PHILIPPINE
PORTS
AUTHORITY

PROCUREMENT OF TECHNICAL SUPPORT SERVICES FOR THE PHILIPPINE PORTS AUTHORITY'S CORE APPLICATION SYSTEMS

BID DOCUMENTS
BAC-PGCS-056-2019

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Section I. Instructions to Bidders

A. General

1. Introduction

1.1. The Procuring Entity named in the Bid Data Sheet (**BDS**) shall select an individual, sole proprietorship, cooperative, partnership, corporation, or a joint venture (JV) (hereinafter referred to as "Consultant") from among those short listed, in accordance with the evaluation procedure specified in the **BDS**.

1.2. The Procuring Entity has received financing (hereinafter called "funds") from the source indicated in the **BDS** (hereinafter called the "Funding Source") toward the cost of the Project named in the **BDS**. The Procuring Entity intends to apply a portion or the whole of the funds to payments for this Project.

1.3. Consultants are invited to submit bids composed of a technical proposal and a financial proposal for Consulting Services required for this Project described in the **BDS**. Bids shall be the basis for contract negotiations and ultimately for a signed contract with the selected Consultant.

1.4. If the **BDS** indicates that the Project will be completed in phases, each phase must be completed to the Procuring Entity's satisfaction prior to the commencement of the next phase.

1.5. Consultants must familiarize themselves with local conditions and take them into account in preparing their bids. To obtain firsthand information on the project and on the local conditions, Consultants are encouraged to visit the Procuring Entity before submitting a bid and to attend the pre-bid conference specified in **ITB** Clause 7.

1.6. The Consultants' costs of preparing their bids and negotiating the contract, including a visit to the Procuring Entity, are not reimbursable as a direct cost of the project.

1.7. Consultants shall not be under a declaration of ineligibility for corrupt, fraudulent, collusive, coercive or obstructive practices issued by the Funding Source or the Procuring Entity in accordance with **ITB** Clause 3.1.

2. Conflict of Interest

2.1. The Funding Source's policy requires that Consultants provide professional, objective, and impartial advice and at all times hold the Procuring Entity'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 the Procuring Entity. 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 for the same Project;

(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 subconsultants) 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 a Procuring Entity in privatization of public assets shall not purchase, nor advise purchasers, of such assets; or a Consultant hired to prepare Terms of Reference (TOR) for a project shall not be recruited for the project in question.

2.2. Consultants shall not be related to the Head of the Procuring Entity (HoPE), members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, 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;

(d) If the Consultant is a cooperative, to all its officers, directors, and controlling shareholders or members; or

(e) If the Consultant is a JV, the provisions of items (a), (b), (c), or (d) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

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

2.3. Subject to the provisions of **ITB** Clause 2, any previous or ongoing participation by the Consultant, its professional staff, or its affiliates or associates under a contract with the Funding Source or the Procuring Entity in relation to this Project may result in the rejection of its bid. Consultants should clarify their situation in that respect with the Procuring Entity before preparing its bid.

2.4. Failure by a Consultant to fully disclose potential conflict of interest at the time of Bid submission, or at a later date in the event that the potential conflict arises after such date, shall result in the Procuring Entity and/or the Funding Source seeking the imposition of the maximum administrative, civil and criminal penalties up to and including imprisonment.

2.5. Consultants are discouraged to include officials and employees of the Government of the Philippines (GoP) as part of its personnel. Participation of officials and employees of the GoP in the Project shall be subject to existing rules and regulations of the Civil Service Commission.

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 Procuring Entity shall make available to all the short listed consultants together with the Bidding Documents all information that would in that respect give each Consultant a competitive advantage.

3. Corrupt, Fraudulent, Collusive, Coercive, and Obstructive Practices

3.1. The Procuring Entity as well as the Consultants shall observe the highest standard of ethics during the procurement and execution of the contract. In pursuance of this policy, the Procuring Entity:

(a) defines, for purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the GoP, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019.

(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a

contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.

(iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.

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

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or

(bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

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

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

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

4. Consultant's Responsibilities

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

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 8.4.

(e) Ensuring that it is not "blacklisted" or barred from bidding by the GoP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;

(f) Ensuring that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;

(g) Authorizing the Head of the Procuring Entity or its duly authorized representative/s to verify all the documents submitted;

(h) Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract, accompanied by the duly notarized Special Power of Attorney, Board/Partnership Resolution, or Secretary's Certificate, whichever is applicable;

(i) Complying with the disclosure provision under Section 47 of RA 9184 and its IRR in relation to other provisions of Republic Act 3019;

(j) Complying with existing labor laws and standards, in the case of procurement of services. Moreover, bidder undertakes to:

(i) Ensure the entitlement of workers to wages, hours of work, safety and health and other prevailing conditions of work as established by national laws, rules and regulations; or collective bargaining agreement; or arbitration award, if and when applicable.

