

# **BIDDING DOCUMENTS**

**Procurement of Consulting Services**

**for the**

**Review / Formulation of Methodology  
for the Quantification of  
Economic Benefits of Social  
Infrastructure Projects**

**November 2016**

# Section I. Eligibility Documents

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# Eligibility Documents

## 1. Eligibility Criteria

- 1.1. The following persons/entities, as specified in the [EDS](#), shall be allowed to participate in the bidding/selection for the Consulting Services:
  - (a) Duly licensed Filipino citizens or sole proprietorships;
  - (b) Partnerships duly organized under the laws of the Philippines and of which at least 60 percent of the interest belongs to citizens of the Philippines;
  - (c) Cooperatives duly organized under the laws of the Philippines, and of which at least 60 percent interest belongs to citizens of the Philippines;
  - (d) Corporations duly organized under the laws of the Philippines and of which at least 60 percent of the outstanding capital stock belongs to citizens of the Philippines; or,
  - (e) Entities forming themselves into a joint venture (JV), *i.e., a group of two (2) or more entities that intend to be jointly and severally responsible or liable for a particular contract*: Provided, however, That Filipino ownership or interest thereof shall be at least 60 percent. For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the JV as specified in their JV Agreement (JVA).
- 1.2. When the types and fields of Consulting Services involve the practice of professions regulated by law, those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions specified in the [EDS](#).
- 1.3. If the Request for Expression of Interest (EOI) allows participation of foreign consultants, prospective foreign bidders/proponents may be eligible subject to the qualifications stated in the [EDS](#).
- 1.4. Government corporate entities may be eligible to participate only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the Government of the Philippines (GPH) or NEDA.

## 2. Eligibility Requirements

- 2.1. The following eligibility requirements shall be submitted on or before the date of the eligibility check specified in the Request for EOI, Clause 5 and the [EDS](#) for purposes of determining eligibility of prospective bidders/proponents:

## **FOR FIRMS**

### (a) Class “A” Documents –

#### *Legal Documents*

- (i) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives, or any proof of such registration as stated in the [EDS](#);
- (ii) Valid Mayor’s permit issued by the city or municipality where the principal place of business of the prospective bidder/proponent is located;
- (iii) Valid Tax Clearance Certificate (TCC) per Executive Order (EO) No. 398, Series of 2005, reviewed and approved by the Bureau of Internal Revenue (BIR);

#### *Technical Documents*

- (iv) Statement of the prospective bidder/proponent of all its ongoing and completed government and private contracts (properly labeled), including contracts awarded but not yet started, if any, whether similar, relevant or not similar/relevant in nature and complexity to the contract to be bid as defined in the [EDS](#), within the relevant period provided in the [EDS](#). The statement shall, for each contract, include, but not limited to, the following:
  - (iv.1) complete name/title and location of the contract;
  - (iv.2) date of award of contract (in day-month-year);
  - (iv.3) detailed description of the project including the type/nature of the scope of works;
  - (iv.4) bidder’s/proponent’s role (whether main consultant, subcontractor, or partner in a JV), including a detailed discussion/description of such role;
  - (iv.5) total project/contract cost;
  - (iv.6) approximate amount of the consulting services rendered;
  - (iv.7) contract duration for the services rendered (in month and year); and,
  - (iv.8) certificate of completion / satisfactory service / final payment, or equivalent/similar document, specified in

the [EDS](#) issued by the client, in the case of a completed contract (with the date of issuance of such certificate indicated);

- (v) Statement of the bidder/proponent specifying its nationality and confirming that those who will actually perform the service are registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions in accordance with Clause 1.2, including their respective updated curricula vitae (CVs) that show, at the very least, the consultant's educational background, related training and relevant experience (in months and years with detailed description/discussion on the nature and scope of works/services rendered).

#### Financial Document

- (vi) The bidder's/proponent's audited financial statements, showing, among others, its total and current assets and liabilities, stamped "received" by the BIR, or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid/proposal submission.

- (b) Class "B" Document –

Valid JVA, in case a JV is already in existence. In the absence of a JVA, duly notarized statements from all the potential JV partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid/proposal is successful, shall be included in the bid/proposal. Failure to enter into a JV in the event of a contract award shall be ground for the forfeiture of the Bid/Proposal Security. Each JV partner shall submit the legal Eligibility Documents. The submission of Technical and Financial Documents by any of the JV partners constitutes compliance.

#### FOR INDIVIDUALS

- (c) Valid TCC or equivalent;
- (d) Philippine Government Electronic Procurement System (PhilGEPS) Online Registration Number;
- (e) CV providing details on the **Consultant's** educational background, training attended/conducted and other skills, and various work experiences (highlighting all completed and ongoing contracts regardless of relevance/similarity to the subject undertaking), including the pertinent information enumerated in Clause 2.1(a)(iv) above and in the [EDS](#); and,

- (f) Certificate of Completion and Acceptance / Satisfactory Service, or equivalent/similar Certification, specified in the [EDS](#) issued by previous clients for related studies/projects in the case of a completed contract (with the date of issuance of such certificate indicated).
- 2.2 In the case of foreign entities, the foregoing eligibility requirements (under Class “A” Documents in the case of firms) may be substituted by the appropriate equivalent documents, if any, issued by the foreign entity’s country except for the registration with the SEC and/or any agency authorized by the laws of the Philippines pursuant to Section 24.3.3 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, or the Government Procurement Reform Act (GPRA).
- 2.3 The eligibility requirements or statements and all other documents to be submitted to the NEDA Bids and Awards Committee for Consulting Services (**NBAC-CS**) must be in English. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Classes “A” and “B” Documents if they are in other foreign language.
- 2.4 Prospective bidders/proponents may obtain a full range of expertise by associating with other consultants or entities through a JV or subcontracting arrangements, as appropriate. However, subcontractors may only participate in the bid/proposal of one (1) shortlisted consultant. Foreign bidders/proponents shall seek the participation of Filipino consultants by entering into a JV with, or subcontracting part of the project to, Filipino consultants.
- 2.5 If a prospective bidder/proponent has previously secured a certification from **NEDA** to the effect that it has previously submitted the Legal and Financial Class “A” and Class “B” Documents, said certification may be submitted in lieu of the requirements enumerated in Clause 2.1 above, provided that the documents covered by the certification are still valid.

### **3. Format and Signing of Eligibility Documents**

- 3.1. Prospective bidders/proponents shall submit their Eligibility Documents through their duly authorized representative on or before the deadline specified in Clause 5 and the [EDS](#).
- 3.2. Prospective bidders/proponents shall prepare an original and copies of the Eligibility Documents. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 3.3. The Eligibility Documents, except for unamended printed literature, shall be signed, and each and every page thereof should be initialed, by the duly authorized representative/s of the prospective bidder/proponent.
- 3.4. Any interlineations, erasures or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the prospective bidder/proponent.

#### **4. Sealing and Marking of Eligibility Documents**

- 4.1. Unless otherwise indicated in the [EDS](#), prospective bidders/proponents shall enclose their original Eligibility Documents described in Clause 2.1, in a sealed envelope marked “ORIGINAL – ELIGIBILITY DOCUMENTS”. Each copy of the Eligibility Documents shall be similarly sealed, duly marking the envelopes as “COPY NO. \_\_\_\_ - ELIGIBILITY DOCUMENTS”. These envelopes containing the original and the copies shall then be enclosed in one (1) single envelope. NEDA shall not assume responsibility for the misplacement, premature opening and/or tampering of unsealed documents, and shall not prejudice the conduct of the procurement process.
- 4.2. The original and the number of copies of the Eligibility Documents as indicated in the [EDS](#) should be typed or written in indelible ink and shall be signed by the prospective bidder or its duly authorized representative/s.
- 4.3. All envelopes should:
  - (a) contain the name of the contract to be bid in capital letters;
  - (b) bear the name and address of the prospective bidder/proponent in capital letters;
  - (c) be addressed to the **NBAC-CS** specified in the [EDS](#);
  - (d) bear the specific identification of the Project indicated in the [EDS](#); and,
  - (e) bear a warning “DO NOT OPEN BEFORE...” the date and time for the opening of Eligibility Documents, in accordance with Clause 5, unless such is allowed to be submitted in advance as indicated in the Request for EOI.

#### **5. Deadline for Simultaneous Submission of Eligibility Documents, Technical and Financial Proposals**

The Eligibility Documents, Technical and Financial Proposals must be received simultaneously by the NBAC-CS at the address and on or before the date and time indicated in the Request for EOI and the [EDS](#).

