

BIDDING DOCUMENTS

Procurement of Consultancy Services

for the

***Conduct of the Feasibility Study (F/S) for
the Establishment of a Commercial Sweet
Sorghum Plantation and Construction of
a Sweet Sorghum Syrup Processing Plant***

September 2014

Section I. Instructions to Bidders

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A. General

1. Introduction

- 1.1. The National Economic and Development Authority (NEDA) as the Government Procuring Entity shall select a Consulting Firm (hereinafter referred to as “Consultant”) for the Conduct of the Feasibility Study (F/S) for the Establishment of a Commercial Sweet Sorghum Plantation and Construction of a Sweet Sorghum Syrup Processing Plant (hereinafter called the “**Project**”) from among those short listed, in accordance with the Quality-Cost Based Evaluation/Selection (QCBE/QCBS) process.
- 1.2. NEDA has received financing (hereinafter called “funds”) under the *FY 2014 Government Appropriations Act (GAA) - F/S Fund* (hereinafter called the “Funding Source”) to finance the costs of the above conduct of F/S. The NEDA now intends to apply a portion or the whole of the funds to payments for this Project.
- 1.3. Consultants are invited to submit bids composed of a technical proposal and a financial proposal for Consulting Services required for this Project described in the **Terms of Reference (TOR)**. Proposals received shall be the basis for contract negotiations and ultimately for a signed contract with the selected Consultant.
- 1.4. The Project shall not be phased.
- 1.5. **Consultants** must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the project and on the local conditions, **Consultants** are encouraged to visit **NEDA** before submitting a proposal and to attend the pre-proposal conference specified in the *Instruction to Bidders (ITB) Clause 7*.
- 1.6. **Consultants’** costs of preparing their bids and negotiating the contract, including a visit to the **NEDA**, are not reimbursable as a direct cost of the project.
- 1.7. **Consultants** shall not be under a declaration of ineligibility for corrupt, fraudulent, collusive, or coercive practices issued by the Funding Source or the **NEDA** in accordance with *ITB Clause 3.1*.

2. Conflict of Interest

- 2.1. The Funding Source’s policy requires that **Consultants** provide professional, objective, and impartial advice and at all times hold the **NEDA’s** interests paramount, without any consideration for future work, and strictly avoid situations where a conflict of interest shall arise with their other projects or their own interests. **Consultants** shall not be hired for any project that would be in conflict with their prior or current obligations to other entities, or that may place them in a position of not being able to carry out the Project in the

best interest of **NEDA**. Without limitation on the generality of this rule, **Consultants** shall not be hired under the circumstances set forth below:

- (a) If a **Consultant** combines the function of consulting with those of contracting and/or supply of equipment;
- (b) If a **Consultant** is associated with, affiliated to, or owned by a contractor or a manufacturing firm with departments or design offices offering services as consultants unless such Consultant includes relevant information on such relationships along with a statement in the Technical Proposal cover letter to the effect that the Consultant shall limit its role to that of a consultant and disqualify itself and its associates from work in any other capacity that may emerge from the Project (including bidding for any part of the future project). The contract with the Consultant selected to undertake the Project shall contain an appropriate provision to such effect; or
- (c) If there is a conflict among consulting projects, the **Consultant** (including its personnel and subcontractors) and any subsidiaries or entities controlled by such **Consultant** shall not be recruited for the relevant project. The duties of the **Consultant** depend on the circumstances of each case. While continuity of consulting services may be appropriate in particular situations where no conflict exists, a **Consultant** cannot be recruited to carry out a project that, by its nature, shall result in conflict with a prior or current project of such **Consultant**. Examples of the situations mentioned are when a **Consultant** engaged to prepare engineering design for an infrastructure project shall not be recruited to prepare an independent environmental assessment for the same project; similarly, a Consultant assisting NEDA in privatization of public assets shall not purchase, nor advise purchasers, of such assets; or a **Consultant** hired to prepare TOR for a project shall not be recruited for the project in question.

2.2. **Consultants** shall not be related to the designated Head of the Procuring Entity (HOPE) or the designated Head of NEDA, members of the NEDA Bids and Awards Committee (NBAC), its Technical Working Groups (TWG) and Secretariat, and the head of the Project Management Office (PMO) or the end-user unit, by consanguinity or affinity up to the third civil degree. The prohibition shall apply as follows:

- (a) If the **Consultant** is an individual or sole proprietorship, then to himself;
- (b) If the **Consultant** is a partnership, then to all its officers and members;
- (c) If the **Consultant** is a corporation, then to all its officers, directors and controlling stockholders; or
- (d) If the **Consultant** is a JV, the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

Relationship of the nature described above or a failure to comply with the provisions of this clause will result in the rejection of the **Consultant's** proposals.

- 2.3. Subject to the provisions of **ITB** Clause 2, any previous or ongoing participation by the **Consultant**, its professional staff, or its affiliates or associates under a contract with the Funding Source or the **NEDA** in relation to this Project may result in the rejection of its proposals. Consultants should clarify their situation in that respect with the **NEDA** before preparing its bid.
- 2.4. Failure by a **Consultant** to fully disclose potential conflict of interest at the time of proposals submission, or at a later date in the event that the potential conflict arises after such date, shall result in the **NEDA** and/or the Funding Source seeking the imposition of the maximum administrative, civil and criminal penalties up to and including imprisonment.
- 2.5. **Consultants** are discouraged to include officials and employees of the Government of the Philippines (GOP) as part of its personnel. Participation of officials and employees of the GOP in the Project shall be subject to existing rules and regulations of the Civil Service Commission (CSC).
- 2.6. Fairness and transparency in the selection process require that **Consultants** do not derive unfair competitive advantage from having provided consulting services related to the Project in question. To this end, the **NEDA** shall make available to all the short listed consultants together with the Bidding Documents all information that would in that respect give each **Consultant** a competitive advantage.

3. Corrupt, Fraudulent, Collusive, and Coercive Practices

- 3.1. The **NEDA** as well as the Consultants shall observe the highest standard of ethics during the procurement and execution of the contract. In pursuance of this policy, the **NEDA**:
 - (a) defines, for purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the GOP, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019.
 - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a

contract to the detriment of the NEDA, and includes collusive practices among participating **Consultants** (prior to or after proposals submission) designed to establish proposal prices at artificial, non-competitive levels and to deprive the **NEDA** of the benefits of free and open competition.

(iii) “collusive practices” means a scheme or arrangement between two or more participating **Consultants**, with or without the knowledge of the **NEDA**, designed to establish proposal prices at artificial, non-competitive levels.

(iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;

(b) will reject a proposal for award if it determines that the proponent **Consultant** recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

3.2. Further, the **NEDA** will seek to impose the maximum civil, administrative, and/or criminal penalties available under applicable laws on individuals and organizations deemed to be involved in any of the practices mentioned in **ITB Clause 3.1(a)**.

3.3. Furthermore, the Funding Source and the **NEDA** reserve the right to inspect and audit records and accounts of a **Consultant** in the selection for and performance of a contract themselves or through independent auditors as reflected in the **GCC Clause 51**.

4. Consultant’s Responsibilities

4.1. The **Consultant** or its duly authorized representative shall submit a sworn statement in the form prescribed in Section IV. Proposal Forms as required in **ITB Clause 10.2(c)**.

4.2. The **Consultant** is responsible for the following:

(a) Having taken steps to carefully examine all of the Bidding Documents;

(b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;

(c) Having made an estimate of the facilities available and needed for this Project, if any;

(d) Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin/s as provided under **ITB Clause 8.3**.

- (e) Ensuring that it is not “blacklisted” or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board (GPPB);
- (f) Ensuring that each of the documents submitted in satisfaction of the procurement requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- (g) Authorizing the HOPE or his duly authorized representative/s to verify all the documents submitted;
- (h) Ensuring that the signatory is the duly authorized representative of the **Consultant**, and granted full powers and authority to do, execute and perform any and all acts necessary and/or to represent the **Consultant** in the procurement process, with the duly notarized Secretary’s Certificate attesting to such fact, if the **Consultant** is a corporation, partnership, cooperative, or joint venture;
- (i) Complying with the disclosure provision under Section 47 of the Act in relation to other provisions of Republic Act 3019; and
- (j) Complying with existing labor laws and standards, if applicable.

Failure to observe any of the above responsibilities shall be at the risk of the **Consultant** concerned.

- 4.3. It shall be the sole responsibility of the proponent **Consultant** to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to this Project, including: (a) the location and the nature of the contract, project, or work; (b) climatic conditions; (c) transportation facilities; (c) nature and condition of the terrain, geological conditions at the site communication facilities, requirements, location and availability of construction aggregates and other materials, labor, water, electric power and access roads; and (d) other factors that may affect the cost, duration and execution or implementation of the contract, project, or work.
- 4.4. The **NEDA** shall not assume any responsibility regarding erroneous interpretations or conclusions by the **Consultant** out of the data furnished by the **NEDA**.
- 4.5. Before submitting their proposals, the **Consultants** are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the GOP which may affect the contract in any way.
- 4.6. The **Consultant** shall bear all costs associated with the preparation and submission of his proposals, and the **NEDA** will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the selection process.

- 4.7. **Consultants** should note that the **NEDA** will only accept proposals only from those that have paid the nonrefundable fee for the Bidding Documents at the office indicated below:

NBAC Secretariat

c/o Administrative Staff

Second Floor, National Economic and Development Authority

12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City, 1605

Tel. No. 631-0945 local 204

5. Origin of Associated Goods

There is no restriction on the origin of Goods other than those prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

6. Subcontracts

- 6.1. The Consultant may not subcontract portions of the Consulting Services except to an extent as may be approved by the **NEDA and Philippine National Oil Company – Alternative Fuels Corporation (PAFC)**. However, subcontracting of any portion shall not relieve the **Consultant** from any liability or obligation that may arise from the contract for this Project.
- 6.2. Subcontractors must comply with the eligibility criteria and the documentary requirements specified in the *Annex to Bid Bulletin No. 1*. In the event that any subcontractor is found by the **NEDA** to be ineligible, the subcontracting of such portion of the Consulting Services shall be disallowed.
- 6.3. The **Consultant** shall identify the subcontractor to whom a portion of the Consulting Services will be subcontracted at any stage of the selection process or during contract implementation. The **Consultant** shall include the required documents as part of the technical component of its proposals.

B. Contents of Bidding Documents

7. Pre-Proposal Conference

- 7.1. A pre-proposal conference shall be held *on 01 October 2014 (Wednesday), 1:30 PM to 4:30 PM*, at the *3/F Infrastructure Staff Conference Room, National Economic and Development Authority (NEDA) 12 St. Josemaria Escriva Drive, Ortigas Center, Pasig City 1605* to clarify and address the participating shortlisted Consultants' questions on the technical and financial components of this Project.
- 7.2. Shortlisted Consultants are encouraged to attend the pre-proposal conference to ensure that they fully understand the NEDA's requirements. Non-attendance of the Consultant will in no way prejudice its proposals; however, the Consultant is expected to know the changes and/or amendments to the Bidding Documents discussed during the pre-proposal conference.

All Shortlisted Consultants' representative/s shall secure and bring a written authority from their authorized official (e.g., president, governing boards if Corporation) to be presented to the NBAC during the Pre-Proposal Conference stating that said representative is an authorized person to speak for and in behalf of their office/company.

- 7.3. Any statement made at the pre-proposal conference shall not modify the terms of the Bidding Documents unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin.

8. Clarifications and Amendments to Bidding Documents

- 8.1. Shortlisted **Consultants** who have purchased the Bidding Documents may request for clarifications on any part of the Bidding Documents for an interpretation. Such a request must be made in writing and submitted to the NBAC at least ten (10) calendar days before the deadline set for the submission and receipt of proposals.
- 8.2. Supplemental/Bid Bulletins may be issued upon the **NBAC's** initiative for purposes of clarifying or modifying any provision of the Bidding Documents not later than seven (7) calendar days before the deadline for the submission and receipt of proposals. Any modification to the Bidding Documents shall be identified as an amendment.
- 8.3. Any Supplemental/Bid Bulletin issued by the NBAC shall also be posted on the Philippine Government Electronic Procurement System (PhilGEPS) and the website of the NEDA concerned, if available. It shall be the responsibility of all Consultants who secure the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the NBAC. However, **Consultants** who have submitted proposals before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their proposals in accordance with **ITB Clause 20**.