In case there is a finding by the Procuring Entity or the DOLE of underpayment or non-payment of workers' wage and wage-related benefits, bidder agrees that the performance security or portion of the contract amount shall be withheld in favor of the complaining workers pursuant to appropriate provisions of Republic Act No. 9184 without prejudice to the institution of appropriate actions under the Labor Code, as amended, and other social legislations.

(ii) Comply with occupational safety and health standards and to correct deficiencies, if any.

In case of imminent danger, injury or death of the worker, bidder undertakes to suspend contract implementation pending clearance to proceed from the DOLE Regional Office and to comply with Work Stoppage Order; and

(iii) Inform the workers of their conditions of work, labor clauses under the contract specifying wages, hours of work and other benefits under prevailing national laws, rules and regulations; or collective bargaining agreement; or arbitration award, if and when applicable, through posting in two (2) conspicuous places in the establishment's premises; and

(k) Ensuring that it did not give or pay, directly or indirectly, any commission, amount, fee, or any form of compensation, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

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 prospective bidder 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 Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the Consultant out of the data furnished by the Procuring Entity. However, the Procuring Entity shall ensure that all information in the Bidding Documents, including supplemental/bid bulletins issued are correct and consistent.

4.5. Before submitting their bids, the Consultants are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the GoP which may affect the contract in any way.

4.6. The Consultant shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

4.7. Consultants should note that the Procuring Entity will only accept bids from those that have paid the applicable fee for the Bidding Documents at the office indicated in the Request for Expression of Interest.

5. Origin of Associated Goods

Unless otherwise indicated in the **BDS**, 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. Unless otherwise specified in the **BDS**, the Consultant may subcontract portions of the Consulting Services to an extent as may be approved by the Procuring Entity and stated in the **BDS**. 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. Subconsultant must comply with the eligibility criteria and the documentary requirements specified in the **BDS**. In the event that any subconsultant is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Consulting Services shall be disallowed.

6.3. The Consultant may identify the subconsultant to whom a portion of the Consulting Services will be subcontracted at any stage of the bidding process or during contract implementation. If the Consultant opts to disclose the name of the subconsultant during bid submission, the Consultant shall include the required documents as part of the technical component of its bid. A subconsultant that is identified by the Consultant during contract implementation must comply with the eligibility criteria and documentary requirements and secure approval of the Procuring Entity.

B. Contents of Bidding Documents

7. Pre-Bid Conference

7.1. If so specified in the **BDS**, a pre-bid conference shall be held at the venue and on the date indicated therein, to clarify and address the Consultants' questions on the technical and financial components of this Project.

7.2. The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not earlier than seven (7) calendar days from the determination of the shortlisted consultants. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid, or when international participation will

be more advantageous to the GoP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.

7.3. Consultants are encouraged to attend the pre-bid conference to ensure that they fully understand the Procuring Entity's requirements. Non-attendance of the Consultant will in no way prejudice its bid; however, the Consultant is expected to know the changes and/or amendments to the Bidding Documents as recorded in the minutes of the pre-bid conference and the Supplemental/Bid Bulleting. The minutes of the pre-bid conference shall be recorded and prepared not later than five (5) calendar days after the pre-bid conference. The minutes shall be made available to prospective bidders not later than five (5) days upon written request.

7.4. Decisions of the BAC amending any provision of the bidding documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) calendar days before the deadline for the submission and receipt of bids.

8. Clarifications and Amendments to Bidding Documents

8.1. Shortlisted consultants may request for clarification(s) on and/or an interpretation of any part of the Bidding Documents. Such a request must be in writing and submitted to the Procuring Entity at the address indicated in the **BDS** at least ten (10) calendar days before the deadline set for the submission and receipt of bids.

8.2. The BAC shall respond to the said request by issuing a Supplemental/Bid Bulletin to be made available to all those who have properly secured the Bidding Documents at least seven (7) calendar days before the deadline for the submission and receipt of Bids.

8.3. Supplemental/Bid Bulletins may also be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the Bidding Documents shall be identified as an amendment.

8.4. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted in the PhilGEPS and the website of the Procuring Entity concerned, if available and at any conspicuous place in the premises of the Procuring Entity concerned. It shall be the responsibility of all Consultants who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, Consultants who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with **ITB** Clause 20.

C. Preparation of Bids

9. Language of Bids

The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines. The English translation shall govern, for purposes of interpretation of the bid.

10. Documents Comprising the Bid: Technical Proposal

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

(a) The Technical Proposal shall not include any financial information. Any Technical Proposal containing financial information shall be declared non-responsive.

