



PROJECT: Procurement of Test Materials for 2023 National Career Assessment Examination (NCAE)
CONTRACT NO.: 2023-BEA2(013)-BIV-CB034-C149

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____ 2023 by and between the **DEPARTMENT OF EDUCATION**, located at DepEd Complex, Meralco Avenue, Pasig City, represented herein by its Undersecretary and Chief of Staff, **ATTY. MICHAEL WESLEY T. POA**, 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 Authorized Representative, **FEDERICO O. CRUZ II** with office address at Sto. Domingo Road, Brgy. Mayapa Calamba City, Laguna (hereinafter referred to as "**XIMEX**"), as per Omnibus Sworn Statement dated October 9, 2023 (hereto attached as Annex "A").

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

WHEREAS, DEPED invited bids for the Procurement of Test Materials for 2023 National Career Assessment Examination (NCAE) consisting of three (3) lots, and received for Lot No. three (3); **DEPED** opened, read, and evaluated the bids and declared **XIMEX** as the Single Calculated Bid for Lot No. 3; after evaluation, **DEPED** post-qualified and declared the bid of **XIMEX** as the Single Calculated Responsive Bid for Lot No. 3 in the sum of **PHILIPPINE PESOS ELEVEN MILLION, FIFTY-NINE THOUSAND, EIGHT HUNDRED THIRTY-FIVE and 00/100 (Php11,059,835.00) ONLY**, (hereinafter called the "Contract Price"), detailed as follows:

Lot No.	Description	Amount (PhP)
3	Delivery and retrieval of test materials, delivery of certificate of ratings	11,059,835.00

NOW THIS CONTRACT WITNESSETH AS FOLLOWS:

1. In this Contract, words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Contract referred to.
2. 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:
 - a. Resolution to Award No. 2023-BEA2(013)-BIV-CB-034 dated October 27, 2023;
 - b. Philippine Bidding Documents;
 - i. General and Special Conditions of the Contract;
 - ii. Schedule of Requirements;
 - iii. Technical Specifications; and

AMITA A. FERON
 XIMEX Witness
 FEDERICO O. CRUZ II
 XIMEX
 DR. NELIA V. BENITO, CEO IV
 DEPED
 ATTY. MICHAEL WESLEY T. POA
 DEPED

iv. Bid Bulletin No. 2 dated October 2, 2023, respectively;

- c. **XIMEX**' bid, including the eligibility requirements, technical and financial proposals, and all other documents or statements submitted;
- d. Performance Security;
- e. Notice of Award (NOA) of Contract and **XIMEX**' conforme thereto; and
- f. Other contract documents required by existing laws and/or DepEd in the Bidding Documents. **XIMEX** agrees that additional contract documents of information prescribed by the Government Procurement Policy Board (GPPB) that are subsequently required for submission after the contract execution such as, but not limited to, Notice to Proceed, Variation Order, and Warranty Security, shall form part of the Contract.

3. **XIMEX** shall post a Performance Security within 10 calendar days from receipt of the NOA in the form and amount prescribed therein. 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.

4. The goods shall be delivered within One-Hundred Forty (**140**) **CALENDAR DAYS** from the receipt of the Notice to Proceed (NTP). **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 hereof.

Violation of this provision, based on documents and reports submitted and validated by the **DEPED** authorized receiving personnel may be a cause for the termination of the Contract and shall be subject to liquidated damages pursuant to item 14 of this Contract.

5. **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.


Pre-Delivery and Pre-Implementation Conference shall be conducted prior to the conduct of inspection of goods by the designated **DEPED** Inspectorate Team.

6. The goods shall be inspected by the designated DepEd Inspectorate Team. **XIMEX** shall coordinate with **DEPED**, through the Procurement Management Service-Contract Management Division (ProcMS-CMD), on



AMITA A. EBRERA
XIMEX' Witness


FEDERICO O. CRUZ II
XIMEX


Dr. NELIA V. BENITO, CEO IV
DEPED's Witness


ATTY. MICHAEL WESLEY T. POA
DEPED

the conduct of inspection or pre-delivery inspection (PDI). Any request for inspection or PDI shall be done in writing, and submitted in accordance with SCC Clause 4 of the Bidding Documents.


AMITA A. EBROV
XIMEX' Witness


7. 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.

8. 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.


FEDERICO O. CRUZ II
XIMEX

9. 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.


Dr. NELIA V. BENITO, CESO IV
DEPED'S Witness

10. 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, quantity of goods delivered based on the schedule of the delivery and other relevant terms and conditions of the Contract, unit price, and total amount;
 - 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 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:


ATTY. MICHAEL WESLEY T. POA
DEPED

- i. Forty percent (40%) of the total Contract Price shall be paid to **XIMEX** upon completion of the delivery of test materials;
- ii. Forty percent (40%) of the total Contract Price shall be paid to **XIMEX** upon completion of the retrieval of test materials;
- iii. Twenty percent (20%) of the total Contract Price upon completion of the delivery of certificate of rating.

[Signature]
AMITA A. EBROU
 XIMEX' Witness

11. 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 progress payment or a Special Bank Guarantee in an amount equal to five percent (5%) of the Contract Price required under Section 62.1 of RA 9184 and its revised IRR. 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.

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 DEPED.

[Signature]
FEDERICO O. CRUZ II
 XIMEX

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

[Signature]
Dr. NELIA V. BENITO, CESO IV
 DEPED' Witness

13. 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 issuance. Any gathered data and information should be protected and respected 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.

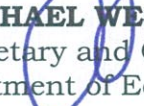
[Signature]
ATTY. MICHAEL WESLEY T. POA
 DEPED

14. **XIMEX** shall be liable for liquidated damages in an amount equal 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.


15. 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:


ATTY. MICHAEL WESLEY T. POA
Undersecretary and Chief of Staff
Department of Education


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


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

SIGNED IN THE PRESENCE OF:


AMITA A. BORON
XIMEX' Witness

CERTIFIED FUNDS AVAILABLE: ₱ 11,059,835.57


MA. RHUNNA L. CATALAN
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 ____ day of APR 05 2024 2024 personally appeared:

NAME

GOVERNMENT ISSUED ID
(Number, Issued On, Issued By)

ATTY. MICHAEL WESLEY T. POA
Undersecretary and Chief of Staff
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 seven (7) pages (including 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.

NOTARY PUBLIC

GAUDENCIO A. BARBOZA JR.
NOTARY PUBLIC
Until Dec. 31, 2024
PTR # A(6123305 Jan. 2, 2024, Taguig City
IBP No. 328534 /12/11/23 RSM (FOR YR. 2024)
ROLL No. 41969
MCLE COMP. NO. VII No. 0028557
APRIL 19, 2023
APP. No. 61 (2023- 2024)

Doc. No. 151;
Page No. 32;
Book No. 18;
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 ____ day of **APR 05 2024** 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.

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