C. Preparation of Proposals

9. Language of Proposal

The proposals, as well as all correspondence and documents relating to the proposals exchanged by the **Consultant** and the **NEDA**, shall be written in English. Supporting documents and printed literature furnished by the **Consultant** may be in another language provided they are accompanied by an accurate translation in English certified by the appropriate embassy or consulate in the Philippines, in which case the English translation shall govern, for purposes of interpretation of the proposals.

10. Documents Comprising the Proposals: Technical Proposal

- 10.1. While preparing the Technical Proposal, **Consultants** must give particular attention to the following:

- (a) The Technical Proposal shall not include any financial information. Any Technical Proposal containing financial information shall be the accountability and responsibility of the **Consultants** and shall not in any way prejudice, affect or deter the selection process, including disqualification of the **Consultant**.
- (b) The number of professional staff-months shall be based on the number of professional staff-months estimated by the Consultant.
- (c) Proposed professional staff must, at a minimum, have the experience indicated in the TOR preferably working under conditions similar to those prevailing in the Republic of the Philippines.
- (d) No alternative professional staff shall be proposed, and only one Curriculum Vitae (CV) may be submitted for each position.

10.2. The Technical Proposal shall contain the following information/documents:

- (a) Proposal security as prescribed in *ITB Clause 15*. If the proponent/Consultant opts to submit the proposal security in the form of:
 - (i) a bank draft/guarantee or an irrevocable Letter of Credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or
 - (ii) a surety bond accompanied by a certification coming from an authorized Insurance Commission that a surety or insurance company is authorized to issue such instrument.
- (b) Information indicated in the paragraphs below must be provided by the **Consultant** and each partner and/or subcontractor, if any, following the formats described in the Section IV. Proposal Forms:
 - (i) A brief description of the organization and outline of recent experience of the **Consultant** and each partner and/or subcontractor on projects of a similar and related nature as required in form *TPF 2*. Consultant's References. For each project, the outline should indicate *inter alia*, the project, contract amount and the **Consultant's** involvement. Information should be provided only for those projects for which the **Consultant** was legally contracted by itself or as one of the major participating consultants within an association or joint venture (JV). Whenever applicable, the experience of individual experts from projects completed independently or when associated with consultants other than the one with whom the individual is currently associated with cannot be claimed as the experience of the current consultant or any one of its partners and/or subcontractors, but can be claimed by the individuals themselves in their CVs. Consultants should be

prepared to substantiate the claimed experience if so requested by the NBAC.

- (ii) A concise, complete, and logical description of how the Consultant's team shall carry out the services to meet all requirements of the TOR.
- (iii) A work plan showing in graphical format (bar chart) the timing of major activities, anticipated coordination meetings, and deliverables such as reports required under the TOR.
- (iv) A Time Schedule (*TPF 7. Time Schedule for Professional Personnel*) indicating clearly the estimated duration in terms of person-months (shown separately for work in the field and in the home office) and the proposed timing of each input for each nominated expert, including domestic experts, if required, using the format shown. The schedule shall also indicate when experts are working in the project office and when they are working at locations away from the project office.
- (v) An organization chart indicating relationships amongst the **Consultant** and any partner and/or subcontractor, the **NEDA**, the Funding Source and the GOP, and other parties or stakeholders, if any, involved in the project.
- (vi) Comments, if any, on the TOR (*TPF 3. Comments and Suggestions of Consultant on the Terms of Reference and on Data, Services, and Facilities to be Provided by the NEDA*) to improve performance in carrying out the Project. Innovativeness shall be appreciated, including workable suggestions that could improve the quality/effectiveness of the Project. In this regard, unless the **Consultant** clearly states otherwise, it shall be assumed by the **NEDA** that work required to implement any such improvements, are included in the inputs shown on the **Consultant's** Staffing Schedule.
- (vii) The name, age, nationality, background employment record, and professional experience of each nominated expert including ongoing projects, with particular reference to the type of experience required for the tasks assigned should be presented in the CV format shown in *TPF 6. Format of Curriculum Vitae (CV) for Proposed Professional Staff*.
- (viii) Only one CV for each consultant involved in the Project may be submitted for each position.
- (ix) The NEDA requires that each expert confirm that the content of his/her CV is correct and the experts themselves should sign the certification of the CV. In addition, the expert should submit a signed written commitment stating that the expert shall work

for the Project once awarded the contract. A zero rating shall be given to a nominated expert if the expert:

(ix.1) failed to state nationality on the CV; or

(ix.2) the CV is not signed in accordance with paragraph (x) above.

(c) Sworn statement in accordance with *Section 25.2(b)(iv)* of the Revised IRR of RA 9184 and using the form prescribed in *Section IV. Proposal Forms*.

11. Documents Comprising the Proposals: Financial Proposal

- 11.1. All information provided in a **Consultant's** Financial Proposal shall be treated as confidential. The Financial Proposal must be submitted in hard copy using the format shown in Financial Proposal Forms.
- 11.2. The Financial Proposal requires completion of six (6) forms, particularly, FPF 1, FPF 2, FPF 3, FPF 4, FPF 5, and FPF 6. FPF 1. Financial Proposal Submission Form should form the covering letter of the Financial Proposal. Form FPF 2. Summary of Costs FPF 3. Breakdown of Price per Activity, FPF 4. Breakdown of Remuneration per Activity, FPF 5. Reimbursables per Activity, and FPF 6. Miscellaneous Expenses, relate to the costs of consulting services under two distinct categories, namely: (a) Remuneration; and (b) Reimbursable Expenditures.
- 11.3. Remuneration is divided into billing rate estimates for international and domestic consultants. Reimbursable Expenditures are divided into per diem rates for international and domestic consultants and costs for other reimbursable expenditure items required to perform the consulting services.
- 11.4. The list of experts, and their respective inputs, identified in Financial Proposal Forms, must match the list of experts and their respective inputs shown in Technical Proposal Forms.
- 11.5. The **Consultant** shall be subject to Philippine taxes on amounts payable by the **NEDA** under the contract through mandated withholding by local tax authorities of specified percentages of such amounts or otherwise. The **NEDA** shall withhold the applicable withholding taxes as implemented under existing revenue regulations [e.g., 5% - Value Added Tax (VAT) and 2% - Expanded Withholding Tax (EWT)].
- 11.6. The Financial Proposal should clearly estimate, as a separate amount, the local taxes (including social security), duties, fees, levies, and other charges imposed under the applicable law, on the Consultants, the subcontractors, and its personnel (other than Philippine Nationals or permanent residents of the Philippines).

- 11.7. Total calculated financial proposal prices, as evaluated and corrected for minor arithmetical corrections, such as computational errors, which exceed the approved budget for the contract (ABC) of **NINETEEN MILLION NINE HUNDRED SEVENTY-ONE THOUSAND and 00/100 Pesos Only (Php19,971,000.00)**, inclusive of all applicable government taxes and charges, professional fees, and other incidental and administrative costs which shall be paid on a reimbursement basis, shall not be considered.

12. Alternative Proposals

Consultants shall submit only one proposal and shall not associate with any other entity other than those already provided in its eligibility documents and allowed by the **NEDA**.

13. Proposal Currencies

- 13.1. All proposal prices shall be quoted in Philippine Pesos. However, for purposes of proposal evaluation, proposals denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate prevailing on the day of the opening of proposals.
- 13.2. If so allowed in accordance with **ITB** Clause 13.1, the **NEDA** for purposes of proposal evaluation and comparing the proposal prices will convert the amounts in various currencies in which the proposal price is expressed to Philippine Pesos at the exchange rate as published in the *Bangko Sentral ng Pilipinas* (BSP) reference rate bulletin on the day of the opening of proposals.
- 13.3. Payment of the contract price shall be made in Philippine Pesos.

14. Proposal Validity

- 14.1. Proposals shall remain valid until one hundred twenty (120) calendar days from the date of the opening of proposals.
- 14.2. In exceptional circumstances, prior to the expiration of the proposal validity period, the **NEDA** may request Consultants to extend the period of validity of their proposals. The request and the responses shall be made in writing. The proposal security described in **ITB Clause 15** should also be extended corresponding to, at least, the extension of the proposal validity period. A Consultant may refuse the request without forfeiting its proposal security, but his proposal shall no longer be considered for further evaluation and award. A Consultant granting the request shall not be required or permitted to modify its bid.

15. Proposal Security

- 15.1. The proposal security, issued in favor of the NEDA shall be equal to the percentage of the ABC in accordance with the following schedule:

Form of Proposal Security	Amount of Proposal Security (Equal to Percentage of the ABC)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Two percent (2%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	
c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Five percent (5%)
d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

- 15.2. The proposal security should be valid until 120 calendar days from the date of opening of technical proposals. Any proposal not accompanied by an acceptable proposal security shall be rejected by the NEDA as non-responsive.
- 15.3. No proposal securities shall be returned to the **Consultants** after the opening of proposals and before contract signing, except to those that failed or declared as post-disqualified, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest. Without prejudice on its forfeiture, proposal securities shall be returned only after the proponent with the Highest Rated and Responsive Proposal has signed the contract and furnished the performance security, but in no case later than the expiration of the proposal security validity period indicated in **ITB Clause 0**.
- 15.4. Upon signing and execution of the contract pursuant to **ITB Clause 30**, and the posting of the performance security pursuant to **ITB Clause 31**, the Consultant's proposal security will be discharged, but in no case later than the proposal security validity period as indicated in **ITB Clause 0**.

15.5. The proposal security may be forfeited:

- (a) if a Consultant:
 - (i) withdraws its proposal during the period of proposal validity specified in **ITB** Clause 0;
 - (ii) does not accept the correction of errors pursuant to **ITB** Clause 11.7;
 - (iii) fails to submit the requirements within the prescribed period or a finding against their veracity as stated in **ITB** Clause 27.2; or
 - (iv) The following are additional grounds for forfeiture of the proposal security:
 - 1. Submission of eligibility requirements containing false information or falsified documents.
 - 2. Submission of proposals that contain false information or falsified documents, or the concealment of such information in the proposals in order to influence the outcome of eligibility screening or any other stage of the public bidding.
 - 3. Allowing the use of one's name, or using the name of another for purposes of public bidding.
 - 4. Withdrawal of a proposal, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Consultant had been adjudged as having submitted the Highest Rated Proposal.
 - 5. Refusal or failure to post the required performance security within the prescribed time.
 - 6. Refusal to clarify or validate in writing its proposal during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.
 - 7. Any documented unsolicited attempt by a Consultant to unduly influence the outcome of the selection in his favor.
 - 8. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from the procurement process, submitting late proposals or patently insufficient proposal, for at least three (3) times within a year, except for valid reasons.

- (b) if the successful Consultant:
 - (i) fails to sign the contract in accordance with **ITB** Clause 30; or
 - (ii) fails to furnish performance security in accordance with **ITB** Clause 31.
- 15.6. In order to enhance competition and Consultants' participation, reduce transactional costs, and promote economy in procurement activities of the government, the Consultant shall have the option to submit a duly notarized **Bid Securing Declaration (BSD)** in lieu of the proposal security in the form and amount enumerated under Section 15.1.
- 15.7. BSD is an undertaking by a prospective Consultant, committing to pay the corresponding fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein.
- 15.8. The BSD shall comply with the standard format attached hereto as **Annex "A"** and shall be submitted to the procuring entity in the manner prescribed under Sections 25 and 27 of the Revised IRR or RA 9184.
- 15.9. The BSD shall be valid for a reasonable period determined by the HOPE concerned and indicated in the bidding documents, which in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of technical proposals, unless duly extended by the proponent upon the request of the HOPE.
- 15.10. The BSD shall automatically expire in the following instances:
 - a.) Upon expiration of the proposal validity period, or any extension thereof pursuant to Section 28.2 of the Revised IRR or RA 9184;
 - b.) When all proponents are declared ineligible or post-disqualified and, upon receipt of the notice therefor, either failed to timely file a request for reconsideration or filed a waiver to avail of said right;
 - c.) When the Consultant declared as having the Highest Rated and Responsive Proposal has furnished the performance security and signed the contract.
- 15.11. The BSD shall be enforced when the Consultant commits any of the following:
 - a.) Withdraws its proposal during the period of proposal validity required in the bidding documents; or
 - b.) Fails or refuses to accept the award and enter into contract or perform any and all acts necessary to the execution of the contract, in accordance with the bidding documents, after having been duly notified of the acceptance of its Proposal during the period of proposal validity.