(b) For projects on a staff-time basis, the estimated number of professional staff-months specified in the **BDS** shall be complied with. Bids shall, however, be based on the number of professional staff-months estimated by the Consultant.

(c) Proposed professional staff must, at a minimum, have the experience indicated in the **BDS**, preferably working under conditions similar to those prevailing in the Republic of the Philippines.

(d) No alternative professional staff shall be proposed, and only one Curriculum Vitae (CV) may be submitted for each position.

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

(a) Technical Proposal Submission Form shall be the cover letter of the Technical Proposal, using the form prescribed in Section VII. Bidding Forms (TPF 1).

(b) Bid security as prescribed in **ITB** Clause 15. If the bidder opts to submit the bid security in the form of:

(i) a bank draft/guarantee or an irrevocable Letter of Credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or

(ii) a surety bond accompanied by a certification coming from the Insurance Commission that the surety or insurance company is authorized to issue such instrument.

(c) Information indicated in the paragraphs below must be provided by the Consultant and each partner and/or subconsultant, if any, following the formats described in the Technical Proposal Forms:

(i) A brief description of the organization and outline of recent experience of the Consultant and each partner and/or subconsultant on projects of a similar and related nature as required in form TPF 2. Consultant's References. For each project, the outline should indicate *inter alia,* the project, contract amount and the Consultant's involvement. Information should be provided only for those projects for which the Consultant was legally contracted by itself or as one of the major participating consultants within an association. Whenever applicable, the experience of individual experts from projects completed independently or when associated with consultants other than the one with whom the individual is currently associated with cannot be claimed as the experience of the current consultant or any one of its partners and/or subconsultants, 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 Procuring Entity.

(ii) 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 Procuring Entity) 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 Procuring Entity that work required to implement any such improvements, are included in the inputs shown on the Consultant's Staffing Schedule. It shall include a list of facilities requested by the Consultant to be provided by the Procuring Entity, if any, in addition to those shown on the Data Sheet that may include support facilities such as: counterpart staff, office space, local transportation, equipment, domestic administrative support, etc. that would be needed to carry out the project.

(iii) A concise, complete, and logical description of how the Consultant's team shall carry out the services to meet all requirements of the TOR using TPF 4. Description of the Methodology and Work Plan for Performing the Project.

(iv) An organization chart of the key and support staff indicating their tasks and relationships amongst the Consultant and any partner and/or subconsultant, the Procuring Entity, the Funding Source and the GoP, and other parties or stakeholders, if any, involved in the project using TPF 5. Team Composition and Task.

(v) The name, age, nationality, background employment record, and professional experience of each nominated expert including ongoing projects, with particular reference to the type of experience required for the tasks assigned should be presented in the CV format shown in TPF 6. Format of Curriculum Vitae (CV) for Proposed Professional Staff. A duly notarized CV for each consultant involved in the Project may be submitted for each position.

(vi) The Procuring Entity requires that each expert confirm that the content of his/her CV is correct and the experts themselves should sign the certification of the CV. In addition, the expert should submit a signed written commitment stating that the expert shall work for the Project once awarded the contract. A zero rating shall be given to a nominated expert if the expert:

(vi.1) is proposed for a domestic position but is not a Filipino citizen;

(vi.2) failed to state nationality on the CV; or

(vi.3) the CV is not signed in accordance with paragraph (v) above.

(vii) A Time Schedule (TPF 7. Time Schedule for Professional Personnel) indicating clearly the estimated duration in terms of person-months (shown separately for work in the field and in the home office) and the proposed timing of each input for each nominated expert, including domestic experts, if required, using the format shown. The schedule shall also indicate when experts are working in the project office and when they are working at locations away from the project office.

(viii) 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 using TPF 8. Activity (Work) Schedule.

(d) Sworn statement in accordance with Section 25.3 of the IRR of RA 9184 and using the form prescribed in Section VI. Bidding Forms.

11. Documents Comprising the Bid: Financial Proposal

11.1. All information provided in a Consultant's Financial Proposal shall be treated as confidential. The Financial Proposal must be submitted in hard copy using the format shown in Financial Proposal Forms.

11.2. The Financial Proposal requires completion of six (6) forms, particularly, FPF 1, FPF 2, FPF 3, FPF 4, FPF 5, and FPF 6. FPF 1. Financial Proposal Submission Form should form the covering letter of the Financial Proposal. Form FPF 2. Summary of Costs FPF 3. Breakdown of Price per Activity,

FPF 4. Breakdown of Remuneration per Activity, FPF 5. Reimbursables per Activity, and FPF 6. Miscellaneous Expenses, relate to the costs of consulting services under two distinct categories, namely: (a) Remuneration; and (b) Reimbursable Expenditures.