#### **6. Late Simultaneous Submission of Eligibility Documents, Technical and Financial Proposals**

The Eligibility Documents, Technical and Financial Proposals simultaneously submitted after the deadline for submission and receipt prescribed in Clause 5 shall be declared “Late” and shall not be accepted.

#### **7. Modification and Withdrawal of Eligibility Documents**

- 7.1. The prospective bidder/proponent may modify its Eligibility Documents after it has been submitted; provided that the modification is received by NEDA

prior to the deadline specified in Clause 5 and the [EDS](#). The prospective bidder/proponent shall not be allowed to retrieve its original Eligibility Documents, but shall be allowed to submit another set equally sealed, properly identified, linked to its original bid marked as “ELIGIBILITY MODIFICATION” and stamped “received” by the **NBAC-CS**. Modifications received after the applicable deadline shall not be considered and shall be returned to the prospective bidder/proponent unopened.

- 7.2. A prospective bidder/proponent may, through a letter of withdrawal, withdraw its Eligibility Documents after they have been submitted, for valid and justifiable reason; provided, that the letter of withdrawal is received by NEDA prior to the deadline prescribed for submission and receipt of Eligibility Documents as specified in Clause 5 and the [EDS](#).
- 7.3. Eligibility Documents requested to be withdrawn in accordance with this Clause shall be returned unopened to the prospective bidder/proponent concerned. A prospective bidder/proponent may also express its intention not to participate in the bidding through a letter which should reach and be stamped by the **NBAC-CS** before the deadline for submission and receipt of Eligibility Documents. A prospective bidder/proponent that withdraws its Eligibility Documents shall not be permitted to submit another set, directly or indirectly, for the same project.

## **8. Opening and Examination of Eligibility Documents**

- 8.1. The **NBAC-CS** will open the envelopes containing the Eligibility Documents in the presence of the prospective bidders’/proponents’ representative/s who choose to attend, at the time, on the date, and at the place specified in the [EDS](#). The prospective bidders’/proponents’ representative/s who is/are present shall sign a register evidencing their attendance.
- 8.2. Letters of withdrawal shall be read out and recorded during the opening of Eligibility Documents and the envelope containing the corresponding withdrawn Eligibility Documents shall be returned unopened to the withdrawing prospective bidder/proponent. If the withdrawing prospective bidder’s/proponent’s representative/s is/are present during the opening, the original Eligibility Documents and all copies thereof shall be returned to the representative/s during the opening of Eligibility Documents. If no representative is present, the Eligibility Documents shall be returned unopened by registered mail.
- 8.3. A prospective bidder/proponent determined as “ineligible” has seven (7) calendar days upon written notice or, if present at the time of the opening of Eligibility Documents, upon verbal notification, within which to file a request for reconsideration with the **NBAC-CS**: Provided, however, that the request for reconsideration shall not be granted if it is established that the finding of failure is due to the fault of the prospective bidder/proponent concerned: Provided, further, that the **NBAC-CS** shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. If a failed prospective bidder/proponent signifies its intent to file a request for reconsideration, in the case of a prospective bidder/proponent who is declared



ineligible, the **NBAC-CS** shall hold the Eligibility Documents until such time that the request for reconsideration or protest has been resolved.

- 8.4. The Eligibility Documents envelopes and modifications, if any, shall be opened one at a time, and the following read out and recorded:
- (a) the name of the prospective bidder/proponent;
  - (b) whether there is a modification or substitution; and,
  - (c) the presence or absence of each document comprising the Eligibility Documents vis-à-vis a checklist of the required documents.
- 8.5. The eligibility of each prospective bidder/proponent shall be determined by examining each bidder's/proponent's eligibility requirements or statements against a checklist of requirements, using non-discretionary "pass/fail" criterion, as stated in the Request for EOI, and shall be determined as either "eligible" or "ineligible". If a prospective bidder/proponent submits the specific Eligibility Document required, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered "failed" for the particular eligibility requirement concerned. If a prospective bidder/proponent is rated "passed" for all the eligibility requirements, it shall be considered eligible to participate in the bidding, and the **NBAC-CS** shall mark the set of Eligibility Documents of the prospective bidder/proponent concerned as "eligible." If a prospective bidder/proponent is rated "failed" in any of the eligibility requirements, said bidder/proponent shall be considered ineligible to participate in the bidding/selection process, and the **NBAC-CS** shall mark the set of Eligibility Documents of the prospective bidder/proponent concerned as "ineligible." In either case, the **NBAC-CS** Chairperson, or his duly designated authority, shall countersign the markings.

## **9. Shortlisting of Consultants**

- 9.1. The **NBAC-CS** shall draw up the shortlist of prospective bidders/proponents from those declared eligible using a detailed set of criteria and rating system.
- 9.2. Shortlisted **Consultants** shall be invited to participate in the bidding/selection process for the procurement undertaking listed in the [EDS](#) through a Letter of Invitation to Bid/Submit Proposals issued by the **NBAC-CS**. Participating shortlisted **Consultants** shall be required to purchase Bidding/Proposal Documents.
- 9.3. Only proposals from shortlisted **Consultants** that have purchased Bidding/Proposal Documents shall be opened and considered for award of contract. These shortlisted **Consultants**, whether single entities or JVs, should confirm in their proposals that the information contained in the submitted Eligibility Documents remains correct as of the date of submission.

## Eligibility Data Sheet (EDS)

Eligibility Documents	
1.1	<b>Individual Consultants or Firms</b> may participate in the procurement process for this Consulting Services.
1.2	Professional Regulations Commission (PRC), if applicable.
1.3	Foreign <b>Consultants</b> may be eligible to participate provided they are registered with the Securities and Exchange commission (SEC) and/or any agency authorized by the laws of the Philippines.
2.1	Please see <b>Reference to Clause 5 of this <a href="#">EDS</a></b> .
2.1(a)(i)	No additional requirements.
2.1(a)(iv)	Please see <b>Reference to Clause 2.1(e) of this <a href="#">EDS</a></b> .
2.1(a)(iv.8)	Please see <b>Reference to Clause 2.1(f) of Section I. Eligibility Documents and this <a href="#">EDS</a></b> .
2.1(e)	<p>The Consultant should meet the following minimum qualifications:</p> <ul style="list-style-type: none"> <li>• At least five (5) years of similar and/or relevant experience in project development;</li> <li>• At least a Bachelor's Degree in Economics, or other related fields (i.e., Engineering, Statistics, Mathematics); and,</li> <li>• Have performed economic analyses of at least three (3) social infrastructure projects.</li> </ul> <p><b>Similar experience</b> refers to previous engagements/contracts with scope of works covering the conduct of pre-feasibility study (F/S), full-blown F/S, economic and social analyses components of an F/S, and/or other related studies/services pertaining to the social infrastructure sector. <b>Relevant experience</b>, on the other hand, refers to previous engagements/contracts with scope of works covering the conduct of pre-F/S, full-blown F/S, economic and social analyses components of an F/S, and/or other related studies/services pertaining to the infrastructure sector in general</p>
2.1(f)	Interested <b>Consultants</b> must submit at least one (1) Certificate of Completion and Acceptance / Satisfactory Service / final payment, or equivalent/similar document, issued by a previous client (with the date of issuance of such certificate indicated).
3.1	Please see <b>Reference to Clause 5 of this <a href="#">EDS</a></b> .