15.12. Commission of any of the acts mentioned in **Section 15.11** shall merit the following sanctions:

- a.) Penalty of automatic blacklisting for two (2) years in all government procurement activities; and
- b.) Payment of fine equivalent to the amount in cash subject to the following rules:
 - i.) In case of multiple proponents, the difference between the evaluated Financial Proposal prices of the Consultant with the Highest Rated Proposal and the Consultant with the next Highest Rated Proposal, and so on. However, as regards the Consultant with the highest rated proposal, the amount shall be based on the difference between the evaluated financial proposal price and the ABC.
 - ii.) In case of a single proponent, the difference between the evaluated financial proposal price and the ABC.

15.13. Notwithstanding the provisions of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, the following provisions shall govern the blacklisting for purposes of this Guidelines:

- a.) The **NEDA** shall immediately issue the blacklisting order upon determination of the grounds for enforcement of the BSD provided in Section 15.11 hereof.
- b.) Only in cases where the notice of award (NOA) is not in conformity with the Bidding Documents may the blacklisted Consultant file a motion for reconsideration with the HOPE within three (3) calendar days from receipt of the blacklisting order.
- c.) The blacklisted Consultant shall only be delisted upon the expiration of the period of penalty and payment of the fine.

16. Format and Signing of Proposals

- 16.1. **Consultants** shall submit their proposals through their duly authorized representative using the appropriate forms provided in Section IV. Proposal Forms on or before the deadline specified in the ***ITB Clause 18*** in two (2) separate sealed proposal envelopes, and which shall be submitted simultaneously. The **first** shall contain the **technical proposal** and the **second** shall contain the **financial proposal**.
- 16.2. Forms as mentioned in ***ITB Clause 16.1*** must be completed without any alterations to their format, and no substitute form shall be accepted. All blank spaces shall be filled in with the information requested.

- 16.3. The **Consultant** shall prepare an original of the first and second envelopes as described in *ITB Clauses 10 and 11*. In addition, the **Consultant** shall submit four (4) copies of the first and second envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 16.4. The proposal, except for unamended printed literature, shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative/s of the Consultant.
- 16.5. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Consultant.

17. Sealing and Marking of Proposals

- 17.1. **Consultants** shall enclose their original technical proposal described in **ITB** Clause 10, in one sealed envelope marked “ORIGINAL - TECHNICAL PROPOSAL”, and the original of their financial proposal in another sealed envelope marked “ORIGINAL - FINANCIAL PROPOSAL”, sealing them all in an outer envelope marked “ORIGINAL BID”.
- 17.2. Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as “COPY NO. ____ - TECHNICAL PROPOSAL” and “COPY NO. ____ – FINANCIAL PROPOSAL” and the outer envelope as “COPY NO. ____”, respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 17.3. Each Participating **Consultant** shall submit one (1) original and four (4) copies of the first and second components of its proposals. The original and the number of copies of the proposals shall be typed or written in indelible ink and shall be signed by the proponent or its duly authorized representative/s.
- 17.4. All envelopes shall:
- (a) contain the name of the contract to be bid in capital letters;
 - (b) bear the name and address of the **Consultant** in capital letters;
 - (c) be addressed to the **NBAC** identified in *ITB Clause 8.1*;
 - (d) bear the specific identification of this bidding process indicated in the Request for Expression of Interest; and
 - (e) bear a warning “DO NOT OPEN BEFORE...” the date and time for the opening of bids, in accordance with *ITB Clause 18*.
- 17.5. If bids are not sealed and marked as required, the **NEDA** will assume no responsibility for the misplacement or premature opening of the bid.

D. Submission of Proposals

18. Deadline for Submission of Proposals

Proposals must be received by the **NBAC**, c/o the Administrative Staff, 2nd Floor, at #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City 1605 on or before **31 October 2014 at 12:00 PM**.

19. Late Proposals

Any proposals submitted after the deadline for submission and receipt of proposals prescribed by the **NEDA**, pursuant to *ITB Clause 18*, shall be declared “Late” and shall not be accepted by the **NEDA**.

20. Modification and Withdrawal of Proposals

- 20.1. The **Consultant** may modify its proposals after it has been submitted; provided that the modification is received by the **NBAC** prior to the deadline prescribed for submission and receipt of proposals. The **Consultant** shall not be allowed to retrieve its original proposals, but shall be allowed to submit another proposal equally sealed, properly identified, linked to its original proposal marked as “TECHNICAL MODIFICATION” or “FINANCIAL MODIFICATION” and stamped “received” by the **NBAC**. Proposals modifications received after the applicable deadline shall not be considered and shall be returned to the **Consultant** unopened.
- 20.2. A **Consultant** may, through a letter of withdrawal, withdraw its proposals after it has been submitted, for valid and justifiable reason; provided that the letter of withdrawal is received by the **NBAC** prior to the deadline prescribed for submission and receipt of proposals.
- 20.3. Proposals requested to be withdrawn in accordance with *ITB Clause 20.1* shall be returned unopened to the **Consultants**. A **Consultant** may also express its intention not to participate in the selection process through a letter which should reach and be stamped by the **NBAC** before the deadline for submission and receipt of proposals. A **Consultant** that withdraws its proposals shall not be permitted to submit another proposal, directly or indirectly, for the same contract.
- 20.4. No Proposals may be modified after the deadline for submission of proposals. No proposal may be withdrawn in the interval between the deadline for submission of proposals and the expiration of the period of proposal validity specified by the **Consultant** on the Financial Proposal Form. Withdrawal of a proposal during this interval shall result in the forfeiture of the Consultant’s proposal security, pursuant to *ITB Clause 15.5*, and the imposition of administrative, civil, and criminal sanctions as prescribed by R.A. 9184 and its Revised IRR.

E. Evaluation and Comparison of Proposals

21. Process to be Confidential

- 21.1. Members of the NBAC, including its staff and personnel, as well as its Secretariat and Special Technical Working Group (STWG), are prohibited from making or accepting any kind of communication with any **Consultant** regarding the evaluation of their proposals until the issuance of the NOA, unless otherwise allowed in the case of *ITB Clause 22*.
- 21.2. Any effort by a proponent to influence the **NEDA** in the NEDA's decision in respect of proposals evaluation, proposal comparison or contract award will result in the rejection of the **Consultant's** proposals.

22. Clarification of Proposals

To assist in the evaluation, comparison and post-qualification of the proposals, the NBAC may ask in writing any **Consultant** for a clarification of its proposals. All responses to such requests for clarification shall be in writing. Any clarification submitted by a **Consultant** in respect to its proposals and that is not in response to a request by the **NEDA** shall not be considered.

23. Proposals Evaluation

- 23.1. For the evaluation of proposals, numerical ratings shall be used. In case of individual scoring by the technical evaluators and in order to eliminate bias in evaluating the proposals, the highest and lowest scores for each **Consultant** for each criterion shall not be considered in determining the average scores of the **Consultants**, except when the evaluation is conducted in a collegial manner.
- 23.2. For complex or unique undertakings, such as those involving new concepts/technology, participating short listed consultants may be required, at the option of the **NEDA**, to make an oral presentation to be presented by each **Consultant**, or its nominated Project Manager or head, in case of consulting firms, within fifteen (15) calendar days after the deadline for submission of Technical Proposals.
- 23.3. The entire evaluation process, including the submission of the results thereof to the Approving Authority of the NEDA for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of proposals. The proposals with the highest rank shall be identified as the Highest Rated Proposal. The Approving Authority of the **NEDA** shall approve or disapprove the recommendations of the NBAC within two (2) calendar days after receipt of the results of the evaluation from the NBAC.
- 23.4. All participating short listed **Consultants** shall be furnished the results (ranking and total scores only) of the evaluation after the approval by the Approving Authority of the **NEDA** of the ranking. Said results shall also be

posted in the PhilGEPS and the website of the **NEDA**, if available, for a period of not less than seven (7) calendar days.

24. Opening and Evaluation of Technical Proposals

- 24.1. The NBAC shall conduct a detailed evaluation of proposals following the procedures below depending on the evaluation procedure identified in the Request for Expression of Interest and **ITB Clause 1.1**.

The opening of the Technical Proposals shall be on **10 November 2014 3:30 PM** at the 3rd Floor Conference Room, National Economic and Development Authority, #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City 1605.

Technical Proposals shall be opened in public. All Consultants' representative/s shall secure and bring a written authority from their authorized official (e.g., president, governing boards if Corporation) to be presented to the NBAC during the Opening of Technical Proposals stating that said representative is an authorized person to speak for and in behalf of their office/company.

For the evaluation procedure of Quality-Cost Based, the following processes for the opening and evaluation of technical proposals shall be adopted:

- a) The technical proposal together with the financial proposal shall be considered in the evaluation of consultants. The technical proposals shall be evaluated first using the criteria in ITB Clause 24.2. The financial proposals of the consultants who meet the minimum technical score shall then be opened.*
- b) The financial and technical proposals shall be given corresponding weights with the financial proposal given a minimum weight of fifteen percent (15%) up to a maximum of forty percent (40%). The weight of the technical criteria shall be adjusted accordingly such that their total weight in percent together with the weight given to the financial proposal shall add to one hundred percent (100%). The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the Highest Rated Proposal.*
- c) The Head Approving Authority of the NEDA shall approve or disapprove the recommendations of the NBAC within two (2) calendar days after receipt of the results of the evaluation from the NBAC.*
- d) After approval by the Head Approving Authority of the NEDA of the Highest Rated Proposal, the NBAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Proposal for negotiation in accordance with ITB Clause 26.*

24.2. The NBAC evaluates the Technical Proposals on the basis of their compliance with the requirements under **ITB Clause 10** and responsiveness to the TOR using the following criteria:

- (a) Quality of personnel to be assigned to the Project which covers suitability of key staff to perform the duties for the Project and general qualifications and competence including education and training of the key staff;
- (b) Experience and capability of the **CONSULTANT** which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The suitability of the **CONSULTANT** to the Project shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and
- (c) Plan of approach and methodology with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions.

24.3. The NBAC shall assign numerical weights to each of the above criteria indicated below. A proposal shall be rejected at this stage if it does not respond to important aspects of the TOR or if it fails to achieve the minimum Technical Score (St) indicated below.

The numerical weights for each criterion are as follows:

- a) *Experience and capability of the Firm* = 10%
- b) *Plan of approach and methodology* = 50%
- c) *Quality of personnel to be assigned to the Project* = 40%

*The minimum St required to pass is **70 points**.*

The attention of the Consultant is drawn to Technical Proposal Forms

24.4. Technical Proposals shall not be considered for evaluation in any of the following cases:

- (a) late submission, *i.e.*, after the deadline set in the **ITB Clause 18**;
- (b) failure to submit any of the technical requirements provided under this ITB and TOR; or

- (c) the **Consultant** that submitted Proposals or any of its partner and/or subcontractor belongs to one of the conflict of interest cases as described in **ITB** Clauses (a) to (b) and failed to make a proper statement to that effect in the cover letter.

25. Opening and Evaluation of Financial Proposals

- 25.1. Financial Proposals shall be opened within one (1) week upon notification of Consultants passing the minimum qualifying mark for technical proposals at the **IS Conference Room, 3rd Floor, NEDA sa Pasig Building, #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City.**

Financial Proposals shall be opened in public. All Consultants representative/s shall secure and bring a written authority from their authorized official (e.g., president, governing boards if Corporation) to be presented to the NBAC during the opening of the financial proposal stating that said representative is an authorized person to speak for and in behalf of their office/company.

- 25.2. The Financial Proposals opened shall be evaluated based on the evaluation procedure indicated in **ITB** Clause 1.1 using the corresponding procedure provided below.

After the evaluation of quality is completed, the NEDA shall notify those Consultants whose technical proposals did not meet the minimum qualifying mark or were considered non-responsive to the Bidding Documents and TOR, indicating that their Financial Proposals shall be returned unopened after completing the selection process. The NEDA shall simultaneously notify the Consultants that have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals. The notification may be sent by registered letter, facsimile, or electronic mail.