11.3. Remuneration is divided into billing rate estimates for international and domestic consultants. Reimbursable Expenditures are divided into per diem rates for international and domestic consultants and costs for other reimbursable expenditure items required to perform the consulting services.

11.4. The list of experts, and their respective inputs, identified in Financial Proposal Forms, must match the list of experts and their respective inputs shown in Technical Proposal Forms.

11.5. The Consultant shall be subject to Philippine taxes on amounts payable by the Procuring Entity under the contract through mandated withholding by local tax authorities of specified percentages of such amounts or otherwise. The **BDS** details the taxes payable.

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 subconsultants, and its personnel (other than Philippine Nationals or permanent residents of the Philippines).

11.7. Unless otherwise provided in the **BDS**, total calculated bid prices, as evaluated and corrected for minor arithmetical corrections, such as computational errors, which exceed the approved budget for the contract (ABC) shall not be considered.

12. Alternative Bids

Consultants participating in more than one bid or associating with any other entity other than those already provided in its eligibility documents and allowed by the Procuring Entity shall be disqualified.

13. Bid Currencies

13.1. All bid prices shall be quoted in Philippine Pesos unless otherwise provided in the **BDS**. However, for purposes of bid evaluation, bids denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening.

13.2. If so allowed in accordance with **ITB** Clause 13.1, the Procuring Entity for purposes of bid evaluation and comparing the bid prices will convert the amounts in various currencies in which the bid 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 bid opening.

13.3. Unless otherwise specified in the **BDS**, payment of the contract price shall be made in Philippine Pesos.

14. Bid Validity

14.1. Bids shall remain valid for the period specified in the **BDS** which shall not exceed one hundred twenty (120) calendar days from the date of the opening of bids.

14.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring Entity may request Consultants to extend the period of validity of their bids. The request and the responses shall be made in writing. The bid security described in **ITB** Clause 15 should also be extended corresponding to the extension of the bid validity period at the least. A Consultant may refuse the request without forfeiting its bid security, but his bid shall no longer be considered for further evaluation and award. A Consultant granting the request shall not be required or permitted to modify its bid.

15. Bid Security

15.1. The Consultant shall submit a Bid Securing Declaration or any form of Bid Security in an amount stated in the **BDS**, which shall be not less than the percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Not less than the Percentage of the ABC)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. *For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.*	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. *For biddings conducted by LGUs, the Bank Draft/ Guarantee, or irrevocable letter of credit may be issued by other banks certified by the BSP as authorized to issue such*	

financial instrument.	
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%)

The Bid Securing Declaration mentioned above is an undertaking which states, among others, that the bidder shall enter into contract with the Procuring Entity and furnish the performance security required under ITB Clause 31, within ten (10) calendar days from receipt of the Notice of Award, and commits to pay the corresponding amount as 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 as provided in the guidelines issued by the GPPB.

15.2. The bid security should be valid for the period specified in the **BDS**. Any bid not accompanied by an acceptable bid security shall be rejected by the Procuring Entity as non-responsive.

15.3. No bid securities shall be returned to the Consultants after the opening of bids and before contract signing, except to those that failed or declared as post-disqualified, upon submission of a written waiver of their right to file a request for reconsideration and/or protest or lapse of the reglementary period without having filed a request for reconsideration or protest. Without prejudice on its forfeiture, bid securities shall be returned only after the bidder with the Highest Rated Responsive Bid (HRRB) has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in **ITB** Clause 15.2.

15.4. Upon signing and execution of the contract pursuant to **ITB** Clause 31, and the posting of the performance security pursuant to **ITB** Clause 32, the Consultant's bid security will be discharged, but in no case later than the bid security validity period as indicated in **ITB** Clause 15.2.

15.5. The bid security may be forfeited:

(a) if a Consultant:

(i) withdraws its bid during the period of bid validity specified in **ITB** Clause 15.2;

(ii) does not accept the correction of errors pursuant to **ITB** Clause 11.7;

(iii) has a finding against the veracity of the required documents submitted in accordance with **ITB** Clause 27.2;

(iv) submission of eligibility requirements containing false information or falsified documents;

(v) any submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding;

(vi) allowing the use of one's name, or using the name of another for purposes of public bidding;

(vii) withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the HRRB;

(viii) refusal or failure to post the required performance security within the prescribed time;

(ix) refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification;

(x) any documented attempt by a Bidder to unduly influence the outcome of the bidding in his favor;

(xi) failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful; or

(xii) all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.

(b) if the successful Consultant:

(i) fails to sign the contract in accordance with **ITB** Clause 31;

(ii) fails to furnish performance security in accordance with **ITB** Clause 32; or

(iii) any other reason stated in the **BDS**.