4.1	No additional requirements.
4.2	Each prospective bidder/proponent shall submit one (1) original and four (4) properly tabbed/labeled copies of its Eligibility Documents.
4.3(c)	<b>Mr. Ruben S. Reinoso, Jr.</b>  Assistant Secretary and Chairman, NEDA Bids and Awards Committee for Consulting Services (NBAC-CS)
4.3(d)	Review/Formulation of Methodology for the Quantification of Economic Benefits of Social Infrastructure Projects
5	The address for the <u>simultaneous</u> submission of Eligibility Documents, Technical and Financial Proposals is:  Office of the Assistant Secretary for Investment Programming, 4/F NEDA-sa-Pasig Building, #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City 1605  <u>The deadline for the simultaneous submission of Eligibility Documents, Technical and Financial Proposals is <b>29 November 2016 (Tuesday), 12:00 P.M.</b></u>
7.1	Please see <b>Reference to Clause 5 of this <a href="#">EDS</a>.</b>
7.2	Please see <b>Reference to Clause 5 of this <a href="#">EDS</a>.</b>
8.1	The place of opening of Eligibility Documents is:  Office of the Assistant Secretary for Investment Programming Conference Room, 4/F NEDA-sa-Pasig Bldg., #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City.  <u>The date and time of opening of Eligibility Documents is <b>29 November 2016 (Tuesday), 1:00 P.M.</b></u>
9.2	Please see <b>Reference to Clause 4.3(d) of this <a href="#">EDS</a>.</b>

# Section II. 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 engage a **Consultant** (Individual or Firm, Foreign or Local) for the Review / Formulation of Methodology for the Quantification of Economic Benefits of Social Infrastructure Projects (hereinafter referred to as the “**Project**”) from among those shortlisted, in accordance with the Quality-Cost Based Evaluation/Selection (QCBE/QCBS) process under Republic Act (RA) No. 9184 and its Revised Implementing Rules and Regulations (IRR) at *80% for the Technical Proposal and 20% for the Financial Proposal*.
- 1.2. Funding for this activity shall be sourced from the Social Infrastructure Economic Indicator (SIEI) Fund of the **NEDA-Infrastructure Staff** (hereinafter referred to as the “**Fund**”).
- 1.3. **Consultants** are invited to simultaneously submit Eligibility Documents and proposals composed of a Technical Proposal and a Financial Proposal for the services required for this **Project** as described in the **Terms of Reference (TOR)**. Proposals received shall be the basis for contract negotiations and ultimately for a signed Contract Agreement with the selected **Consultant**.
- 1.4. **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 *Clause 7 of this Instruction to Bidders (ITB)*.
- 1.5. **Consultants’** costs of preparing their proposals and negotiating the contract, including a visit to the **NEDA**, are not reimbursable as a direct cost of the **Project**.
- 1.6. **Consultants** shall not be under a declaration of ineligibility for corrupt, fraudulent, collusive or coercive practices issued by the **NEDA** in accordance with *ITB Clause 3.1*.

### 2. Conflict of Interest

- 2.1. The **Consultants** is required to provide professional, objective and impartial advice and at all times hold **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 Committees (NBACs), Technical Working Groups (TWGs) and Secretariats, and the head of the Project Management Office (PMO) and/or the End-User (EU) 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 joint venture (JV), the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to each of the members of said JV, 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/s, nominated expert, its affiliates, or associates under a contract with 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 proposal.
- 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** seeking the imposition of the maximum administrative, civil and criminal penalties up to and including imprisonment.
- 2.5. **Consultants** are discouraged to nominate officials and employees of the Government of the Philippines (GPH) as expert or part of its personnel for the **Project**. Participation of officials and employees of the GPH 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 shortlisted **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 **Consultant** shall observe the highest standard of ethics during the procurement and execution of the Contract. In pursuance of this policy, the **NEDA**:
  - 3.1.1 defines, for purposes of this provision, the terms set forth below as follows:
    - (a) “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 GPH, 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 RA 3019;



- (b) “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 **NEDA** of the benefits of free and open competition;
- (c) “Collusive Practice” means a scheme or arrangement between two (2) or more participating **Consultants**, with or without the knowledge of the **NEDA**, designed to establish proposal prices at artificial, non-competitive levels; and,
- (d) “Coercive Practice” 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 and,

3.1.2 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 **ITB Clause 3** 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**.

3.3. Furthermore, the **NEDA** reserves 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 *General Conditions of Contract (GCC) Clause 47*.

## 4. **Consultant’s Responsibilities**

4.1. The **Consultant**, or its duly authorized representative, shall submit a sworn statement in the form prescribed in *Section V. Proposal Forms* hereof as required in **ITB Clause 10.2.3**.

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 GPH or any of its agencies, offices, corporations or local government units (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 a JV;
- (i) Complying with the disclosure provision under *Section 47* of RA 9184 in relation to other provisions of RA 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 **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 simultaneously submitting their Eligibility Documents, Technical and Financial Proposals, the **Consultants** are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the GPH which may affect the contract in any way.

- 4.6. The **Consultant** shall bear all costs associated with the preparation and simultaneous submission of his/her Eligibility Documents, Technical and Financial 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 simultaneously accept Eligibility Documents, Technical and Financial Proposals from those that have purchased / paid the **PhP5,000.00** fee for the Bidding Documents at the Office indicated below:

***NBAC for Consulting Services (NBAC-CS)***

*Office of the Assistant Secretary for Investment Programming*

*4/F, NEDA-sa-Pasig Building*

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

*Tel. No. (02) 631-0945 to 60 local 607 / (02) 631-2192*

## **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**. 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 *Clause 2. Eligibility Requirements of Section I. Eligibility Documents*. 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 **15 November 2016 (Tuesday), 1:00 P.M.**, at the **Office of the Assistant Secretary for Investment**

**Programming Conference Room, 4/F NEDA-sa-Pasig Building, 12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City** to clarify and address the participating **Consultants'** questions on the **Terms of Reference (TOR)** and the Eligibility Documents, Technical and Financial components of this **Project**.

- 7.2. **Consultants** are encouraged to attend the Pre-Proposal Conference to ensure that they fully understand **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.

Only those interested **Consultants** that have purchased / paid the **Php5,000.00** fee for the Bidding Documents on or before the date and time of the Pre-Proposal Conference will be allowed to participate in the Pre-Proposal Conference. Those that have paid the participation fee of **Php2,000.00**, which shall cover the attendant administrative cost for the eligibility check and shortlisting process, shall be deducted from the cost of the Bidding Documents. The cost of the Bidding Documents, less the participation fee, shall be returned to the **Consultant** if the same has not been determined eligible and shortlisted.

All **Consultants'** representatives shall secure and bring a written authority from the **Consultant** (in case of Individual Consultant) or their authorized official, e.g., president, governing boards if Corporation (in case of Firm), to be presented to the **NBAC-CS** during the Pre-Proposal Conference stating that said representative/s is/are authorized person/s to speak for and in behalf of the **Consultants**.

- 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 the Bidding Documents**

- 8.1. **Consultants** that 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-CS** at least ten (10) calendar days before the deadline set for the simultaneous submission and receipt of Eligibility Documents, Technical and Financial Proposals.
- 8.2. Supplemental/Bid Bulletins may be issued upon the **NBAC-CS'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 simultaneous submission and receipt of Eligibility Documents, Technical and Financial Proposals. Any modification to the Bidding Documents shall be identified as an amendment.

- 8.3. Any Supplemental/Bid Bulletin issued by the **NBAC-CS** shall also be posted at the Philippine Government Electronic Procurement System (PhilGEPS) and the **NEDA** websites. It shall be the responsibility of all **Consultants** who secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the **NBAC-CS**. However, **Consultants** who have simultaneously submitted the Eligibility Documents, Technical and Financial Proposals before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their documents/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, as applicable:
- (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**. **Consultants** are given the flexibility in determining and proposing the most appropriate time input / man-months relative to the realization of the required activities and/or outputs under the **TOR**.
  - (c) The Individual Consultant or the proposed professional staffs and/or nominated expert (in case of Firm) 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) Preferably no alternative professional staff shall be proposed, and only one (1) Curriculum Vitae (CV) may be submitted for each position.

- (e) Deviations from the **TOR** in terms of scope and schedule of activities and number of positions/personnel may be allowed as long as justified, and will not consequently lead to Financial Proposals exceeding the Approved Budget for the Contract (ABC) and will not deviate by more than twenty percent (i.e.,  $\pm 20\%$ ) from the allocated budgets for remuneration and reimbursable expenses indicated in the **TOR**.

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

10.2.1 Proposal Security as prescribed in *ITB Clause 15*. The **Consultant** may opt to submit the Proposal Security in the form of:

- (a) 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,
- (b) A surety bond, it shall be accompanied by a certification coming from an authorized Insurance Commission that a surety or insurance company is authorized to issue such instrument.

10.2.2 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 V. Proposal Forms*:

- (a) 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 *Technical Proposal Form (TPF 2. Consultant's References*. For each project, the outline should indicate *inter alia*, the project, number of respondents, contract amount, contract period (in month and year), the **Consultant's** specific role / involvement, and the **Consultant's** share to the contract amount in case of an association or JV. Information should be provided only for those projects for which the **Consultant** was legally contracted by itself or as one (1) of the major participating consultants within an association or JV. Whenever applicable, the experience of individual experts from projects completed independently or when associated with consultants other than the one (1) with whom the individual is currently associated with cannot be claimed as the experience of the current consultant or any one (1) 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-CS**.
- (b) 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.