The Financial Proposals shall be opened publicly in the presence of the Consultants' representatives who choose to attend. The name of the Consultant, the quality scores, and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The NEDA shall prepare minutes of the public opening.

The NBAC shall determine whether the Financial Proposals are complete, i.e., whether all the documents mentioned in ITB Clause 11 are present and all items of the corresponding Technical Proposals that are required to be priced are so priced. If not, the NEDA shall reject the proposal. The NBAC shall correct any computational errors, and convert prices in various currencies to the Philippine Peso at the rate indicated in ITB Clause 13. The Financial Proposal shall not exceed the ABC and shall be deemed to include the cost of all taxes, duties, fees, levies, and other charges imposed under the applicable laws. The evaluation shall include all such taxes, duties, fees, levies, and other charges imposed under the applicable laws; where special tax privileges are granted to a particular class or nationality of Consultant by virtue of the GOP's international commitments, the amount of such tax privileges shall be

included in the Financial Proposal for purposes of comparative evaluation of Bids.

The lowest Financial Proposal (Fm) shall be given a Financial Score (Sf) of 100 points. The Sf of other Financial Proposals shall be computed based on the formula indicated below:

$$Sf = 100 \times Fl/F$$

Where:

Sf is the financial score of the Financial Proposal under consideration,

Fl is the price of the Fm, and F is the price of the Financial Proposal under consideration.

Using the formula $S = St \times T\% + Sf \times P\%$, the Bids shall then be ranked according to their combined St and Sf using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated below:

T - 0.80

P - 0.20

26. Negotiations

- 26.1. Negotiations shall be held at the 3rd Floor Conference Room, NEDA-sa-Pasig #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City. The aim is to reach agreement on all points.
- 26.2. Negotiations shall cover the following:
 - (a) Discussion and clarification of the TOR and Scope of Services;
 - (b) Discussion and finalization of the methodology and work program proposed by the **Consultant**;
 - (c) Consideration of appropriateness of qualifications and pertinent compensation, number of man-months and the personnel to be assigned to the job, taking note of over-qualified personnel to be commensurate with the compensation of personnel with the appropriate qualifications, number of man-months and schedule of activities (manning schedule);
 - (d) Discussion on the services, facilities and data, if any, to be provided by **NEDA** concerned; and
 - (e) Provisions of the contract.

- 26.3. No negotiations pertaining to the amount of the Financial Proposal shall be undertaken.
- 26.4. Having selected the Consultant on the basis of, among other things, an evaluation of the proposed key professional staff, the **NEDA** expects to negotiate a contract on the basis of the experts named in the proposals. Before contract negotiations, the **NEDA** shall require assurances that the experts shall be actually available. The **NEDA** shall not consider substitutions during contract negotiations other than for reasons of death or illness unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the Project. If this is not the case and if it is established that key staff were offered in the proposals without confirming their availability, the Consultant may be disqualified. Once the contract has been awarded, no replacement shall be allowed until after fifty percent (50%) of the personnel's man-months have been served, except for justifiable reasons. Violators shall be fined an amount equal to the refund of the replaced personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement.
- 26.5. Negotiations shall include a discussion of the technical proposal, the proposed methodology (work plan), staffing and any suggestions made by the **Consultant** to improve the TOR. The **NEDA** and **Consultant** shall then work out the final TOR, staffing, and bar charts indicating activities, staff, periods in the field and in the home office, staff-months, logistics, and reporting. The agreed work plan and final TOR shall then be incorporated in Appendix I and form part of the contract. Special attention shall be paid to getting the most the **Consultant** can offer within the available budget and to clearly defining the inputs required from the **NEDA** to ensure satisfactory implementation of the Project.
- 26.6. The financial negotiations shall include a clarification of the Consultant's tax liability in the Philippines, if any, and the manner in which it shall be reflected in the contract; and shall reflect the agreed technical modifications in the cost of the services. The negotiations shall conclude with a review of the draft form of the contract. To complete negotiations, the **NEDA** and the **Consultant** shall initial the agreed contract. If negotiations fail, the **NEDA** shall invite the **Consultant** whose proposals received the second highest score to negotiate a contract. If negotiations still fail, the **NEDA** shall repeat the process for the next-in-rank **Consultant** until the negotiation is successfully completed.

27. Post Qualification

- 27.1. The **NEDA** shall determine to its satisfaction whether the Consultant that is evaluated as having submitted the Highest Rated Proposal (HRP) complies with and is responsive to all the requirements and conditions specified in the Eligibility Documents and **ITB** Clauses 10 and 11.
- 27.2. Within three (3) calendar days from receipt by the Consultant of the notice from the NBAC that it is the HRP, the Consultant shall submit the following documentary requirements:

- (a) Latest income and business tax returns. Consultants have option to submit manually filed tax returns or tax returns filed through the Electronic Filing and Payments System (EFPS).

NOTE: The latest income and business tax returns are those within the last six months preceding the date of submission of proposals.

- (b) Certificate of PhilGEPS Registration; and
- (c) Other appropriate licenses and permits required by law.

Failure of the **Consultant** declared as HRP to duly submit the requirements under this Clause or a finding against the veracity of such, shall be ground for forfeiture of the proposal security and disqualification of the Consultant for award.

- 27.3. The determination shall be based upon an examination of the documentary evidence of the **Consultant's** qualifications submitted pursuant to **ITB** Clauses 10 and 11, as well as other information as the NBAC deems necessary and appropriate.
- 27.4. If the NBAC determines that the **Consultant** with the HRP passes all the criteria for post-qualification, it shall declare the said proposal as the **Consultant** with the Highest Rated and Responsive Proposal (HRRP), and recommend to the Approving Authority of the **NEDA** the award of contract to the said **Consultant** at its submitted price or its calculated financial proposal price, whichever is lower, subject to **ITB** Clause 29.3.
- 27.5. A negative determination shall result in rejection of the Consultant's proposal, in which event the **NEDA** shall proceed to the next HRP to make a similar determination of that **Consultant's** capabilities to perform satisfactorily. If the second **Consultant**, however, fails the post qualification, the procedure for post qualification shall be repeated for the **Consultant** with the next HRP, and so on until the HRRP is determined for contract award.
- 27.6. Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the NBAC, the Approving Authority of the **NEDA** shall approve or disapprove the said recommendation.

28. Reservation Clause

- 28.1. Notwithstanding the eligibility, short listing, or post-qualification of a **Consultant**, **NEDA** reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said **Consultant**, or that there has been a change in the **Consultant's** capability to undertake this Project from the time it submitted its eligibility and qualification requirements. Should such review uncover any misrepresentation made in the eligibility, qualification and procurement requirements, statements or documents, or any changes in the situation of the **Consultant** which will affect its capability to undertake the project so that it fails the preset eligibility, qualification or

proposal evaluation criteria, the **NEDA** shall consider the said **Consultant** as ineligible and shall disqualify it from submitting a proposal or from obtaining an award or contract.

28.2. Based on the following grounds, the **NEDA** reserves the right to reject any and all proposals, including a single qualified proposal, declare a failure of procurement at any time prior to the contract award, or not to award the contract, without thereby incurring any liability, and make no assurance that a contract shall be entered into as a result of the procurement process:

- (a) if there is prima facie evidence of collusion between appropriate public officers or employees of the **NEDA**, or between the NBAC and any of the proponents, or if the collusion is between or among the proponents themselves, or between a proponent and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) if the NBAC is found to have failed in following the prescribed procurement 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 **Approving Authority of the NEDA**;
 - (ii) If the project is no longer necessary as determined by the **Approving Authority of the NEDA**; and
 - (iii) If the source of funds for the project has been withheld or reduced through no fault of the NEDA.

28.3. In addition, the NBAC may likewise declare a failure of bidding when:

- (a) No proposals are received;
- (b) All prospective proponents are declared ineligible or disqualified;
- (c) All proposals fail to comply with all the proposal requirements or fail post-qualification; or
- (d) The Consultant with the HRRP refuses, without justifiable cause to accept the award of contract, and no award is made.

F. Award of Contract

29. Contract Award

- 29.1. Subject to **ITB** Clause 27, the NEDA shall award the contract to the Consultant whose proposal has been determined to be the HRRP.
- 29.2. Prior to the expiration of the period of proposal validity, the NBAC shall notify the successful Consultant in writing that its proposal has been accepted, through a NOA received personally or sent by registered mail or electronically, receipt of which must be confirmed in writing within two (2) days by the **Consultant** with the HRRP and submitted personally or sent by registered mail or electronically to the **NEDA**.
- 29.3. Notwithstanding the issuance of the NOA, award of contract shall be subject to the following conditions:
 - (a) Submission of the valid JVA, if applicable, within ten (10) calendar days from receipt by the Consultant of the notice from the NBAC that the Consultant has the HRRP;
 - (b) Posting of the performance security in accordance with **ITB** Clause 31;
 - (c) Signing of the contract as provided in **ITB** Clause 30; and
 - (d) Approval by higher authority, if required.

30. Signing of the Contract

- 30.1. At the same time as the NEDA notifies the successful Consultant that its proposal has been accepted, the NEDA shall send the Contract Form to the Consultant, which contract has been provided in the Bidding Documents, incorporating therein all agreements between the parties.
- 30.2. Within ten (10) calendar days from receipt of the Notice of Award, the successful Consultant shall post the required performance security and sign and date the contract and return it to the NEDA.
- 30.3. The NEDA shall enter into contract with the successful Consultant within the same ten (10) calendar day period provided that all the documentary requirements are complied with.
- 30.4. The following documents shall form part of the contract:
 - (a) Contract Agreement;
 - (b) Bidding Documents;
 - (c) Winning Consultant's proposals, including the Technical and Financial Proposals, and all other documents/statements submitted;
 - (d) Performance Security;

- (e) Notice of Award of Contract; and
- (f) Other contract documents that may be required by existing laws.

31. Performance Security

- 31.1. To guarantee the faithful performance by the winning Consultant of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the NEDA and in no case later than the signing of the contract.
- 31.2. The performance security shall be denominated in Philippine Pesos and posted in favor of the NEDA in an amount equal to the percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Five percent (5%)
(b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	
(c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security; and/or	Thirty percent (30%)
(d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

- 31.3. Failure of the successful Consultant to comply with the above-mentioned requirement shall constitute sufficient ground for the annulment of the award and forfeiture of the proposal security, in which event the NEDA shall initiate and complete the post qualification of the second HRP. The procedure shall be repeated until the HRRP is identified and selected for contract award. However if no Consultant passed post-qualification, the NBAC shall declare the procurement a failure and conduct a re-bidding with re-advertisement.

32. Notice to Proceed

- 32.1. The Notice to Proceed to the Consultant shall be issued within three (3) calendar days from the date of approval of the contract by the Approving Authority of the NEDA.
- 32.2. The contract shall take effect upon the Consultant's receipt of the Notice to Proceed or seven (7) days from its issuance whichever is earlier.

REPUBLIC OF THE PHILIPPINES)
CITY OF _____) S.S.
X-----X

BID-SECURING DECLARATION

Request for Expression of Interest No. : *[Insert reference number]*

To: *[Insert name and address of the Procuring Entity]*

I/We¹, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Proposal Security, which may be in the form of a Bid-Securing Declaration.
2. I/We accept that: (a) I/we will be automatically disqualified from bidding for any contract with any procuring entity for a period of two (2) years upon receipt of your Blacklisting Order; and, (b) I/we will pay the applicable fine provided under Section 6 of the Guidelines on the Use of Bid Securing Declaration², if I/we have committed any of the following actions:
 - (i) Withdrawn my/our Proposal during the period of proposal validity required in the Bidding Documents; or
 - (ii) Fail or refuse to accept the award and enter into contract or perform any and all acts necessary to the execution of the Contract, in accordance with the Bidding Documents after having been notified of your acceptance of our Proposal during the period of Proposal validity.
3. I/We understand that this Bid-Securing Declaration shall cease to be valid on the following circumstances:
 - (a) Upon expiration of the Proposal validity period, or any extension thereof pursuant to your request;
 - (b) I am/we are declared ineligible or post-disqualified upon receipt of your notice to such effect, and (i) I/we failed to timely file a request for reconsideration or (ii) I/we filed a waiver to avail of said right;
 - (c) I am/we are declared as the Consultant with the Highest Rated and Responsive Bid, and I/we have furnished the performance security and signed the Contract.