16. Format and Signing of Bids

16.1. Consultants shall submit their bids through their duly authorized representative using the appropriate forms provided in Section VI. Bidding Forms on or before the deadline specified in the **ITB** Clause 18 in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical proposal and the second shall contain the financial proposal.

16.2. Forms as mentioned in **ITB** Clause 16.1 must be completed without any alterations to their format, and no substitute form shall be accepted. All blank spaces shall be filled in with the information requested.

16.3. The Consultant shall prepare an original of the first and second envelopes as described in **ITB** Clauses 10 and 11. In addition, the Consultant shall submit copies of the first and second envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.

16.4. Each and every page of the Technical Proposal Submission Form and the Financial Proposal Submission Form under Section VI hereof shall be signed by the duly authorized representative/s of the Consultant. Failure to do so shall be a ground for the rejection of the bid.

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 Bids

17.1. Unless otherwise indicated in the **BDS**, Consultants shall enclose their original technical proposal described in **ITB** Clause 10, in one sealed envelope marked "ORIGINAL - TECHNICAL PROPOSAL", and the original of their financial proposal in another sealed envelope marked "ORIGINAL - FINANCIAL PROPOSAL", sealing them all in an outer envelope marked "ORIGINAL BID".

17.2. Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY NO. ___ - TECHNICAL PROPOSAL" and "COPY NO. ___ – FINANCIAL PROPOSAL" and the outer envelope as "COPY NO. ___", respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

17.3. The original and the number of copies of the bid as indicated in the **BDS** shall be typed or written in ink and shall be signed by the bidder 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 Procuring Entity's BAC in accordance with **ITB** Clause 18.1;

(d) bear the specific identification of this bidding process indicated in the **ITB** Clause 1.2; 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. Bid envelopes that are not properly sealed and marked, as required in the bidding documents, shall not be rejected, but the bidder or its duly authorized representative shall acknowledge such condition of the Bid as submitted. The BAC or the Procuring Entity shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked Bid, or for its premature opening.

D. Submission and Opening of Bids

18. Deadline for Submission of Bids

Bids must be received by the Procuring Entity's BAC at the address and on or before the date and time indicated in the **BDS.**

19. Late Bids

Any bid submitted after the deadline for submission and receipt of bids prescribed by the Procuring Entity, pursuant to **ITB** Clause 18, shall be declared "Late" and shall not be accepted by the Procuring Entity. The BAC shall record in the minutes of Bid submission and opening, the Consultant's name, its representative and the time the late bid was submitted.

20. Modification and Withdrawal of Bids

20.1. The Consultant may modify its bid after it has been submitted; provided that the modification is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Consultant shall not be allowed to retrieve its original bid, but shall be allowed to submit another bid equally sealed, properly identified in accordance with **ITB** Clause 17.4, linked to its original bid marked as "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" and stamped "received" by the BAC. Bid 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 bid after it has been submitted, for valid and justifiable reason; provided that the letter of withdrawal is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The letter of withdrawal must be executed by the authorized representative of the Bidder identified in the Omnibus Sworn Statement, a copy of which should be attached to the letter.

20.3 Bids requested to be withdrawn in accordance with **ITB** Clause 20.1 shall be returned unopened to the Bidders. A Consultant, who has acquired the bidding documents, may also express its intention not to participate in the bidding through a letter which should reach and be stamped by the BAC before the deadline for submission and receipt of bids. A Consultant that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

20.4 No bid may be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Consultant on the Financial Bid Form. Withdrawal of a bid during this interval shall result in the forfeiture of the Consultant's bid security, pursuant to **ITB** Clause 15.5, and the imposition of administrative, civil, and criminal sanctions as prescribed by R.A. 9184 and its IRR.

E. Evaluation and Comparison of Bids

21. Opening and Preliminary Examination of Bids

21.1 Only bids from short listed bidders shall be opened and considered for award of contract. These short listed bidders, whether single entities or JVs, should confirm in their Technical Proposal Submission Form that the information contained in the submitted eligibility documents remains correct as of the date of bid submission.

21.2 The BAC shall open the bids immediately after the deadline for the submission and receipt of bids in public, as specified in the **BDS**. In case the bids cannot be opened as scheduled due to justifiable reasons, the BAC shall take custody of the bids submitted and reschedule the opening on the next working day or at the soonest possible time through the issuance of a Bulletin to be posted at the PhilGEPS website and the website of the Procuring Entity concerned.

21.3 To determine each bidder's compliance with the documents prescribed in **ITB** Clause 10, the BAC shall open the first envelope (Technical Proposal) and check the submitted documents of each bidder in accordance with ITB Clause 10.2 to ascertain if they are all present, using a non-discretionary "pass/fail" criterion. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed".