- (c) A concise, complete and logical description of how the **Consultant** shall carry out the services to meet all requirements of the **TOR**.
- (d) Team composition and the tasks to be delivered relative to the **Project** (*TPF 5. Team Composition and Tasks*).
- (e) The name, age, nationality, education, related training attended (in hours), employment record (in days, months and years), and similar/relevant professional experience (in man-months) of the Individual **Consultant** or nominated Expert (in case of Firm), with detailed description/discussion on the nature and scope of works/services rendered and particular reference to the type of experience required for this undertaking (similar and relevant), including ongoing and committed projects (with dates of contract award and contract durations indicated), should be presented in the CV format shown in *TPF 6. Format of Curriculum Vitae (CV)*.
- (f) Only one (1) CV may be submitted for this **Project**.
- (g) The **NEDA** requires that the **Individual Consultant** or the nominated Expert (in case of Firm) confirm that the content of his/her CV is correct and the **Consultant/expert** himself/herself should sign the certification of the CV. In addition, the **Consultant/Expert** should submit a signed written commitment stating that he/she shall work for the **Project** once awarded the contract. A zero (0) rating shall be given to an Individual **Consultant** or a nominated Expert if he/she:
  - (g.1) Failed to state nationality on the CV; or,
  - (g.2) The CV is not signed in accordance with paragraph (g).
- (h) A Time Schedule (*TPF 7. Time Schedule for Consultant and Its 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.

- (i) 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**.
- (j) An Organizational Chart indicating relationships amongst the **Consultant** and any partner and/or subcontractor, the nominated expert (in case of Firm), the **NEDA** and the GPH, and other parties or stakeholders, if any, involved in the **Project**.

10.2.3 Sworn Statement in accordance with *Section 25.2(b)(iv)* of the Revised IRR of RA 9184 and using the form prescribed in *Section V. 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 (FPFs)*.
- 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. *FPF 2. Summary of Costs*, *FPF 3. Breakdown of Price per Activity*, *FPF 4. Breakdown of Remuneration per Activity*, *FPF 5. Reimbursable Expenditures per Activity*, and *FPF 6. Miscellaneous Expenses*, relate to the costs of consulting services under two (2) distinct categories, namely: (a) Remuneration; and (b) Reimbursable Expenditures.
- 11.3 Remuneration is divided into billing rate estimates for international and/or domestic consultants, as the case may be. Reimbursable Expenditures are divided into costs for reimbursable expenditure items for the Consulting Services.
- 11.4 The **Consultants**, and their respective inputs, identified in the **FPFs**, must match the list of experts and their respective inputs shown in the **TPFs**.
- 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 ABC of **TWO MILLION, TWO HUNDRED NINETY-ONE THOUSAND TWO HUNDRED FIFTY AND 00/100 PESOS (PhP2,291,250.00)**, inclusive of all applicable government taxes and charges, professional fees, and other incidental and administrative costs (i.e., transportation/travel expenses, printing, reproduction and packaging of hard and soft copies of reports, expenses for meetings, etc.), shall not be considered.

## **12 Alternative Proposals**

**Consultants** shall submit only one (1) 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 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 proposal.

## **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 have been 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 (HRRP) 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 14**.
- 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 14**.
- 15.5 The Proposal Security may be forfeited:
- 15.5.1 If a **Consultant**:
- (a) Withdraws its proposal during the period of Proposal Validity specified in **ITB Clause 14**;
  - (b) Does not accept the correction of errors pursuant to **ITB Clause 11.7**;

- (c) Fails to submit the requirements within the prescribed period or a finding against their veracity as stated in **ITB Clause 27.2**; or,
- (d) The following are additional grounds for forfeiture of the Proposal Security:
  - i. Submission of eligibility requirements containing false information or falsified documents;
  - ii. 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;
  - iii. Allowing the use of one's name, or using the name of another for purposes of public bidding;
  - iv. 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 (HRP);
  - v. Refusal or failure to post the required Performance Security within the prescribed time;
  - vi. 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;
  - vii. Any documented unsolicited attempt by a **Consultant** to unduly influence the outcome of the selection in his/her favor; and,
  - viii. 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.

15.5.2 If the successful **Consultant**:

- (a) Fails to sign the contract in accordance with **ITB Clause 30**; or,
- (b) 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 *Clause 15.1* of this **ITB**.

- 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 of 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 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 of 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; or,
  - (c) When the **Consultant** declared as having the HRRP 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 *ITB Clause 15.11* above 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 HRP and the **Consultant** with the next HRP, and so on. However, as regards the **Consultant** with the HRP, 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 *ITB Clause 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; and,
- (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 simultaneously submit their Eligibility Documents, Technical and Financial Proposals through their duly authorized representative as provided in *Section I. Eligibility Documents* and using the appropriate forms provided in *Section V. Proposal Forms* on or before the deadline specified in the *ITB Clause 18* in separate sealed envelopes.
- 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 Technical and Financial envelopes as described in *ITB Clauses 10 and 11*. In addition, the **Consultant** is required to submit four (4) copies of the Technical and Financial 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 (1) 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 (1) single envelope.
- 17.3 Each participating **Consultant** shall submit one (1) original and four (4) copies of the Technical and Financial 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-CS** identified in *ITB Clause 8.1*;
  - (d) Bear the specific identification of this bidding process indicated in the Request for EOI; 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 proposals are not sealed and marked as required, the **NEDA** will assume no responsibility for the misplacement or premature opening of the proposal.

### D. Submission of Proposals

## 18. Deadline for Simultaneous Submission of Documents

The Eligibility Documents, Technical and Financial Proposals must be simultaneously received by the **NBAC-CS** on or before **29 November 2016 (Tuesday), 12:00 P.M.**, at the *Office of the Assistant Secretary for Investment Programming and NBAC-CS Chairman, 4/F NEDA-sa-Pasig Building, #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City*.

## 19. Late Submission of Documents

Any document/proposal submitted after the deadline for the simultaneous submission and receipt of Eligibility Documents, Technical and Financial Proposals prescribed by the **NEDA**, pursuant to *ITB Clause 18 and Clause 5 of Section I. Eligibility Documents*, shall be declared “Late” and shall not be accepted by the **NEDA**.

## 20. Modification and Withdrawal of Documents

- 20.1 The **Consultant** may modify its proposals after it has been submitted; provided that the modification is received by the **NBAC-CS** prior to the deadline prescribed for the simultaneous submission and receipt of Eligibility Documents, Technical and Financial 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-CS**. 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-CS** prior to the deadline prescribed for the simultaneous submission and receipt of Eligibility Documents, Technical and Financial Proposals.
- 20.3 Proposals requested to be withdrawn in accordance with *ITB Clause 20* 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-CS** before the deadline for the simultaneous submission and receipt of Eligibility Documents, Technical and Financial 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 the simultaneous submission. No proposal may be withdrawn in the interval between the deadline for submission and the expiration of the period of Proposal Validity specified by the **Consultant** on the FPF. 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 RA 9184 and its Revised IRR.

## E. Evaluation and Comparison of Proposals

## 21. Process to be Confidential

- 21.1 Members of the **NBAC-CS**, including its staff and personnel, as well as its Secretariat and TWG, 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* hereof.

- 21.2 Any effort by a proponent to influence the **NEDA** in **NEDA**'s decision with respect to 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-CS** 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** with 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 shortlisted **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 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 HOPE for approval, shall be completed in not more than 21 calendar days after the deadline for receipt of proposals. The proposals with the highest rank shall be identified as the HRP. The HOPE shall approve or disapprove the recommendations of the **NBAC-CS** within two (2) calendar days after receipt of the results of the evaluation from the **NBAC-CS**.
- 23.4 All shortlisted **Consultants** shall be furnished the results (ranking and total scores only) of the evaluation after the approval by the HOPE of the ranking. Said results shall also be posted at the PhilGEPS and **NEDA** websites for a period of not less than seven (7) calendar days.