¹ Select one and delete the other. Adopt same instruction for similar terms throughout the document.

² Issued by the GPPB through GPPB Resolution 03-2012 on 27 January 2012.

IN WITNESS WHEREOF, I/We have hereunto set my/our hand/s this ____ day of *[month]* *[year]* at *[place of execution]*.

***[Insert NAME OF CONSULTANT'S
AUTHORIZED REPRESENTATIVE]
[Insert signatory's legal capacity]
Affiant***

SUBSCRIBED AND SWORN to before me this ____ day of *[month]* *[year]* at *[place of execution]*, Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her *[insert type of government identification card used]*, with his/her photograph and signature appearing thereon, with no. ____ and his/her Community Tax Certificate No. ____ issued on ____ at ____.

Witness my hand and seal this ____ day of *[month]* *[year]*.

NAME OF NOTARY PUBLIC

Serial No. of Commission _____

Notary Public for _____ until _____

Roll of Attorneys No. _____

PTR No. __, *[date issued]*, *[place issued]*

IBP No. __, *[date issued]*, *[place issued]*

Doc. No. ____

Page No. ____

Book No. ____

Series of ____.

Section II. General Conditions of Contract

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1. Definitions

1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Philippines as they may be issued and enforced from time to time.
- (b) “Consultant” refers to the short listed consultant with the Highest Rated and Responsive Proposal determined by the NEDA as such in accordance with the ITB.
- (c) “Consulting Services” refer to services for Infrastructure Projects and other types of projects or activities of the Government of the Philippines (GOP) requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the NEDA to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.
- (d) “Contract” means the agreement signed by the Parties, to which these General Conditions of Contract (GCC) and other sections of the Bidding Documents are attached.
- (e) “Effective Date” means the date on which this Contract comes into full force and effect.
- (f) “Foreign Currency” means any currency other than the currency of the Philippines.
- (g) “Funding Source” means the FY 2014 General Appropriations Act.
- (h) “GCC” means these General Conditions of Contract.
- (i) “Government” means the Government of the Philippines (GOP).
- (j) “Local Currency” means the Philippine Peso (Php).
- (k) “Member,” in case the Consultant is a Joint Venture (JV) of two (2) or more entities, means any of these entities; and “Members” means all these entities.
- (l) “Party” means the NEDA or the Consultant, as the case may be, and “Parties” means both of them.
- (m) “Personnel” means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof; “Foreign Personnel” means such persons who at the time of being so hired had their domicile outside the Government’s country; “Local Personnel” means such persons who at

the time of being so hired had their domicile inside the Philippines; and “Key Personnel” means the Personnel referred to in **GCC** Clause 39.

- (n) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- (o) “Services” means the work to be performed by the Consultant pursuant to this Contract and as required in the TOR.
- (p) “Sub-consultant” means any person or entity to whom/which the Consultant subcontracts any part of the Services in accordance with the provisions of **GCC** Clause 50.
- (q) “Third Party” means any person or entity other than the Government, the NEDA, the Consultant or a Sub-Consultant.

2. Headings

The headings shall not limit, alter or affect the meaning of this Contract.

3. Location

The Services shall be performed at such locations as are specified in Appendix I and, where the location of a particular task is not so specified, at such locations, whether in the Philippines or elsewhere, as the NEDA may approve.

4. Law Governing Contract and Services

- 4.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
- 4.2. The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel of the Consultant and any Sub-Consultant, complies with the Applicable Law. The NEDA shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.
- 4.3. If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased on a no loss-no gain basis, and corresponding adjustments shall be made to the ceiling amounts specified in GCC Clause 52, provided that the cost is within the Approved Budget for the Contract (ABC).

5. Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

6. Consultants and Affiliates Not to Engage in Certain Activities

- 6.1. The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works, or consulting services for any project resulting from or closely related to this Contract other than the Services and any continuation thereof provided there is no current or future conflict.
- 6.2. The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any of the following activities:
- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract; and
 - (b) after the termination of this Contract, any business or professional activities in the Government's country which would conflict with the activities that have been assigned to them under this Contract.

7. Authority of Member in Charge

In case the Consultant is a JV, the Members hereby authorize _____ to act on their behalf in exercising all the Consultant's rights and obligations towards the NEDA under this Contract, including without limitation the receiving of instructions and payments from the NEDA.

8. Resident Project Manager

The Consultant shall ensure that at all times during the Consultant's performance of the Services in the Government's country, a resident project manager, acceptable to the NEDA, shall take charge of the performance of such Services. The person designated as resident project manager in Appendix III shall serve in that capacity.

9. Entire Agreement

This Contract, including the documents specified in Section 37.2.3 of the IRR, contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make any statement, representation, promise, or agreement not set forth herein of which the Parties shall not be bound by or be liable for.

10. Modification

No modification of the terms and conditions of this Contract, including any modification of the scope of the Services shall be allowed. Pursuant to GCC Clause 14 hereof, however, each Party shall give due consideration to any proposal for modification made by the other Party.

11. Relationship of Parties

- 11.1. Nothing contained herein shall be construed as establishing a relation of employer and employee or of principal and agent as between the NEDA and the Consultant. The Consultant, subject to this Contract, has complete charge of its Personnel and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 11.2. The Consultant shall during the performance of the Services be an independent contractor, retaining complete control over its Personnel, conforming to all statutory requirements with respect to all its employees, and providing all appropriate employee benefits.

12. Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the NEDA or the Consultant may be taken or executed by the following officials.

For the NEDA: Hon. Rolando G. Tungpalan, Deputy Director-General

For the Consultant: _____

13. Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

14. Operation of the Contract

The Parties recognize that it is impractical for this Contract to provide for every contingency which may arise during the life of this Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them; and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties shall use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with GCC Clause 34 hereof.

15. Notices

- 15.1. Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when received by the concerned party, either in person or through an authorized representative of

the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the following addresses:

NEDA: National Economic and Development Authority
Attention: Hon. Rolando G. Tungpalan, Deputy Director-General
Address: #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City 1605
Telephone No. 631-0960 to 65 local 608
Facsimile: 631-2186

Consultants: *[insert name of the Consultant]*
Attention: *[insert name of the Consultant's authorized representative]*
Address: _____
Facsimile: _____
Email Address: _____

15.2. Notice shall be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail, on delivery;
- (b) in the case of facsimiles, within four (4) hours following confirmed transmission; or
- (c) in the case of telegrams, within four (4) hours following confirmed transmission.

15.3. A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the above provisions with respect to **GCC** Clause 15.2.

16. Warranty as to Eligibility

- 16.1. The Consultant represents, warrants, and confirms that it, as well as its Sub-Consultant, if any, is eligible, *i.e.*, has the legal personality to act as a consultant in accordance with the eligibility documents issued for this project.
- 16.2. The Consultant shall fulfill its obligations under this Contract by using knowledge according to the best accepted professional standards. The Consultant shall exercise all reasonable skill, care and diligence in the discharge of duties agreed to be performed and shall work in the best interest of the GOP.

17. Confidentiality

Except with the prior written consent of the NEDA, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services. For purposes of this clause, "confidential information" means any information or knowledge acquired by the Consultant and/or its Personnel arising out of, or in connection with, the performance of the Services under this Contract that is not otherwise available to the public.

18. Payment

- 18.1. In consideration of the Services performed by the Consultant under this Contract, the NEDA shall make to the Consultant such payments and in such manner as is provided by **GCC** Clause 53 of this Contract. However, the NEDA may refuse to make payments when the terms and conditions of the contract are not satisfactorily performed by the Consultant.
- 18.2. Subject to the ceilings specified in **GCC** Clause 52 hereof, the NEDA shall pay to the Consultant: (i) remuneration as set forth in **GCC** Clause 53.2; and (ii) reimbursable expenditures as set forth in **GCC** Clause 53.6. Said remuneration shall not be subject to price adjustment.
- 18.3. All payments under this Contract shall be made to the following account of the Consultant: (Company Account Number, Name of Bank and branch address).
- 18.4. A retention payment of 10% shall be withheld. It shall be based on the total amount due to the Consulting Firm prior to any deduction and shall be retained from every progress payment until 50% of the value of Study, as determined by NEDA, are completed. If, after 50% completion, the Study is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the 10% retention shall be imposed.
- 18.5. The total “retention money” shall be due for release upon approval of the Final Report. The Consulting Firm may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to NEDA, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the 10% retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of NEDA shall be valid for the duration of the contract.

19. Currency of Payment

All payments shall be made in Philippine Pesos.

20. Liability of the Consultant

The Consultant's liability under this Contract shall be as provided by the laws of the Republic of the Philippines. If the Consultant is a joint venture, all partners to the joint venture shall be jointly and severally liable to the NEDA.

21. Insurance to be Taken Out by the Consultant

- 21.1. The Consultant, at its own cost, shall be responsible for taking out or maintaining any insurance policy against any risk related to the project.
- 21.2. The NEDA undertakes no responsibility in respect of life, health, accident, travel or any other insurance coverage for the Personnel or for the dependents of any such Personnel.

22. Effectivity of Contract

This Contract shall take effect on the date of the Consultant's receipt of the NTP, in accordance with **ITB** Clause 32.

23. Commencement of Services

The Consultant shall begin carrying out the Services starting from the effectivity date of this Contract, as mentioned in **GCC** Clause 22.

24. Expiration of Contract

Unless sooner terminated pursuant to **GCC** Clauses 27 or 28 hereof, this Contract shall terminate one (1) month after the issuance by NEDA of the Certificate of Completion and Satisfactory Service or such other time period as the parties may agree in writing.

25. Force Majeure

25.1. For purposes of this Contract the terms "force majeure" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the Consultant 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 Consultant.

25.2. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of force majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

25.3. Unless otherwise agreed herein, force majeure shall not include:

- (a) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultants or agents or employees;
- (b) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or overcome in the carrying out of its obligations hereunder;
- (c) insufficiency of funds or failure to make any payment required hereunder; or

- (d) the NEDA's failure to review, approve or reject the outputs of the Consultant beyond a reasonable time period.
- 25.4. A Party affected by an event of force majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder immediately or within a reasonable time.
- 25.5. A Party affected by an event of force majeure shall notify the other Party of such event as soon as possible, and in any event not later than fifteen (15) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- 25.6. The Parties shall take all reasonable measures to minimize the consequences of any event of force majeure.
- 25.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a direct and proximate result of force majeure.
- 25.8. During the period of their inability to perform the Services as a direct and proximate result of an event of force majeure, the Consultant shall be entitled to continue receiving payment under the terms of this Contract as well as to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period, provided that such costs are still within the total contract price. However, the foregoing provision shall not apply if the NEDA suspends or terminates this Contract in writing, notice thereof duly received by the Consultant, pursuant to GCC Clauses 26 and 27 hereof with the exception of the direct and proximate result of force majeure.
- 25.9. Not later than fifteen (15) days after the Consultant, as the direct and proximate result of an event of force majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures considering the circumstances.
- 25.10. In the case of disagreement between the parties as to the existence, or extent of force majeure, the matter shall be submitted to arbitration in accordance with GCC Clause 34 hereof.

26. Suspension

- 26.1. The NEDA shall, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fail to perform any of their obligations due to their own fault or due to force majeure or other circumstances beyond the control of either party (e.g. suspension of civil works being supervised by the consultant) under this Contract, including the carrying out of the Services, provided that such notice of suspension:
 - (a) shall specify the nature of the failure; and

- (b) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.
- 26.2. The Consultant may, without prejudice to its right to terminate this Contract pursuant to **GCC** Clause 28, by written notice of suspension, suspend the Services if the NEDA fails to perform any of its obligations which are critical to the delivery of the Consultant's services such as, non-payment of any money due the Consultant within forty-five (45) days after receiving notice from the Consultant that such payment is overdue.