21.4 Letters of withdrawal shall be read out and recorded during bid opening, and the envelope containing the corresponding withdrawn bid shall be returned to the Consultant unopened

21.5 All members of the BAC who are present during bid opening shall initial every page of the original copies of all bids received and opened.

21.6 All technical envelopes shall be resealed. Those rated "passed" shall be secured for the detailed technical bid evaluation, while those rated "failed" will be secured for purposes of possible filing of a request for reconsideration unless the bidder waives its right to file a request for reconsideration, in which case, the envelope shall be returned to the bidder immediately. .

21.7 The Procuring Entity shall prepare the minutes of the proceedings of the bid opening that shall include, as a minimum: (a) names of Bidders, their bid price (per lot, if applicable, and/or including discount, if any), bid security, findings of preliminary examination, and whether there is a withdrawal or modification; and (b) attendance sheet. The BAC members shall sign the abstract of bids as read.

22. Process to be Confidential

22.1 Members of the BAC, 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 bids until the approval by the HoPE of the ranking of shortlisted Consultants, unless otherwise allowed in the **BDS** or in the case of **ITB** Clause 23.

22.2 Any effort by a bidder to influence the Procuring Entity in the Procuring Entity's decision in respect of bid evaluation, bid comparison or contract award will result in the rejection of the Consultant's bid.

23. Clarification of Bids

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

24. Bid Evaluation

24.1 For the evaluation of bids, numerical ratings shall be used. In order to eliminate bias in evaluating the Bids, it is recommended that 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.

24.2 For complex or unique undertakings, such as those involving new concepts/technology or financial advisory services, participating short listed consultants may be required, at the option of the Procuring Entity concerned, to make an oral presentation to be presented by each Consultant, or its nominated Project Manager or head, in case of consulting firms, within fifteen (15) calendar days after the deadline for submission of Technical Proposals.

24.3 The entire evaluation process, including the submission of the results thereof to the HoPE for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of bids. The bid with the highest rank shall be identified as the Highest Rated Bid. The HoPE shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.

24.4 All participating short listed 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 in the PhilGEPS and the website of the Procuring Entity, if available, for a period of not less than seven (7) calendar days.

25 Evaluation of Technical Proposals

25.1 The BAC shall then conduct a detailed evaluation of technical bids following the procedures specified in the **BDS** depending on the evaluation procedure identified in the Request for Expression of Interest and **ITB** Clause 1.1.

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

(a) Quality of personnel to be assigned to the Project which covers suitability of key staff to perform the duties for the Project and general qualifications and competence including education and training of the key staff;

(b) Experience and capability of the Consultant which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The suitability of the Consultant to the Project shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and

(c) Plan of approach and methodology with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions.

25.3 The BAC shall assign numerical weights and the minimum required technical score to each of the above criteria which shall be indicated in the **BDS**. A Bid 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 in the **BDS**.

25.4 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;

(c) the Consultant that submitted a Bid or any of its partner and/or subconsultant belongs to one of the conflict of interest cases as described in **ITB** Clauses 2.1(a) to (c) and failed to make a proper statement to that effect in the cover letter; or

(d) the Technical Proposal included any cost of the services.

26 Opening and Evaluation of Financial Proposals

26.1 Financial Proposals shall be opened on the date indicated in the **BDS**.

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

27 Negotiations

27.1 Negotiations with the Consultant that submitted the Highest Rated Bid shall be held at the address indicated in the **BDS**. The aim is to reach agreement on all points.

27.2 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 Procuring Entity concerned;

(e) Unless otherwise indicated in the **BDS**, discussion on the Financial Proposal submitted by the Consultant; and

(f) Provisions of the contract.

27.3 Having selected the Consultant on the basis of, among other things, an evaluation of the proposed key professional staff, the Procuring Entity expects to negotiate a contract on the basis of the experts named in the bid. Before contract negotiations, the Procuring Entity shall require assurances that the experts shall be actually available. The Procuring Entity shall not consider substitutions during contract negotiations except for justifiable reason as may be determined by the Procuring Entity, such as illness, death, or resignation, 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 bid without confirming their availability, the Consultant may be disqualified. Once the contract has been awarded, no replacement shall be allowed until after fifty percent (50%) of the personnel's man-months have been served, except for justifiable reasons as may be

determined by the Procuring Entity. Violators shall be fined an amount equal to the refund of the replaced personnel's basic rate, which should be at least fifty percent (50%) of the total basic rate for the duration of the engagement.

