality and privacy requirements under the said law and applicable regulations.
15. **XIMEX** shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery, for every day of delay until such goods are finally delivered and accepted by **DEPED**. **DEPED** shall deduct the liquidated damages from any money due or which may become due to **XIMEX**, or collect from any of the securities or warranties posted by **XIMEX**, whichever is convenient to **DEPED**. Once the accumulated amount of liquidated damages reaches 10% of the Contract Price, **DEPED** may rescind or terminate the Contract, without prejudice to other courses of action and remedies available under the circumstances.
16. The **PARTIES** shall make every effort to resolve amicably and by mutual consultation any and all disputes or differences arising between the **PARTIES** in connection with the implementation of the Contract. Should such dispute not be resolved amicably, it shall be submitted to Early Neutral Evaluation pursuant to Republic Act No. 9285 or the "Alternative Dispute Resolution Act of 2004", and its Implementing Rules and Regulations.





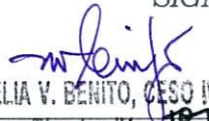
IN WITNESS WHEREOF, the **PARTIES** hereto have caused this Contract to be executed in accordance with governing laws on the day and year first above written.

SIGNED, SEALED AND DELIVERED BY:


DR. GINA O. GONONG *MG*
Undersecretary for Curriculum and
Teaching
Department of Education


FEDERICO O. CRUZ II
Authorized Representative
XIMEX DELIVERY EXPRESS, INC.

SIGNED IN THE PRESENCE OF:


Dr. NELIA V. BENITO, CESO IV
Director IV
DEPED's Witness


AMITA A. EBRON
XIMEX DELIVERY EXPRESS, INC.'s
Witness

CERTIFIED FUNDS AVAILABLE: ₱9,970,952.-


MA. RHUNNA L. CATALAN
Chief Accountant
Chief Accountant

REPUBLIC OF THE PHILIPPINES)
PASIG CITY, METRO MANILA) S.S

ACKNOWLEDGMENT

BEFORE ME, a Notary Public in and for PASIG CITY, Philippines,
this 16 day of JUL 2024 personally appeared:

NAME

GOVERNMENT ISSUED ID

(Number, Issued On, Issued By)

DR. GINA O. GONONG

Undersecretary for Curriculum and
Teaching
Department of Education

Known to me and to me known to be the same person who executed the foregoing instrument and acknowledged to me that the same is the free and voluntary act and deed of the entity which he/she respectively represents.

The foregoing instrument is a CONTRACT consisting of six (6) pages (exclusive of attachments), excluding this page on which this acknowledgment is written and signed by the party hereto.

WITNESS MY HAND AND SEAL on the date and place first above written.

ATTY. NEIL T. ALBOPERA

NOTARY PUBLIC

Until December 31, 2025

Pasig City and in the Municipality of Pateros, Metro Manila

PTR No. 1257680 / Pasig City/G1 -02-2024

IBP No. 325487; 12/06 /2023 (MD for 2024)

Admitted to the Philippine Bar on 04/12/2022

Roll of Attorney No. 76228

TIN No. 242 -007-260-000

G/F Pasig City Hall, Brgy. San Nicolas, Pasig City

Appointment No. 58 (2024-2025)

Cellphone No. 0977 -634-4229

Doc. No. 378;
Page No. 69;
Book No. 711
Series of 2024.

REPUBLIC OF THE PHILIPPINES)

PASIG CITY, METRO MANILA) S.S

ACKNOWLEDGMENT

BEFORE ME, a Notary Public in and for PASIG CITY, Philippines, this 2 day of JUL 2024 personally appeared:

NAME

GOVERNMENT ISSUED ID

(Number, Issued On, Issued By)

FEDERICO O. CRUZ II

Authorized Representative
XIMEX DELIVERY EXPRESS, INC.

Known to me and to me known to be the same person who executed the foregoing instrument and acknowledged to me that the same is the free and voluntary act and deed of the entity which he/she respectively represents.

The foregoing instrument is a CONTRACT consisting of six (6) pages (exclusive of attachments), excluding this page on which this acknowledgment is written and signed by the party hereto.

WITNESS MY HAND AND SEAL on the date and place first above written.

Doc. No. 329;
Page No. 69;
Book No. LVII
Series of 2024.

ATTY. NEIL T. ALBOPERA
NOTARY PUBLIC
Until December 31, 2025
Pasig City and in the Municipality of Pateros, Metro Manila
PTR No. 1287680 / Pasig City/G1 -02-2024
IBP No. 323487; 12/06 /2023 (MD for 2024)
Admitted to the Philippine Bar on 04/12/2022
Roll of Attorney No. 76228
TIN No. 242-007-260-000
G/F Pasig City Hall, Brgy. San Nicolas, Pasig City
Appointment No. 58 (2024-2025)
Cellphone No. 09777-66344222

List/Description of Goods /Services

The delivery schedule expressed below stipulates the date of delivery to the project site.

Early Language, Literacy, and Numeracy Assessment (ELLNA)

Package 3

| Test Booklets, Scannable Answer Sheets and Non-classified Materials | | |
|--|----------------------------|---|
| ¹Delivery Period | Test Administration | ²Retrieval Period |
| May 20 - June 19, 2024 (30 calendar days) | June 25, 2024 | July 2 – August 8, 2024 (35 calendar days) |

¹ Upon receipt of the letter to start the delivery of test materials from Bureau of Education Assessment – Education Assessment Division (BEA-EAD) -

² Upon receipt of the letter to start the retrieval of test materials from Bureau of Education Assessment – Education Assessment Division (BEA-EAD) -