## 24. Opening and Evaluation of Technical Proposals

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



The opening of the Technical Proposals shall be scheduled after the determination of the shortlist of **Consultants** and will be held at the *Office of the Assistant Secretary for Investment Programming Conference Room, 4/F NEDA-sa-Pasig Building, #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City.*

*The shortlisted **Consultants**, through their duly authorized representative/s, may attend the opening of proposals. All **Consultants**' representatives shall secure and bring a written authority from the **Consultant** (in case of Individual **Consultant**) or their authorized official, e.g., president, governing boards if Corporation (in case of Firm), to be presented to the **NBAC-CS** during the Opening of Technical Proposals stating that said representative/s is/are authorized person/s to speak for and in behalf of the **Consultants**.*

*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 Proposal is given a weight of **20 percent** while the weight of the Technical Proposal shall be **80 percent**. The **NBAC-CS** shall rank the Consultants in descending order based on the combined numerical ratings of their Technical and Financial Proposals and identify the HRP.*
- (c) The Head Approving Authority of the **NEDA** shall approve or disapprove the recommendations of the **NBAC-CS** within two (2) calendar days after receipt of the results of the evaluation from the **NBAC-CS**.*
- (d) After approval by the Head Approving Authority of the **NEDA** of the HRP, the **NBAC-CS** shall, within three (3) calendar days, notify and invite the consultant with the HRP for negotiation in accordance with **ITB** Clause 26.*

24.2 The **NBAC-CS** shall evaluate 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) Applicable Experience and Capability of the **Consultant**, or the nominated Expert in case of a Firm, which include records of previous engagement and quality of performance in similar and other relevant projects, including, among others, 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/Expert** to the **Project** shall consider both the overall experience of the **Consultant**,*

or the nominated Expert in case of a Firm, including the times when employed by other consultants;

- (b) Plan of Approach and Methodology, with emphasis on the substance, clarity, feasibility, innovativeness and/or comprehensiveness of the plan approach, and/or the quality of interpretation of project problems, risks, and suggested solutions.
- (c) Qualifications of the **Consultant**, or the nominated Expert in case of a Firm, which covers his/her suitability to perform the duties for the **Project** and general qualifications and competence including education and training; and,
- (d) Overall work commitments or the **Consultant**'s capacity to implement the **Project** vis-à-vis its other ongoing and committed projects.

24.3 The **NBAC-CS** shall assign numerical weights to each of the above criteria as 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 of the criterion are as follows:*

<i>Criteria</i>	<i>Firm</i>	<i>Individual</i>
<i>a) Experience and Capability of the Consultant</i>	<i>= 10%</i>	<i>5%</i>
<i>b) Plan of Approach and Methodology</i>	<i>= 45%</i>	<i>45%</i>
<i>c) Qualification of the Consultant / Expert to be assigned to the Study</i>	<i>= 45%</i>	<i>50%</i>

*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 (1) of the conflict of interest cases as described in **ITB Clauses 2.1** 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 *Office of the Assistant Secretary for Investment Programming Conference Room, 4/F, NEDA-sa-Pasig Building, #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City.*

*Financial Proposals shall be opened in public. All **Consultants'** representatives shall secure and bring a written authority from the **Consultant** (in case of Individual **Consultant**) or their authorized official, e.g., president, governing boards if Corporation (in case of Firm), to be presented to the NBAC-CS during the opening of the Financial Proposal stating that said representative is an authorized person to speak for and in behalf of the **Consultants**.*

- 25.2 The Financial Proposals opened shall be evaluated based on the evaluation procedure indicated in *ITB Clause **Error! Reference source not found.*** 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-CS** 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-CS** 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 GPH's international commitments, the amount of such tax privileges shall be included in the Financial Proposal for purposes of comparative evaluation of proposals.*

*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:*

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

*Where:*

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

*FI 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 *Office of the Assistant Secretary for Investment Programming Conference Room, 4/F NEDA-sa-Pasig Building, #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 50 percent 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 50 percent 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 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 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-CS** 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 (annual or quarterly) are those within the last six (6) 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-CS** deems necessary and appropriate.
- 27.4 If the **NBAC-CS** determines that the **Consultant** with the HRP passes all the criteria for post-qualification, it shall declare 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-CS**, the Approving Authority of the **NEDA** shall approve or disapprove the said recommendation.

## **28 Reservation Clause**

- 28.1 Notwithstanding the eligibility, shortlisting, or post-qualification of a **Consultant**, the **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 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-CS** 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-CS** 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 GPH 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 the **Funds** for the **Project** has been withheld or reduced through no fault of **NEDA**.

28.3 In addition, the **NBAC-CS** 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-CS** 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 JV Agreement (JVA), if applicable, within ten (10) calendar days from receipt by the **Consultant** of the notice from the **NBAC-CS** that the **Consultant** has the HRRP;
  - (b) Posting of the Performance Security in accordance with *Clause 31* of this **ITB**;
  - (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 NOA, 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 Agreement:
- (a) General Conditions of Contract (GCC);
  - (b) TOR;
  - (c) Request for EOI;
  - (d) Eligibility Requirements, Documents and/or Statements;
  - (e) Instructions to Bidders;
  - (f) Addenda and/or Supplemental/Bid Bulletins, if any;



- (g) Consultant's Bid, Technical and Financial Proposals, and all other documents/statements contained in the Consultant's bidding envelopes, as annexes;
- (h) Detailed Evaluation and Post-Qualification Documents;
- (i) NOA and the Consultant's Conforme thereto;
- (j) Performance Security;
- (k) Notice to Proceed (NTP); and,
- (l) Other contract documents that may be required by existing laws and/or the Procuring Entity.

### 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 NOA 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-CS** shall declare the procurement a failure and conduct a re-bidding with re-advertisement.

## **32 Notice to Proceed (NTP)**

- 32.1 The NTP 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 NTP or seven (7) calendar days from its issuance, whichever is earlier.

REPUBLIC OF THE PHILIPPINES )  
CITY OF \_\_\_\_\_ ) S.S.

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**BID-SECURING DECLARATION**

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

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

I/We<sup>1</sup>, 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 Declaration<sup>2</sup>, 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 Proposal (HRRP), and I/we have furnished the Performance Security and signed the Contract.

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

<sup>2</sup> 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]*

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Series of 2016.

# **Section III. General Conditions of Contract**

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## 1. Definitions

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

- 1.1 “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.
- 1.2 “**Consultant**” refers to the individual **Consultant** or the Firm, determined by the National Economic and Development Authority (**NEDA**) as such in accordance with the *Instructions to Bidders (ITB)*.
- 1.3 “Consulting Services” refer to services for projects or activities of the Government of the Philippines (GPH) 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.
- 1.4 “Contract” or “Contract Agreement” means the agreement signed by the Parties, to which these General Conditions of Contract (**GCC**) and other sections of the Bidding Documents are attached.
- 1.5 “Effective Date” means the date on which this Contract comes into full force and effect.
- 1.6 “Foreign Currency” means any currency other than the currency of the Philippines.
- 1.7 “Fund” means the Social Infrastructure Economic Indicator (SIEI) Fund of the NEDA-Infrastructure Staff.
- 1.8 “**GCC**” means these General Conditions of Contract.
- 1.9 “Government” means the Government of the Philippines (GPH).
- 1.10 “Local Currency” means the Philippine Peso (PhP).
- 1.11 “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.
- 1.12 “Party” means the **NEDA** or the **Consultant**, as the case may be, and “Parties” means both of them.
- 1.13 “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 as referred to in *GCC Clause 37*; “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.

- 1.14 “SCC” means the Special Conditions of Contract by which the **GCC** may be amended or supplemented.
- 1.15 “Services” means the work to be performed by the **Consultant** pursuant to this Contract and as required in the Terms of Reference (TOR).
- 1.16 “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 46*.
- 1.17 “Nominated Expert” (in case of a Firm) means the expert commissioned by a Firm to actually perform the services required under the Contract.
- 1.18 “Third Party” means any person or entity other than the Government, the **NEDA**, the **Consultant**, Sub-Consultant or nominated Expert in case of a Firm.

## **2. Headings**

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

## **3. Law Governing Contract and Services**

- 3.1 This Contract Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
- 3.2 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. The **Consultant** shall comply with, and strictly observe any law regarding workmen’s health and safety, workmen’s welfare, compensation for injuries, minimum wage, hours of labor and other labor laws.

## **4. Language**

This Contract Agreement 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.

## **5. Consultants and Affiliates Not to Engage in Certain Activities**

- 5.1 The **Consultant** agrees that, during the term of this Contract and after its termination, the **Consultant** and any entity affiliated with the **Consultant** (if any), as well as any Sub-Consultant and any entity affiliated with such Sub-



Consultant (if any), 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.

5.2 The **Consultant** shall not engage, and shall cause their Personnel and/or nominated Expert (in case of a Firm) as well as their Sub-Consultants and their Personnel (if any) 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;
- (b) For full-time foreign **Consultant** during his/her assignment under this Contract either in his name or through the Consulting Firm, in any business or professional activities in the Philippines other than the performance of his duties or assignment under this Contract, and,
- (c) 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.

## 6. **Authority of Member in Charge (*in case of JV*)**

The JV members hereby authorize \_\_\_\_\_, to act on behalf of the **Consultant** 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**.

## 7. **Entire Agreement**

This Contract Agreement, including the documents specified in *Section 37.2.3* of the Revised IRR of RA 9184, 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.

## 8. **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 12** hereof, however, each Party shall give due consideration to any proposal for modification made by the other Party.