27. Termination by the NEDA

- 27.1. The NEDA shall terminate this Contract when any of the following conditions attends its implementation:
- (a) Outside of force majeure, the Consultant fails to deliver or perform the Outputs and Deliverables within the period(s) specified in the Contract, or within any extension thereof granted by the NEDA pursuant to a request made by the Consultant prior to the delay;
 - (b) As a result of force majeure, the Consultant is unable to deliver or perform a material portion of the Outputs and Deliverables for a period of not less than sixty (60) calendar days after the Consultant's receipt of the notice from the NEDA stating that the circumstance of force majeure is deemed to have ceased;
 - (c) In whole or in part, at any time for its convenience, the Head of the NEDA may terminate the Contract for its convenience 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;
 - (d) If the Consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction; in which event, termination will be without compensation to the Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the NEDA and/or the Consultant;
 - (e) In case it is determined prima facie that the Consultant has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following: corrupt, fraudulent, collusive and coercive practices; drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and any other act analogous to the foregoing. For purposes of this clause, corrupt, fraudulent, collusive, and coercive practices shall have the same meaning as that provided in **ITB** Clause 3.1(a):

- (f) The Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 15.2 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the NEDA may have subsequently approved in writing;
- (g) The Consultant's failure to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 34 hereof; or
- (h) The Consultant fails to perform any other obligation under the Contract.

27.2. In case of termination, written notice shall be understood to mean fifteen (15) days for short term contracts, *i.e.*, four (4) months or less, and thirty (30) days for long term contracts.

28. Termination by the Consultant

The Consultant must serve a written notice to the NEDA of its intention to terminate this Contract at least thirty (30) calendar days before its intended termination. This Contract is deemed terminated if no action has been taken by the NEDA with regard to such written notice within thirty (30) calendar days after the receipt thereof by the NEDA. The Consultant may terminate this Contract through any of the following events:

- (a) The NEDA is in material breach of its obligations pursuant to this Contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant's notice specifying such breach;
- (b) The NEDA's failure to comply with any final decision reached as a result of arbitration pursuant to **GCC** Clause 34 hereof
- (c) As the direct and proximate result of force majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) The NEDA fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to **GCC** Clause 32 hereof within eighty four (84) days after receiving written notice from the Consultant that such payment is overdue.

29. Procedures for Termination of Contracts

The following provisions shall govern the procedures for the termination of this Contract:

- (a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the NEDA shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;

- (b) Upon recommendation by the NEDA, the Head of the NEDA shall terminate this Contract only by a written notice to the Consultant conveying such termination. The notice shall state:
 - (i) that the contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - (ii) the extent of termination, whether in whole or in part;
 - (iii) an instruction to the Consultant to show cause as to why the contract should not be terminated; and
 - (iv) special instructions of the NEDA, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report;

- (c) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Consultant shall submit to the Head of the NEDA a verified position paper stating why this Contract should not be terminated. If the Consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the NEDA shall issue an order terminating this Contract;
- (d) The NEDA may, at anytime before receipt of the Consultant's verified position paper to withdraw the Notice to Terminate if it is determined that certain services subject of the notice had been completed or performed before the Consultant's receipt of the notice;
- (e) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the NEDA shall decide whether or not to terminate this Contract. It shall serve a written notice to the Consultant of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Consultant of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and
- (f) The Head of the NEDA may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the NEDA.

30. Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to **GCC** Clauses 27 or 28 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the NEDA, the Consultant shall proceed as provided, respectively, by **GCC** Clauses 35 or 36 hereof.

31. Payment Upon Termination

Upon termination of this Contract pursuant to **GCC** Clauses 27 or 28 hereof, the NEDA shall make the following payments to the Consultant:

- (a) remuneration pursuant to **GCC** Clause 53 hereof for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to **GCC** Clause 53 hereof for expenditures actually incurred prior to the effective date of termination; and
- (c) in the case of termination pursuant to **GCC** Clause 27.1(b) hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of this Contract including the cost of the return travel of the Personnel and their eligible dependents.

32. Disputes about Events of Termination

If either Party disputes whether an event specified in **GCC** Clause 27.1 or in **GCC** Clause 28 hereof has occurred, such Party may refer the matter to arbitration pursuant to **GCC** Clause 34 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

33. Cessation of Rights and Obligations

Upon termination of this Contract pursuant to **GCC** Clauses 27 or 28 hereof, or upon expiration of this Contract pursuant to **GCC** Clause 24, all rights and obligations of the Parties hereunder shall cease, except:

- (a) such rights and obligations as may have accrued on the date of termination or expiration;
- (b) the obligation of confidentiality set forth in **GCC** Clause 17 hereof; and
- (c) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in **GCC** Clauses 51.1(b) and 51.1(c) hereof, any right which a Party may have under the Applicable Law.

34. Dispute Settlement

34.1. If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of this Contract, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

34.2. Any and all disputes arising from the implementation of this Contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Acts 876 and 9285, as required in Section 59 of the IRR of RA 9184. Provided, that, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. In the event that dispute

cannot be resolved pursuant to the stated laws above, the venue of the action shall be in any courts in Pasig City.

35. Documents Prepared by the Consultant and Software Developed to be the Property of the NEDA

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the NEDA under this Contract shall become and remain the property of the NEDA, and the Consultant shall, prior to termination or expiration of this Contract, deliver all such documents to the NEDA, together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software. The plans, drawings, specifications, designs, reports, other documents and software, and any other deliverable prepared by the Consultant under the TOR for the NEDA under this Contract shall become and remain the property of the NEDA. Future use, reproduction, distribution or citation of such property by the Consultant for any purpose is prohibited unless written consent is given by the NEDA.

- 35.1. All computer programs developed by the Consultant under this Contract shall be the sole and exclusive property of the NEDA; provided, however, that the Consultant may use such programs for its own use with prior written approval of the NEDA. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the NEDA's prior written approval to such agreements. In such cases, the NEDA shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned.

36. Equipment and Materials Furnished by the NEDA

Equipment and materials made available to the Consultant by the NEDA, or purchased by the Consultant with funds provided by the NEDA, shall be the property of the NEDA and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the NEDA an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the NEDA's instructions. While in possession of such equipment and materials, the Consultant, unless otherwise instructed by the NEDA in writing, shall insure it at the expense of the NEDA in an amount equal to their full replacement value.

37. Services, Facilities and Property of the NEDA

The NEDA shall make available to the Consultant and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix V at the terms and in the manner specified in said appendix, provided that if such services, facilities and property shall not be made available to the Consultant as and when so specified, the Parties shall agree on:

- (a) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services;

- (b) the manner in which the Consultant shall procure any such services, facilities and property from other sources; and
- (c) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to **GCC** Clause 52 hereinafter which should be within the agreed contract ceiling.

38. Consultant's Actions Requiring NEDA's Prior Approval

The Consultant shall obtain the NEDA's prior approval in writing before taking any of the following actions:

- (a) appointing such members of the Personnel as are listed in Appendix III merely by title but not by name;
- (b) entering into a subcontract for the performance of any part of the Services, it being understood that:
 - (i) the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the NEDA and DENR prior to the execution of the subcontract; and
 - (ii) the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Contract;
- (c) replacement, during the performance of the contract for any reason, of any Personnel as listed in Appendix III of this Contract requiring the NEDA's prior approval; and
- (d) reimbursement of cost of items not covered in the reimbursable expenses but which may be required by the Consultant for completion of the Services, subject to the prior authorization in writing by the DENR

39. Personnel

- 39.1. The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services.
- 39.2. The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Personnel are described in Appendix III.
- 39.3. The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix III are hereby approved by the NEDA. In respect of other Key Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the NEDA for review and approval a copy of their biographical data and, in the case of Key Personnel to be assigned within the GOP, a copy of a satisfactory medical certificate attached as part of Appendix III. If the NEDA does not object in writing; or if it objects in writing but fails to state the reasons for such objection, within

twenty-one (21) calendar days from the date of receipt of such biographical data and, if applicable, such certificate, the Key Personnel concerned shall be deemed to have been approved by the NEDA.

- 39.4. The NEDA may request the Consultants to perform additional services not covered by the original scope of work but are determined by the NEDA to be critical for the satisfactory completion of the Services, subject to **GCC** Clause 55.6.
- 39.5. No changes shall be made in the Key Personnel, except for justifiable reasons beyond the control of the Consultant, and only upon prior approval of the NEDA. The Consultant may change its Key Personnel only for reasons of death, serious illness, incapacity of an individual Consultant, or until after fifty percent (50%) of the Personnel's man-months have been served.
- 39.6. If it becomes justifiable and necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications. If the Consultant introduces changes in Key Personnel for reasons other than those mentioned above, the Consultant shall be fined an amount equal to the refund of the replaced Personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement.
- 39.7. Any of the Personnel provided as a replacement under **GCC** Clauses 39.5 and 39.8, the rate of remuneration applicable to such person as well as any reimbursable expenditures the Consultant may wish to claim as a result of such replacement, shall be subject to the prior written approval by the NEDA. Except as the NEDA may otherwise agree, the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.
- 39.8. If the NEDA finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action as defined in the Applicable Law, or has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the NEDA's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the NEDA.

40. Working Hours, Overtime, Leave, etc.

- 40.1. Working hours and holidays for Key Personnel are set forth in Appendix III. Any travel time prior to and after contract implementation shall not be considered as part of the working hours.
- 40.2. The Key Personnel shall not be entitled to claim payment for overtime work, sick leave, or vacation leave from the NEDA since these items are already covered by the Consultant's remuneration. All leaves to be allowed to the Personnel are included in the staff-months of service set forth in Appendix III.

Taking of leave by any Personnel should not delay the progress and adequate supervision of the Services.

- 40.3. If required to comply with the provisions of **GCC** Clause 43.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix III may be made by the Consultant by prior written notice to the NEDA, provided that:
- (a) such adjustments shall not alter the originally estimated period of engagement of any individual by more than ten percent (10%); and
 - (b) the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in **GCC** Clause 52.1 of this Contract. Any other such adjustments shall only be made with the NEDA's prior written approval.

41. Counterpart Personnel

- 41.1. If so provided in Appendix III hereto, the NEDA shall make available to the Consultant, as and when provided in such Appendix III, and free of charge, such Counterpart Personnel to be selected by the NEDA, with the Consultant's advice, as shall be specified in such Appendix III. Counterpart Personnel shall work with the Consultant. If any member of the Counterpart Personnel fails to perform adequately any work assigned to such member by the Consultant which is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the NEDA shall not unreasonably refuse to act upon such request.
- 41.2. The responsibilities of the Counterpart Personnel shall be specified in Appendix III, attached hereto, and the Counterpart Personnel shall not perform any work beyond the said responsibilities.
- 41.3. If Counterpart Personnel are not provided by the NEDA to the Consultant as and when specified in Appendix III, and or if the Counterpart Personnel lack the necessary training, experience or authority to effectively undertake their responsibilities, the NEDA and the Consultant shall agree on how the affected part of the Services shall be carried out, and the additional payments, if any, to be made by the NEDA to the Consultant as a result thereof pursuant to **GCC** Clause 52 hereof.

42. Performance Security

- 42.1. Within ten (10) calendar days from receipt of the Notice of Award from the NEDA but in no case later than the signing of the contract by both parties, the Consultant shall furnish the performance security in any the forms prescribed in the **ITB** Clause 31.2.
- 42.2. The performance security posted in favor of the NEDA shall be forfeited in the event it is established that the Consultant is in default in any of its obligations under the contract.

- 42.3. The performance security shall remain valid until issuance by the NEDA of the Certificate of Final Acceptance.
- 42.4. The performance security may be released by the NEDA and returned to the Consultant after the issuance of the Certificate of Final Acceptance or Completion subject to the following conditions:
 - (a) There are no pending claims against the Consultant or the surety company filed by the NEDA; and
 - (b) The Consultant has no pending claims for labor and materials filed against it.
- 42.5. In case of a reduction of the contract value, the NEDA shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

43. Standard of Performance

- 43.1. The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods.
- 43.2. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the NEDA, and shall at all times support and safeguard the NEDA's legitimate interests in any dealings with Sub-Consultants or third parties.
- 43.3. The Consultant shall furnish to the NEDA such information related to the Services as the NEDA may from time to time reasonably request.
- 43.4. The Consultant shall at all times cooperate and coordinate with the NEDA with respect to the carrying out of its obligations under this Contract.