27.4 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 Procuring Entity and Consultant shall then work out the final TOR, staffing, and bar charts indicating activities, staff, periods in the field and in the home office, staff-months, logistics, and reporting. The agreed work plan and final TOR shall then be incorporated in Appendix I and form part of the contract. Special attention shall be paid to getting the most the Consultant can offer within the available budget and to clearly defining the inputs required from the Procuring Entity to ensure satisfactory implementation of the Project.

27.5 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 Procuring Entity and the Consultant shall initial the agreed contract. If negotiations fail, the Procuring Entity shall invite the Consultant whose Bid received the second highest score to negotiate a contract. If negotiations still fail, the Procuring Entity shall repeat the process for the next-in-rank Consultant until the negotiation is successfully completed.

28 Post Qualification

28.1 The BAC shall determine to its satisfaction whether the Consultant that is evaluated as having submitted the Highest Rated Bid (HRB) complies with and is responsive to all the requirements and conditions specified in the Eligibility Documents and **ITB** Clauses 10 and 11.

28.2 Within a non-extendible period of five (5) calendar days from receipt by the Consultant of the notice from the BAC that it submitted the Highest Rated Bid, the Consultant shall submit its latest income and business tax returns filed and paid through the BIR Electronic Filing and Payment System (EFPS) and other appropriate licenses and permits required by law and stated in the **BDS**.

Failure to submit any of the post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award. Provided, in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the bid security in accordance with Section 69 of the IRR of RA 9184.

28.3 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 Procuring Entity deems necessary and appropriate, using a non-discretionary "pass/fail" criterion, which shall be completed within a period of twelve (12) calendar days.

28.4 If the BAC determines that the Consultant with the Highest Rated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Consultant with the HRRB, and recommend to the HoPE the award of contract to the said Consultant at its submitted price or its calculated bid price, whichever is lower, subject to **ITB** Clause 30.3.

28.5 A negative determination shall result in rejection of the Consultant's bid, in which event the BAC shall proceed to the next Highest Rated Bid with a fresh period 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 Highest Rated Bid, and so on until the HRRB is determined for recommendation of contract award.

28.6 Within a period not exceeding fifteen (15) calendar days from the determination by the BAC of the HRRB and the recommendation to award the contract, the HoPE or his duly authorized representative shall approve or disapprove the said recommendation.

28.7 In the event of disapproval, which shall be based on valid, reasonable, and justifiable grounds as provided for under Section 41 of the IRR of RA 9184, the HoPE shall notify the BAC and the Consultant in writing of such decision and the grounds for it. When applicable, the BAC shall conduct negotiations, and if successful, post-qualification of the Consultant with the next Highest Rated Bid. A request for reconsideration may be filed by the bidder with the HoPE in accordance with Section 37.1.3 of the IRR of RA 9184.

29 Reservation Clause

29.1 Notwithstanding the eligibility, short listing, or post-qualification of a Consultant, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said Consultant, or that there has been a change in the Consultant's capability to undertake this Project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility and bidding 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 or bid evaluation criteria, the Procuring Entity shall consider the said Consultant as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract.

29.2 Based on the following grounds, the Procuring Entity reserves the right to reject any and all bids, declare a failure of bidding 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 bidding:

(a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders

themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

(b) If the Procuring Entity's BAC is found to have failed in following the prescribed bidding procedures; or

(c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GoP as follows:

(i) If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the HoPE;

(ii) If the project is no longer necessary as determined by the HoPE; and

(iii) If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

29.3 In addition, the Procuring Entity may likewise declare a failure of bidding when:

(a) No bids are received;

(b) All prospective bidders are declared ineligible;

(c) All bids fail to comply with all the bid requirements or there is no successful negotiation, or fail post-qualification; or

(d) The bidder with the HRRB refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the IRR of RA 9184.

F. Award of Contract

30. Contract Award

30.1 Subject to **ITB** Clause 28, the HoPE or its authorized representative shall award the contract to the Bidder whose bid has been determined to be the HRRB.

30.2 Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Consultant in writing that its bid has been accepted, through a Notice of Award duly received by the Consultant or its authorized representative personally or by registered mail or electronically, receipt of which must be confirmed in writing within two (2) days by the Consultant with the HRRB and submitted personally or sent by registered mail or electronically to the Procuring Entity.

30.3 Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

(a) Submission of the following documents within the (10) calendar days from receipt of the Notice of Award:

(i) Valid JVA, if applicable;

(ii) In the case of procurement by a Philippine Foreign Service Office or Post, the PhilGEPS Registration Number of the winning foreign consultant; and/or

(iii) SEC Certificate of Registration of the foreign consulting firm, and/or the authorization or license issued by the appropriate GoP professional regulatory body of the foreign professionals engaging in the practice of regulated professions and allied professions, where applicable.