## 9. **Relationship of Parties**

9.1 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 and the timely delivery of outputs.

- 9.2 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.

## **10. 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**: MR. ROLANDO G. TUNGPALAN, Undersecretary

For the **Consultant**: \_\_\_\_\_

## **11. 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.

## **12. Operation of the Contract**

The Parties recognize that it is impractical for this Contract Agreement 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 32* hereof.

## **13. Notices**

- 13.1 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: Mr. Rolando G. Tungpalan, Undersecretary  
Address: #12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City 1605  
Telephone: (02) 631-0945 to 60 local 608  
Facsimile: (02) 631-2186  
Email Address: RGTungpalan@neda.gov.ph

Consultant: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email Address: \_\_\_\_\_

13.2 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.

13.3 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 13.2**.

## 14. Warranty as to Eligibility

14.1 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 submitted for this **Project**.

14.2 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 GPH.

## 15. Confidentiality

Except with the prior written consent of the **NEDA**, the **Consultant** and/or its Personnel and Sub-Consultant (if any) and nominated Expert (in case of Firm) 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/or the Personnel/Sub-Consultant and nominated Expert (in case of Firm) 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/Sub-Consultant and nominated Expert (in case of Firm) arising out of, or in connection with, the performance of the Services under this Contract that is not otherwise available to the public.

## **16. Payment**

- 16.1 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 49* 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**.
- 16.2 Subject to the ceilings specified in *GCC Clauses 48 and 49.7* hereof, the **NEDA** shall pay to the **Consultant**: (i) remuneration as set forth in *GCC Clause 49.2*; and (ii) reimbursable expenditures as set forth in *GCC Clause 49.4*.
- 16.3 Payment will be made to the **Consultant** through check to be picked-up by the **Consultant**'s representative at the **NEDA** Cashier's Office.
- 16.4 A retention payment of 10 percent shall be withheld. It shall be based on the total amount due to the **Consultant** prior to any deduction and shall be retained from every progress payment until 50 percent of the value of Study, as determined by **NEDA**, are completed. If, after 50 percent completion, the Study is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the 10 percent retention shall be imposed.
- 16.5 The total "retention money" shall be due for release upon approval of the Final Report. The **Consultant** 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 percent retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the **NEDA** shall be valid for the duration of the Contract.

## **17. Currency of Payment**

All payments shall be made in Philippine Pesos.

## **18. Liability of the Consultant**

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

## **19. Insurance to be taken out by the Consultant**

- 19.1 The **Consultant**, at its own cost, shall be responsible for taking out or maintaining any insurance policy against any risk related to the **Project**.
- 19.2 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.

## **20. Effectivity of Contract**

This Contract shall take effect on the date of the **Consultant**'s receipt of the Notice to Proceed (NTP), or seven calendar (7) days from the issuance of such notice, whichever is earlier.

## **21. Commencement of Services**

The **Consultant** shall begin carrying out the Services starting from the effectivity date of this Contract, as mentioned in *GCC Clause 20*.

## **22. Expiration of Contract**

Unless sooner terminated pursuant to *GCC Clauses 25 or 26* 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.

## **23. Force Majeure**

- 23.1 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**.
- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 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 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.
- 23.6 The Parties shall take all reasonable measures to minimize the consequences of any event of force majeure.
- 23.7 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.
- 23.8 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 24 and 25** hereof with the exception of the direct and proximate result of force majeure.
- 23.9 Not later than 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.
- 23.10 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 32** hereof.

## 24. Suspension

24.1 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 30 days after receipt by the **Consultant** of such notice of suspension.

24.2 The **Consultant** may, without prejudice to its right to terminate this Contract pursuant to *GCC Clause 26*, 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 45 days after receiving notice from the **Consultant** that such payment is overdue.

## 25. Termination by the NEDA

25.1 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 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/she 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*;
- (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 13.2* hereinabove, within 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 32* hereof; or,
- (h) The **Consultant** fails to perform any other obligation under the Contract.

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

## 26. Termination by the Consultant

The **Consultant** must serve a written notice to the **NEDA** of its intention to terminate this Contract at least 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 30 calendar days after the receipt thereof by the **NEDA**. The **Consultant** may terminate this Contract through any of the following events:

- 26.1 The **NEDA** is in material breach of its obligations pursuant to this Contract and has not remedied the same within 60 calendar days following its receipt of the **Consultant**'s notice specifying such breach;
- 26.2 The **NEDA**'s failure to comply with any final decision reached as a result of arbitration pursuant to *GCC Clause 32* hereof;
- 26.3 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 60 days; or,



- 26.4 The **NEDA** fails to pay any money due to the **Consultant** pursuant to this Contract and not subject to dispute pursuant to *GCC Clause 30* hereof within 84 days after receiving written notice from the **Consultant** that such payment is overdue.

## 27. Procedures for Termination of Contracts

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

- 27.1 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;
- 27.2 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:
- (a) 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;
  - (b) The extent of termination, whether in whole or in part;
  - (c) An instruction to the **Consultant** to show cause as to why the Contract should not be terminated; and,
  - (d) Special instructions of the **NEDA**, if any.

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

- 27.3 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;
- 27.4 The **NEDA** may at any time before receipt of the **Consultant**'s verified position paper 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;
- 27.5 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,

- 27.6 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**.

## **28. Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to **GCC Clauses 25 or 26** 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** or purchased by the **Consultant** under this Contract, the **Consultant** shall proceed as provided, respectively, by **GCC Clauses 33 or 34** hereof.

## **29. Payment upon Termination**

Upon termination of this Contract pursuant to **GCC Clauses 25 or 26** hereof, the **NEDA** shall make the following payments to the **Consultant**:

- 29.1 Remuneration pursuant to **GCC Clause 49** hereof for Services satisfactorily performed prior to the effective date of termination;
- 29.2 Reimbursable expenditures pursuant to **GCC Clause 49** hereof for expenditures actually incurred prior to the effective date of termination; and
- 29.3 In the case of termination pursuant to **GCC Clause 25.1(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.

## **30. Disputes about Events of Termination**

If either Party disputes whether an event specified in **GCC Clauses 25.1 or 26** hereof has occurred, such Party may refer the matter to arbitration pursuant to **GCC Clause 32** hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

## **31. Cessation of Rights and Obligations**

Upon termination of this Contract pursuant to **GCC Clauses 25 or 26** hereof, or upon expiration of this Contract pursuant to **GCC Clause 22**, all rights and obligations of the Parties hereunder shall cease, except:

- 31.1 Such rights and obligations as may have accrued on the date of termination or expiration;
- 31.2 The obligation of confidentiality set forth in *GCC Clause 15* hereof; and,
- 31.3 The **Consultant**'s obligation to permit inspection, copying and auditing of their accounts and records set forth in *GCC Clauses 47(b) and 47(c)* hereof, any right which a Party may have under the Applicable Law.

## **32. Dispute Settlement**

- 32.1 Should any dispute related to this Contract and/or rights of the Parties arise, the same shall be submitted to mutual consultation, mediation and arbitration, in the order of application. The venue of the proceedings shall be in Pasig City.
- 32.2 In case of a court suit, the venue shall be the courts of competent jurisdiction in Pasig City, to the exclusion of all other courts.

## **33. Documents Prepared by the Consultant and Software Developed to be the Property of the NEDA**

- 33.1 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. 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**.
- 33.2 Computer programs developed by the **Consultant** under this Contract, if any, 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.

## **34. Equipment and Materials Furnished by the NEDA**

Equipment and materials which may be made available to the **Consultant** by the **NEDA**, or purchased by the **Consultant** out of this Contract, 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 turnover to **NEDA** 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 in an amount equal to their full replacement value. The **NEDA** is not obliged to provide equipment and materials to the **Consultant** under this Contract.

### **35. Services, Facilities and Property of the NEDA**

The **NEDA** is not obliged to provide services, facilities and property to the **Consultant** under the Contract but may provide assistance to the **Consultant** to the extent possible pursuant to *GCC Clause 45*. The **Consultant** shall be responsible for the provision of the necessary office space for its Personnel and support staffs (if any), including the necessary office equipment and furniture for the delivery of the Consulting Services.

### **36. 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:

- 36.1 Entering into a subcontract for the performance of any part of the Services, it being understood that:
  - (a) The selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by the **NEDA** prior to the execution of the subcontract; and,
  - (b) The **Consultant** shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Contract. The approval by the Government of the assignment of any part of said Services or of the engagement by the **Consultant** of sub-contractors to perform any part of the same shall not relieve the **Consultant** of any obligations under this Contract;
- 36.2 Replacement, during the performance of the Contract for any reason, of any Personnel as listed in the **Consultant**'s Proposal of this Contract requiring the **NEDA**'s prior approval.