44. Consultant Not to Benefit from Commissions, Discounts, etc.

The remuneration of the Consultant pursuant to GCC Clause 53 hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and, subject to GCC Clause 45 hereof, the Consultant shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

45. Procurement by the Consultant

If the Consultant, as part of the Services, has the responsibility of advising or procuring goods, works or services, for the NEDA, the Consultant shall comply with any applicable procurement guidelines of the Funding Source, and shall at all times exercise such responsibility in the best interest of the NEDA. Any discounts or advantages obtained by the Consultant in the exercise of such procurement responsibility shall be for the benefit of the NEDA.

46. Specifications and Designs

46.1. The Consultant shall prepare all specifications and designs using the metric system and shall embody the best design criteria applicable to Philippine conditions. The Consultant shall specify standards which are accepted and well-known among industrial nations.

46.2. The Consultant shall ensure that the specifications and designs and all documentation relating to procurement of goods and services for this Contract are prepared on an impartial basis so as to promote national and international competitive bidding.

47. Reports

The Consultant shall submit to the NEDA the reports, deliverables and documents in English, in the form, in the numbers, and within the time periods set forth in Appendix II.

48. Assistance by the NEDA on Government Requirements

48.1. The NEDA may assist the Consultant, Sub-Consultants, and Personnel in the payment of such taxes, duties, fees and other impositions as may be levied under the Applicable Law by providing information on the preparation of necessary documents for payment thereof.

48.2. The NEDA shall use its best efforts to ensure that the Government shall:

- (a) provide the Consultant, Sub-Consultants, and Personnel with work permits and such other documents as shall be necessary to enable the Consultant, Sub-Consultants, or Personnel to perform the Services;
- (b) arrange for the foreign Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, and any other documents required for their stay in the Philippines for the duration of the Contract;
- (c) facilitate prompt clearance through customs of any property required for the Services and of the necessary personal effects of the foreign Personnel and their eligible dependents;

- (d) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services; and
- (e) grant to foreign Consultant, any foreign Sub-Consultant and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into the Government's country reasonable amounts of foreign currency for purposes of the Services or for the personal use of the foreign Personnel and their dependents.

49. Access to Land

The NEDA warrants that the Consultant shall have, free of charge, unimpeded access to all lands in the Philippines in respect of which access is required for the performance of the Services. The NEDA shall be responsible for any damage to such land or any property thereon resulting from such access and shall indemnify the Consultant and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Consultant or any Sub-Consultant or the Personnel of either of them.

50. Subcontract

- 50.1. Subcontracting of any portion of the Consulting Services does not relieve the Consultant of any liability or obligation under this Contract. The Consultant will be responsible for the acts, defaults, and negligence of any sub-consultant, its agents, servants or workmen as fully as if these were the Consultant's own acts, defaults, or negligence, or those of its agents, servants or workmen.
- 50.2. Sub-consultants disclosed and identified during the procurement process may be changed during the implementation of this Contract, subject to compliance with the required qualifications and the approval of the NEDA.

51. Accounting, Inspection and Auditing

- 51.1. The Consultant shall:
 - (a) keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as shall clearly identify all relevant time changes and costs, and the bases thereof;
 - (b) permit the NEDA or its designated representative and or the designated representative of the Funding Source at least once for short-term Contracts, and annually in the case of long-term Contracts, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the NEDA; and
 - (c) permit the Funding Source to inspect the Consultant's accounts and records relating to the performance of the Consultant and to have them audited by auditors approved by the Funding Source, if so required.

- 51.2. The basic purpose of this audit is to verify payments under this Contract and, in this process, to also verify representations made by the Consultant in relation to this Contract. The Consultant shall cooperate with and assist the NEDA and its authorized representatives in making such audit. In the event the audit discloses that the Consultant has overcharged the NEDA, the Consultant shall immediately reimburse the NEDA an amount equivalent to the amount overpaid. If overpayment is a result of the Consultant having been engaged in what the NEDA (or, as the case may be, the Funding Source) determines to constitute corrupt, fraudulent, or coercive practices, as defined in GCC Clause 27.1(e) and under the Applicable Law, the NEDA shall, unless the NEDA decides otherwise, terminate this Contract.
- 51.3. The determination that the Consultant has engaged in corrupt, fraudulent, coercive practices shall result in the NEDA and/or the Funding Source seeking the imposition of the maximum administrative, civil and criminal penalties up to and in including imprisonment.

52. Contract Cost

- 52.1. Except as may be otherwise agreed under GCC Clause 10, payments under this Contract shall not exceed the Contract Amount under this Agreement. The Consultant shall notify the NEDA as soon as cumulative charges incurred for the Services have reached eighty percent (80%) of this ceiling.
- 52.2. The cost of the Services shall be payable in Philippine Pesos and shall be set forth in the Appendix IV attached to this Contract.

53. Remuneration and Reimbursable Expenditures

- 53.1. Payments of Services do not relieve the Consultant of any obligation hereunder.
- 53.2. Remuneration for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services after the date determined in accordance with GCC Clause 22, or such other date as the Parties shall agree in writing, including time for necessary travel via the most direct route, at the rates referred to, and subject to such additional provisions as are set forth, in the schedule of payments provided in the TOR.
- 53.3. Further, it is understood that the remuneration rates shall cover:
- (a) such salaries and allowances as the Consultant shall have agreed to pay to the Personnel as well as factors for social charges and overhead;
 - (b) the cost of backstopping by home office staff not included in the Personnel listed in Appendix III; and
 - (c) the Consultant's fee;
- 53.4. Bonuses or other means of profit-sharing shall not be allowed as an element of overhead. Any rates specified for persons not yet appointed shall be provisional and shall be subject to revision, with the written approval of the NEDA.

- 53.5. Remuneration for periods of less than one month shall be calculated on an hourly basis for time spent in home office (the total of 176 hours per month shall apply) and on a calendar-day basis for time spent away from home office (1 day being equivalent to 1/30th of a month).
- 53.6. Reimbursable expenditures actually and reasonably incurred by the Consultants in the performance of the Services are provided as follows:
- a) Domestic travel and transportation;
 - b) Communication expenses;
 - c) Cost of engineering/office supplies and cost of preparing/reproduction drawings and other documents to be submitted;
 - d) Cost of field office through rental;
 - e) Cost of equipment, materials and other supplies; and
 - f) Cost of other items deemed necessary for the project as certified by the NEDA and PAFC.
- 53.7. Billings and payments in respect of the Services shall follow the schedule of payments provided in the TOR and shall be made as follows:
- (a) An advance payment shall be made to cover mobilization costs, but shall not exceed 10% of the contract amount, subject to the posting of an irrevocable standby letter of credit issued by an entity acceptable to NEDA and of an equal amount to the advance payment. The advance payment shall be repaid by the Consulting Firm by deducting from his subsequent billings / payments such sum as agreed upon during contract negotiations until fully liquidated within the duration of the contract.
 - (b) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, the Consultant shall submit to the NEDA and PAFC, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to GCC Clauses 52.1 and 53 for such month. Separate monthly statements shall be submitted in respect of amounts payable in foreign currency and in local currency. Each separate monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.
 - (c) The NEDA shall cause the payment of the Consultant's monthly statements within sixty (60) days after the receipt by the NEDA of such statements with supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld

from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the NEDA may add or subtract the difference from any subsequent payments. No interest shall be paid for delayed payments.

54. Final Payment

- 54.1. The final payment shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the NEDA. The Services shall be deemed completed and finally accepted by the NEDA and the final report and final statement shall be deemed approved by the NEDA as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the NEDA unless the NEDA, within such ninety (90)-day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The Consultant shall thereupon promptly make any necessary corrections within a maximum period of ninety (90) calendar days, and upon completion of such corrections, the foregoing process shall be repeated.
- 54.2. Any amount which the NEDA has paid or caused to be paid in accordance with this clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the NEDA within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the NEDA for reimbursement must be made within twelve (12) calendar months after receipt by the NEDA of a final report and a final statement approved by the NEDA in accordance with the above.

55. Lump Sum Contracts

- 55.1. For Lump Sum Contracts when applicable, notwithstanding the terms of **GCC** Clauses 10, 18.1, 31(c), 41.3, 53.2, 53.5, 53.6, 53.7, and 54.1, the provisions contained hereunder shall apply.
- 55.2. Personnel - Any replacement approved by the NEDA in accordance with **ITB** Clause 26.3 shall be provided by the Consultant at no additional cost.
- 55.3. Staffing Schedule - Should the rate of progress of the Services, or any part hereof, be at any time in the opinion of the NEDA too slow to ensure that the Services are completed in accordance with the Staffing Schedule, the NEDA shall so notify the Consultant in writing and the Consultant shall at its sole cost and expense, thereupon take such steps as necessary, subject to the NEDA's approval, or as reasonably required by the NEDA, to expedite progress so as to ensure that the Services are completed in accordance with the Staffing Schedule.
- 55.4. Final payment pursuant to the Payment Schedule in Appendices IV and V shall be made by the NEDA after the final report has been submitted by the Consultant and approved by the NEDA.

- 55.5. Termination - Upon the receipt or giving of any notice referred to in **GCC** Clause 29 and if the Consultant is not in default under this Contract and has partly or substantially performed its obligation under this Contract up to the date of termination and has taken immediate steps to bring the Services to a close in prompt and orderly manner, there shall be an equitable reduction in the maximum amount payable under this Contract to reflect the reduction in the Services, provided that in no event shall the Consultant receive less than his actual costs up to the effective date of the termination, plus a reasonable allowance for overhead and profit.
- 55.6. No additional payment for variation order, if any, shall be allowed for this Contract.

56. Liquidated Damages for Delay

If the Consultant fails to deliver any or all of the Services within the period(s) specified in this Contract, the NEDA shall, without prejudice to its other remedies under this Contract and under the Applicable Law, deduct from the contract price, as liquidated damages, a sum equivalent to one-tenth of one percent of the price of the unperformed portion of the Services for each day of delay based on the approved contract schedule up to a maximum deduction of ten percent (10%) of the contract price. Once the maximum is reached, the NEDA may consider termination of this Contract pursuant to **GCC** Clause 27.

Section III. Terms of Reference

PLEASE REFER TO THE ATTACHED TERMS OF REFERENCE, WHICH CAN ALSO BE DOWNLOADED FROM THE NEDA WEBSITE (http://www.neda.gov.ph/?page_id=256).

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TECHNICAL PROPOSAL FORMS

Notes for Consultants

The following summarizes the content and maximum number of pages permitted for the Technical Proposal. A page is considered to be one printed side of A4 or letter sized paper.

Cover Letter

Use TPF 1. Technical Proposal Submission Form.

Experience of the Firm

Maximum of *[insert acceptable number of pages]* introducing the background and general experience of the Consultant, including its partner(s) and subcontractors, if any.

Maximum of *[insert acceptable number of pages]* completed projects in the format of TPF 2. Consultant's References illustrating the relevant experience of the Consultant, including its partner and subcontractors, if any. No promotional material should be included.

General approach and methodology, work and staffing schedule

Use TPF 4. Description of the Methodology and Work Plan for Performing the Project, TPF 5. Team Composition and Task, TPF 7. Time Schedule for Professional Personnel, and TPF 8. Activity (Work) Schedule.

If subcontracting is allowed, add the following: If the Consultant will engage a subcontractor for the portions of the Consulting Services allowed to be subcontracted, the Consultant shall indicate which portions of the Consulting Services will be subcontracted, identify the corresponding subcontractor, and include the legal eligibility documents of such subcontractor.

Curriculum Vitae (CV)

Use TPF 6. Format of Curriculum Vitae (CV) for Proposed Professional Staff.

Comments on the terms of reference and data and facilities to be provided by the NEDA

Not more than *[insert acceptable number of pages]* using TPF 3. Comments and Suggestions of Consultant on the Terms of Reference and on Data, Services, and Facilities to be Provided by the

TPF 1. TECHNICAL PROPOSAL SUBMISSION FORM

[Date]

[Name and address of the NEDA]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for *[Title of Project]* in accordance with your Bidding Documents dated *[insert date]* and our Bid. We are hereby submitting our Bid, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

If negotiations are held during the period of proposal validity, *i.e.*, before *[insert date]*, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from contract negotiations.