### **37. Personnel**

- 37.1 The **Consultant** may employ and provide such qualified and experienced Personnel and Sub-Consultants to carry out the Services.
- 37.2 The position, agreed job description and estimated period of engagement in the carrying out of the Services of each of the **Consultant**'s Personnel (if any) are described in the Proposal of the **Consultant**.
- 37.3 The Personnel listed in the Proposal of the **Consultant** (if any) are hereby approved by the **NEDA**. In respect of other 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 Personnel to be assigned within the GPH, a copy of a satisfactory medical certificate attached. If the **NEDA** does not object in writing; or if it objects in writing but fails to state the reasons for such objection, within 21 calendar days from the date of receipt of such biographical data and, if applicable, such certificate, the Personnel concerned shall be deemed to have been approved by the **NEDA**.

- 37.4 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.
- 37.5 No changes shall be made in the Personnel (if any), except for justifiable reasons beyond the control of the **Consultant**, and only upon prior approval of the **NEDA**. The **Consultant** may change its Personnel only for reasons of death, serious illness, incapacity of an individual personnel, or until after 50 percent of the Personnel's man-months have been served.
- 37.6 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 the 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 50 percent of the total basic rate for the duration of the engagement.
- 37.7 Any of the Personnel provided as a replacement under *GCC Clauses 37.5 and 37.8*, the rate of remuneration applicable to such person as well as any reimbursable expenditure 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.
- 37.8 If the **NEDA** finds that the **Consultant's** Personnel, if any, 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 the **Consultant's** 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**.
- 37.9 The **Consultant** shall hold the Government free from any and all liabilities, suits, actions, demands or damages arising from death or injuries to persons or properties, or any loss resulting from or caused by the **Consultant** and its Personnel incident to or in connection with the services under this Contract. The **Consultant** shall agree to indemnify, protect and defend at its own expense the Government and its agents from and against all actions, claims

and liabilities arising out of acts done by the **Consultant** or its Personnel (if any) in the performance of the Services, including the use of, or violation of any copyrighted materials, patented invention, article or appliance.

### **38. Working Hours, Overtime, Leave, Etc.**

- 38.1 Working hours and holidays for the **Consultant** are the responsibility of the **Consultant**. The **Consultant** shall ensure that the working hours and holidays allocated are appropriate for the timely accomplishment of the outputs and deliverables of the **Consultant**. Any travel time prior to and after Contract implementation shall not be considered as part of the working hours.
- 38.2 The **Consultant** shall not be entitled to claim payment for overtime work, sick leave, or vacation leave from the **NEDA** since these items are already deemed covered by the **Consultant**'s remuneration. All leaves and holidays to be allowed to the **Consultant**'s Personnel are the responsibility of the **Consultant**. Taking of leave or holiday by the **Consultant** and any of its Personnel should not delay the progress and adequate supervision of the Services nor in any way prejudice the outputs and deliverables of the **Consultant**.
- 38.3 If required to comply with the provisions of *GCC Clause 40.1* hereof, adjustments with respect to the estimated periods of engagement of the **Consultant** set forth in the **Consultant**'s Proposal may be made by the **Consultant** by prior written notice to the **NEDA**, provided that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in *GCC Clauses 48.1 and 51.7* of this Contract Agreement. Any other such adjustments shall only be made with the **NEDA**'s prior written approval.

### **39. Performance Security**

- 39.1 Within ten (10) calendar days from receipt of the Notice of Award (NOA) from the **NEDA** but in no case later than the signing of the contract by both parties, the **Consultant** shall furnish the Performance Security, which 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 and form prescribed below:

<b>Form of Performance Security</b>	<b>Amount of Performance Security (Equal to Percentage of the Total Contract Price)</b>
(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.	Five percent (5%)
(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

- 39.2 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.
- 39.3 The Performance Security shall remain valid until issuance by the **NEDA** of the Certificate of Final Acceptance.
- 39.4 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.
- 39.5 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 10 percent and that the aggregate of such reductions is not more than 50 percent of the original Performance Security.

#### 40. Standard of Performance

- 40.1 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 and engineering theories and practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods.
- 40.2 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.

40.3 The **Consultant** shall furnish to the **NEDA** such information related to the Services as the **NEDA** may from time to time reasonably request.

40.4 The **Consultant** shall at all times cooperate and coordinate with the **NEDA** with respect to the carrying out of its obligations under this Contract.

#### **41. Consultant Not to Benefit from Commissions, Discounts, Etc.**

The remuneration of the **Consultant** pursuant to *GCC Clause 49* hereof shall constitute the **Consultant**'s sole remuneration in connection with this Contract or 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.

#### **42. 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**.

#### **43. Specifications and Designs**

43.1 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.

43.2 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.

#### **44. Reports**

44.1 The deliverables for the Services as enumerated below shall be submitted by the **Consultant** in multiple hard copies to **NEDA** for review and monitoring purposes and/or payment processing. An electronic/soft copy shall also be submitted to **NEDA** on the date/period specified hereunder:



Key Tasks/Deliverables	Indicative Timelines
Draft Inception Report indicating the work plan and methodology/approach to be adopted in the conduct of the Study [Three (3) hard copies and in electronic form]	Within two (2) weeks from the date of receipt of the NTP or from the seventh day after the issuance of the NTP, whichever is earlier.
Draft Interim Report including preliminary output/s [Three (3) hard copies and in electronic form]	Within five (5) weeks from acceptance of the Inception Report.
Draft Final Report and Instruction Manual [Three (3) hard copies and in electronic form]	Within six (6) weeks from acceptance of the Interim Report.
Conduct of Training/Workshop [For at least 30 personnel]	Within four (4) weeks from the submission of the Draft Final Report and Manual.
Final Report and Instruction Manual [Five (5) hard copies and in electronic form]	Within three (3) weeks from completion of Training/Workshop.

44.2 The **Consultant** shall submit to the **NEDA** all reports, deliverables and relevant documents in English.

## 45. Assistance on Government Requirements

45.1 The **NEDA** and/or other concerned government agencies/entities, 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.

45.2 The **NEDA** and/or other concerned government agencies/entities, 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.

## **46. Sub-Contract**

- 46.1 Sub-contracting of any portion of the 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.
- 46.2 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**.

## **47. Accounting, Inspection and Auditing**

- 47.1 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 and accurately establish all costs actually incurred, as well as relevant time changes, 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 (1) 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 **NEDA** 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 **NEDA**, if so required.
- 47.2 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 to **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 25.1(e)* and under the Applicable Law, the **NEDA** shall, unless it decides otherwise, terminate this Contract.

- 47.3 The determination that the **Consultant** has engaged in corrupt, fraudulent, coercive practices shall result in the **NEDA** seeking the imposition of the maximum administrative, civil and criminal penalties up to and in including imprisonment.

#### **48. Contract Cost**

- 48.1 Except as may be otherwise agreed under *GCC Clause 8*, payments under this Contract shall not exceed **TWO MILLION, TWO HUNDRED NINETY-ONE THOUSAND TWO HUNDRED FIFTY AND 00/100 PESOS (PhP2,291,250.00)**, inclusive of all applicable government taxes and charges, professional fees, and other incidental and administrative costs (i.e., transportation/travel expenses, printing, reproduction and packaging of hard and soft copies of reports, expenses for meetings, etc.). The **Consultant** shall notify the **NEDA** as soon as cumulative charges incurred for the Services have reached 80 percent of this ceiling.
- 48.2 The cost of the Services shall be payable in Philippine Pesos.
- 48.3 This Contract shall be a fixed price contract. Any extension of the contract period shall not involve any additional cost to the Government.

#### **49. Remuneration and Reimbursable Expenditures**

- 49.1 Payments of Services do not relieve the **Consultant** of any obligation hereunder.
- 49.2 Payments shall be determined on the basis of acceptance by **NEDA** of the **Consultant's** deliverables / outputs. Personnel – Any replacement approved by the **NEDA** in accordance with *ITB Clause 26.4* shall be provided by the Consultant at no additional cost.
- 49.3 Further, it is understood that the remuneration rates shall cover:
- (a) Such salaries and allowances as the **Consultant** shall have agreed to pay its 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 the **Consultant's** proposal; and,

(c) The **Consultant's** fee.

49.4 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**.

49.5 Reimbursable expenditures actually and reasonably incurred by the **Consultant** in the performance of the Services include items deemed necessary for the delivery of the Services as certified by the **NEDA**.

49.6 Billings and payments in respect of the Services shall be made as follows:

(a) Billing shall be in accordance with the following delivery schedule:

Milestone	Payment Schedule
Upon acceptance of the Inception Report	10% of contract cost
Upon acceptance of the Interim Report	30% of contract cost
Upon acceptance of the Draft Final Report and Manual	30% of contract cost
Upon completion of the Training/Workshop	10% of contract cost
Upon acceptance of the Final Report and Manual	20% of contract cost

(b) An advance payment equivalent to ten (10) percent of the ABC may be made which shall cover the cost of mobilization subject to posting of an irrevocable standby letter of credit issued by an entity acceptable to **NEDA** and of an amount equal to the advance payment. The advance payment shall be repaid by the **Consultant** by deducting from its subsequent payments such sum as will be agreed upon during contract negotiations until fully liquidated within the duration of the Contract.

49.7 Activity 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 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 Activity Schedule.

- 49.8 Termination - Upon the receipt or giving of any notice referred to in *GCC Clause 27* 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.
- 49.9 No additional payment for variation order, if any, shall be allowed for this Contract Agreement.

## 50. Final Payment

- 50.1 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 90 calendar days after receipt of the final report and final statement by the **NEDA** unless the **NEDA**, within such 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 90 calendar days, and upon completion of such corrections, the foregoing process shall be repeated.
- 50.2 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 30 days after receipt by the **Consultant** of notice thereof. Any such claim by the **NEDA** for reimbursement must be made within 12 calendar months after receipt by the **NEDA** of the final report and a final statement approved by the **NEDA** in accordance with the above.

## 51. 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 10 percent of the contract price. Once the maximum is reached, the **NEDA** may consider termination of this Contract pursuant to *GCC Clause 25* without prejudice to any further action it may take to recover whatever losses incurred due to non-performance of the **Consultant**. To be entitled to such liquidated damages, **NEDA** does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may

become due the Consulting Firm under the contract and/or collect such liquidated damages from the retention money or other securities posted by the Consulting Firm, whichever is convenient to **NEDA**.

## **Section IV. Terms of Reference**

PLEASE REFER TO THE ATTACHED TERMS OF REFERENCE, WHICH CAN ALSO BE DOWNLOADED FROM THE NEDA WEBSITE.

# Section V. Proposal Forms

Technical Proposal Forms..... 72

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## TECHNICAL PROPOSAL FORMS

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### Notes for Consultants

The following summarizes the content for the Technical Proposal.

#### Cover Letter

Use TPF 1. Technical Proposal Submission Form.

#### Applicable Experience of the Firm

Introduction of the background and general experience of the Consultant, including its partner(s) and subcontractors, if any.

Indicate 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 Consultant and Its 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).

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:

- (1) Failed to state nationality on the CV; or
- (2) The CV is not signed in accordance with paragraph above.

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

Use TPF 3. Comments and Suggestions of Consultant on the Terms of Reference and on Data, Services, and Facilities to be Provided by the NEDA and PFDA

## TPF 1. TECHNICAL PROPOSAL SUBMISSION FORM

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*[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 47 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 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 (in months and years):
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (at contract award and in PhP):
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**

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On the Terms of Reference (TOR):

- 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**

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## TPF 5. TEAM COMPOSITION AND TASKS

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1. Principal Consultant		
Name	Position	Task

2. Other Personnel (if any)		
Name	Position	Task

## TPF 6. FORMAT OF CURRICULUM VITAE (CV)

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Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Licenses: \_\_\_\_\_

Years with Firm/Entity: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Professional Societies: \_\_\_\_\_

\_\_\_\_\_

Detailed Tasks Assigned: \_\_\_\_\_

\_\_\_\_\_

### **Key Qualifications:**

*[Give an outline of the Consultant's experience and training most pertinent to tasks on project. Describe degree of responsibility on relevant previous projects and give dates and locations as well as costs.]*

\_\_\_\_\_

### **Education:**

*[Summarize post-graduate/college/university and other specialized education of the Consultant, giving names of schools, dates attended, and degrees as well as special awards obtained.]*

\_\_\_\_\_

### **Related Training:**

*[Enumerate and discuss all similar and relevant trainings attended and other related workshops/seminars, giving names of institutions and dates attended/conducted (**in hours, days, months and years**). Kindly attach certificates, if any.]*

\_\_\_\_\_

**Professional Experience/Employment Record:**

*[Starting with present position, list in reverse order every employment held. List all positions held by Consultant since graduation, giving dates (**in months and years**), names of employing organizations, titles of positions held, and names, costs, dates, and locations of projects that the Consultant has been involved with [describe also the degree of involvement of the Consultant for each project and provide the length of involvement (in man-months)]. Also, give types of activities performed and client references, where appropriate.]*

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**Languages:**

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

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**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 Consultant and authorized representative if firm]*

Date: \_\_\_\_\_  
*Day/Month/Year*

Full name of Consultant: \_\_\_\_\_

Full name of authorized representative, if firm: \_\_\_\_\_



## TPF 7. TIME SCHEDULE FOR CONSULTANT AND ITS PERSONNEL (IF ANY)

			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 of Deliverables and Submission of Reports

Key Tasks/Deliverables/Reports	Date
1. Inception Report, including the schedule, activities, work plan, methodologies for scoping, implementation arrangements and evaluation capacity assessment (ECA) instrument	
2. TORs of the consulting services for the conduct of impact evaluation studies of selected programs/projects (at least 5 TORs)	
3. Report on other evaluation study proposals and inputs to the submitted technical proposals of the prospective bidders for IE (completion dependent on the availability of study proposals and inputs to the submitted technical proposals)	
4. Report on the evaluation capacity assessment of NEDA	
5. Report on the results of scoping studies	
6. Report on the proposed evaluation agenda for the next 3-5 years	
7. Draft Final Report	
8. Final Report	

## FINANCIAL PROPOSAL FORMS

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### **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:

- (f) followed the applicable rules and guidelines indicated in this ITB;
- (g) not taken any action which is or constitutes a corrupt, fraudulent, or coercive practice as defined in the applicable rules and guidelines; and
- (h) 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. Reimbursable Expenditures per Activity; and FPF 6. Miscellaneous Expenses.

## FPF 1. FINANCIAL PROPOSAL SUBMISSION FORM

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*[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 0, 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) <sup>3</sup>	Amount in Philippine Peso
Subtotal		
Local Taxes		
Total Amount of Financial Proposal		_____

---

<sup>3</sup> 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) <sup>4</sup>	Amount in Philippine Peso
Remuneration		
Reimbursable Expenditures		
Miscellaneous		
Subtotal		_____

---

<sup>4</sup> 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 <sup>5</sup>	Remuneration Currency(ies) Rate	Amount
Grand Total				_____

---

<sup>5</sup> Consultant, and its Personnel (if any), months, days, or hours as appropriate.

## FPF 5. REIMBURSABLE EXPENDITURES PER ACTIVITY

Activity No: \_\_\_\_\_

Name: \_\_\_\_\_

No.	Description*	Unit	Quantity	Unit Price In	Total Amount In
1.	Transportation allowance				
2.	Field allowance				
3.	Office supplies and equipment				
4.	Communications, coordination meetings, etc.				
5.	Reports preparation, reproduction, etc.				
	Grand Total				_____

\* *whichever is applicable*



## FPF 6. MISCELLANEOUS EXPENSES

---

Activity No. \_\_\_\_\_

Activity Name: \_\_\_\_\_

No.	Description*	Unit	Quantity	Unit Price	Total Amount
1.					
2.					
3.					
4.					
	Grand Total				_____

\* *whichever is applicable*

## 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 (TOR);
  - (c) Request for Expression of Interest (EOI);
  - (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; and,
  - (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 NEDA to the Consultant as hereinafter mentioned, the Consultant hereby covenants with the NEDA 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 NEDA 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

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Binding Signature of Consultant

---

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

## OMNIBUS SWORN STATEMENT

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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 NEDA Bids and Awards Committees (NBACs), the Technical Working Groups (TWGs), and the NBAC Secretariats, the head of the Project Management Office (PMO), the Proponent Agency and/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 NBACs, the TWGs, and the NBAC Secretariats, the head of the PMO, the Proponent Agency and/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 NBACs, the TWGs, and the NBAC Secretariats, the head of the PMO, the Proponent Agency and/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]  
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/their [insert type of government identification card used], with his/her/their photograph and signature appearing thereon, with no. \_\_\_\_\_.

Witness my hand and seal this \_\_\_\_ day of [moth] [year].

# **Section VI. 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.