In accordance with **GCC** Clause 18 we acknowledge and accept the NEDA's right to inspect and audit all records relating to our Proposal irrespective of whether we enter into a contract with the NEDA as a result of this Proposal or not.

We understand you are not bound to accept any Proposal received for the selection of a consultant for the Project.

We remain,

Yours sincerely,

Authorized Signature:
Name and Title of Signatory:
Name of Firm:
Address:

TPF 2. CONSULTANT'S REFERENCES

Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each project for which your firm/entity, either individually, as a corporate entity, or as one of the major companies within an association, was legally contracted.

Project Name:		Country:
Location within Country:		Professional Staff Provided by Your Firm/Entity(profiles):
Name of Client:		Nº of Staff:
Address:		Nº of Staff-Months; Duration of Project:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (in Current US\$):
Name of Associated Consultants, if any:		Nº of Months of Professional Staff Provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:		
Narrative Description of Project:		
Description of Actual Services Provided by Your Staff:		

Consultant's Name: _____

**TPF 3. COMMENTS AND SUGGESTIONS OF CONSULTANT ON THE TERMS OF
REFERENCE AND ON DATA, SERVICES, AND FACILITIES TO BE PROVIDED BY
THE NEDA**

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services, and facilities to be provided by the NEDA:

- 1.
- 2.
- 3.
- 4.
- 5.

TPF 4. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE PROJECT

TPF 5. TEAM COMPOSITION AND TASK PROJECTS

1. Technical/Managerial Staff		
Name	Position	Task

2. Support Staff		
Name	Position	Task

TPF 6. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm/Entity: _____ Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on project. Describe degree of responsibility held by staff member on relevant previous projects and give dates and locations. Use about half a page.]

Education:

[Summarize college/university and other specialized education of staff members, giving names of schools, dates attended, and degrees obtained. Use about one quarter of a page.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of projects. For experience in last ten years, also give types of activities performed and client references, where appropriate. Use about two pages.]

Languages:

[For each language, indicate proficiency: excellent, good, fair, or poor in speaking, reading, and writing.]

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience.

[Signature of staff member and authorized representative of the firm]

Date: _____
Day/Month/Year

Full name of staff member: _____

Full name of authorized representative: _____

TPF 7. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

			Months (in the Form of a Bar Chart)														
Name	Position	Reports Due/Activities	1	2	3	4	5	6	7	8	9	10	11	12	Number of Months		
																Subtotal (1)	
																Subtotal (2)	
																	Subtotal (3)
																	Subtotal (4)

Full-time: _____
Reports Due: _____
Activities Duration: _____
Location _____

Part-time: _____

Signature:_____
(Authorized representative)

Full Name:_____
Title:_____
Address:_____

TPF 8. ACTIVITY (WORK) SCHEDULE

A. Field Investigation and Study Items

	<i>[1st, 2nd, etc. are months from the start of project.]</i>												
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	
Activity (Work)													

B. Completion and Submission of Reports

Reports	Date
1. Inception Report	
2. Interim Progress Report (a) First Status Report (b) Second Status Report	
3. Draft Report	
4. Final Report	

FINANCIAL PROPOSAL FORMS

Notes for Consultants

The following summarizes the content of the Financial Proposal.

Cover Letter

Use FPF 1. Financial Proposal Submission Form, which is an acknowledgement that, in preparation and submission of the Technical and Financial Proposals, Consultants have:

- (a) followed the applicable rules and guidelines indicated in this ITB;
- (b) not taken any action which is or constitutes a corrupt, fraudulent, or coercive practice as defined in the applicable rules and guidelines; and
- (c) agrees to allow the NEDA, at their option, to inspect and audit all accounts, documents, and records relating to the its Proposal and to the performance of the ensuing contract.

Costs of Consulting Services

Use FPF 2. Summary of Costs; FPF 3. Breakdown of Price per Activity; FPF 4. Breakdown of Remuneration per Activity; FPF 5. Reimbursables per Activity; and FPF 6. Miscellaneous Expenses.

FPF 1. FINANCIAL PROPOSAL SUBMISSION FORM

[Date]

[Name and address of the NEDA]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for *[Title of Project]* in accordance with your Bidding Documents dated *[insert date]* and our Proposals (Technical and Financial Proposals). Our attached Financial Proposal is for the sum of *[amount in words and figures]*. This amount is exclusive of the local taxes, which we have estimated at *[amount(s) in words and figures]*.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the proposal validity period, *i.e.*, *[Date]*.

In accordance with **GCC** Clause 51, we acknowledge and accept the NEDA's right to inspect and audit all records relating to our Proposal irrespective of whether we enter into a contract with the NEDA as a result of this Proposal.

We confirm that we have read, understood and accept the contents of the Instructions to Bidders (ITB), General Conditions of Contract (GCC), Special Conditions of Contract (SCC), Terms of Reference (TOR), the provisions relating to the eligibility of Consultant and the applicable guidelines for the procurement rules of the Funding Source, any and all Bid bulletins issued and other attachments and inclusions included in the Bidding Documents sent to us.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,
Authorized Signature:
Name and Title of Signatory:
Name of Firm:
Address:

FPF 2. SUMMARY OF COSTS

Costs	Currency(ies) ³	Amount in Philippine Peso
Subtotal		
Local Taxes		
Total Amount of Financial Proposal		_____

³ In cases of contracts involving foreign consultants, indicate the exchange rate used.

FPF 3. BREAKDOWN OF PRICE PER ACTIVITY

Activity No.:_____	Activity No.:_____	Description:_____
Price Component	Currency(ies) ⁴	Amount in Philippine Peso
Remuneration		
Reimbursables		
Miscellaneous Expenses		
Subtotal		_____

⁴ In cases of contracts involving foreign consultants, indicate the exchange rate used.

FPF 4. BREAKDOWN OF REMUNERATION PER ACTIVITY

Activity No. _____		Name: _____		
Names	Position	Input ⁵	Remuneration Currency(ies) Rate	Amount
Regular staff				
Local staff				
Consultants				
Grand Total				_____

⁵ Staff months, days, or hours as appropriate.

FPF 5. REIMBURSABLES PER ACTIVITY

Activity No: _____

Name: _____

No.	Description	Unit	Quantity	Unit Price In	Total Amount In
1.	International flights _____	Trip			
2.	Miscellaneous travel expenses	Trip			
3.	Subsistence allowance	Day			
4.	Local transportation costs ⁶				
5.	Office rent/accommodation/ clerical assistance				
	Grand Total				_____

⁶ Local transportation costs are not included if local transportation is being made available by the Entity. Similarly, in the project site, office rent/accommodations/clerical assistance costs are not to be included if being made available by the Entity.

FPF 6. MISCELLANEOUS EXPENSES

Activity No. _____ Activity Name: _____

No.	Description	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs between _____ and _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.	Equipment: vehicles, computers, etc.				
4.	Software				
	Grand Total				_____

FORM OF CONTRACT AGREEMENT

THIS AGREEMENT, made this *[insert date]* day of *[insert month]*, *[insert year]* between *[name and address of NEDA]* (hereinafter called the “Entity”) and *[name and address of Consultant]* (hereinafter called the “Consultant”).

WHEREAS, the Entity is desirous that the Consultant execute *[name and identification number of contract]* (hereinafter called “the Works”) and the Entity has accepted the bid for *[insert the amount in specified currency in numbers and words]* by the Consultant for the execution and completion of such Consulting Services and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be attached, deemed to form, and be read and construed as part of this Agreement, to wit:
 - (a) General and Special Conditions of Contract;
 - (b) Terms of Reference
 - (c) Request for Expression of Interest;
 - (d) Instructions to Bidders;
 - (e) Addenda and/or Supplemental/Bid Bulletins, if any;
 - (f) Proposal forms, including all the documents/statements contained in the Consultant’s proposal envelopes, as annexes;
 - (g) Eligibility requirements, documents and/or statements;
 - (h) Performance Security;
 - (i) Credit line issued by a licensed bank, if any;
 - (j) Notice of Award of Contract and the Consultant’s conforme thereto;
 - (k) Other contract documents that may be required by existing laws and/or the Entity.
3. In consideration of the payments to be made by the Entity to the Consultant as hereinafter mentioned, the Consultant hereby covenants with the Entity to execute and complete the Consulting Services and remedy any defects therein in conformity with the provisions of this Consultant in all respects.
4. The Entity hereby covenants to pay the Consultant in consideration of the execution and completion of the Consulting Services, the Contract Price or

such other sum as may become payable under the provisions of this Contract at the times and in the manner prescribed by this Contract.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

Binding Signature of NEDA

Binding Signature of Contractor

[Addendum showing the corrections, if any, made during the evaluation of proposals should be attached with this agreement]

OMNIBUS SWORN STATEMENT

REPUBLIC OF THE PHILIPPINES)
CITY/MUNICIPALITY OF _____) S.S.

AFFIDAVIT

I, *[Name of Affiant]*, of legal age, *[Civil Status]*, *[Nationality]*, and residing at *[Address of Affiant]*, after having been duly sworn in accordance with law, do hereby depose and state that:

1. ***Select one, delete the other:***

If a sole proprietorship: I am the sole proprietor of *[Name of Consultant]* with office address at *[address of Consultant]*;

If a partnership, corporation, cooperative, or joint venture: I am the duly authorized and designated representative of *[Name of Consultant]* with office address at *[address of Consultant]*;

2. ***Select one, delete the other:***

If a sole proprietorship: As the owner and sole proprietor of *[Name of Consultant]*, I have full power and authority to do, execute and perform any and all acts necessary to represent it in the procurement for *[Name of the Project]* of the *[Name of the NEDA]*;

If a partnership, corporation, cooperative, or joint venture: I am granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the *[Name of Consultant]* in the procurement process as shown in the attached *[state title of attached document showing proof of authorization (e.g., duly notarized Secretary's Certificate issued by the corporation or the members of the joint venture)]*;

3. *[Name of Consultant]* is not "blacklisted" or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board;
4. Each of the documents submitted in satisfaction of the procurement requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
5. *[Name of Consultant]* is authorizing the Head of the NEDA or its duly authorized representative(s) to verify all the documents submitted;

6. **Select one, delete the rest:**

If a sole proprietorship: I am not related to the Head of the NEDA, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

If a partnership or cooperative: None of the officers and members of [Name of Consultant] is related to the Head of the NEDA, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

If a corporation or joint venture: None of the officers, directors, and controlling stockholders of [Name of Consultant] is related to the Head of the NEDA, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

7. [Name of Consultant] complies with existing labor laws and standards; and
8. [Name of Consultant] is aware of and has undertaken the following responsibilities as a Proponent:
- a) Carefully examine all of the Bidding Documents;
 - b) Acknowledge all conditions, local or otherwise, affecting the implementation of the Contract;
 - c) Made an estimate of the facilities available and needed for the contract to be bid, if any; and
 - d) Inquire or secure Supplemental/Bid Bulletin(s) issued for the [Name of the Project].

IN WITNESS WHEREOF, I have hereunto set my hand this __ day of __, 20__ at _____, Philippines.

[Consultant's Representative/Authorized Signatory]

[JURAT]

Section V. Appendices

I. Description of Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Client, etc.

II. Reporting Requirements

List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

III. Key Personnel and Sub-Consultants

List under:

1. Titles [and names, if already available], detailed job descriptions and minimum qualifications, and staff-months of service, and estimated periods of engagement for each, including a copy of a satisfactory medical certificate.
2. Same information as in no. 1 for Key foreign Personnel to be assigned to work outside the Government’s country.
3. Same information as in no.1 for Key Local Personnel.
4. List of approved Sub-Consultants (if already available) and Counterpart personnel (if allowed); same information with respect to their Personnel as in no.’s 1 and 2.

IV. Breakdown of Contract Price

List here the elements of cost, including expenditures in foreign currency(ies) denominated and payable in Philippine Peso, used to arrive at the itemized breakdown of the contract price:

1. Monthly rates for Personnel (Key Personnel and other Personnel)
2. Reimbursable expenditures
3. Applicable taxes

V. Services and Facilities Provided by the Client

Give detailed description of the services and facilities made available to the Consultant, and the time and manner of its availment.