(b) Posting of the performance security in accordance with **ITB** Clause 32;

(c) Signing of the contract as provided in **ITB** Clause 31; and

(d) Approval by higher authority, if required, as provided in Section 37.3 of the IRR of RA 9184.

31. Signing of the Contract

31.1 At the same time as the Procuring Entity notifies the successful Bidder that its bid has been accepted, the Procuring Entity shall send the Contract Form to the Bidder, which contract has been provided in the Bidding Documents, incorporating therein all agreements between the parties.

31.2 Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall post the required performance security and sign and date the contract and return it to the Procuring Entity.

31.3 The Procuring Entity shall enter into contract with the successful Bidder within the same ten (10) calendar day period provided that all the documentary requirements are complied with.

31.4The following documents shall form part of the contract:

(1) Contract Agreement;

(2) Bidding Documents;

(3) Winning bidder's bid, including the Technical and Financial Proposals, and all other documents/statements submitted (*e.g.,* bidder's response to request for clarifications on the bid), including corrections to the bid, if any, resulting from the Procuring Entity's bid evaluation;

(4) Performance Security;

(5) Notice of Award of Contract; and

(6) Other contract documents that may be required by existing laws and/or specified in the **BDS**.

32. Performance Security

32.1 Unless otherwise provided in the **BDS**, to guarantee the faithful performance by the winning Consultant of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the contract.

32.2 The performance security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity in an amount not less than the percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Not less than the Percentage of the Total Contract Price)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank; *For biddings conducted by the LGUs, the Cashier's/Manager's Check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.*	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; and/or *For biddings conducted by the LGUs, the Bank Draft/ Guarantee or Irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.*	
(c) Surety bond callable upon demand issued by a surety or	Thirty percent (30%)

insurance company duly certified by the Insurance Commission as authorized to issue such security.	

32.3 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 bid security, in which event the Procuring Entity shall have a fresh period to initiate negotiation and if successful, complete post-qualification of the second Highest Rated Bid. The procedure shall be repeated until the HRRB is identified and selected for recommendation of contract award. However if no Consultant had a successful negotiation or passed post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement, if necessary.

33. Notice to Proceed

33.1 Within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority, the Procuring Entity shall issue the Notice to Proceed together with copies of the approved contract to the successful Consultant. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful Consultant.

33.2 The contract effectivity date shall be the date of contract signing. The Consultant shall commence performance of its obligations only upon receipt of the Notice to Proceed.

34. Protest Mechanism

Decision of the Procuring Entity at any stage of the procurement process may be questioned in accordance with Section 55 of the IRR of RA 9184.

Bid Data Sheet

ITB Clause	
1.1	The Procuring Entity is the **Philippine Ports Authority** The evaluation procedure is Quality Cost Based Evaluation/Selection (QCBE/QCBS) QCBE/QCBS – Technical and Financial Scores are combined to determine the winner. ABC is stated and Financial Proposal above this amount are rejected except in the case of WB, no ABC or cost estimate is included in the Bidding Documents except for an estimate of the staff months required to complete the Project.
1.2	The Funding Source is: The Government of the Philippines through the Corporate Budget of the Philippine Ports Authority (PPA) for CY 2018 in the amount of **Thirteen Million Pesos (P13,000,000.00) VAT inclusive** The name of the project is ***Procurement of Technical Support Services for the Philippine Ports Authority's Core Application Systems***
1.3	Please see Terms of Reference (TOR).
1.4	Please see TOR and its annexes.
5	No further instructions
6.1	Subcontracting is not allowed
6.2	Not applicable
7.1	PPA will hold a Pre-Bid Conference for this Project on: **<<DATE>> at 10:00 A.M.**, Function Room, 7th Floor, PPA Building, Bonifacio Drive, South Harbor, Port Area, Manila.
8.1	The Procuring Entity's Address is: **ATTY. MARK JON S. PALOMAR** Chairperson Bids & Awards Committee for the Procurement of Goods and Consultancy Services Philippine Ports Authority PPA Building, Bonifacio Drive South Harbor, Port Area, Manila Telephone No. 527-8356 local 604

	Email Address:
10.1(b)	Not applicable
10.1(c)	Bidder must have seven (7) Oracle Certified e-Business application consultants, five (5) of which should have functional expertise and two (2) should have technical expertise. At least two (2) consultants must have been involved in the implementation of Oracle e-Business R12 with any of the government agency. These must be supported by the following documents: a. Certification from Oracle Corporation b. Resume c. Company ID
11.5	All applicable government taxes
11.7	The ABC is **Thirteen Million Pesos (P13,000,000.00)**. Any bid with a financial component exceeding this amount shall not be accepted.
13.1	The bid prices shall be quoted in Philippine Pesos.
13.3	No further instructions.
14.1	Bids will be valid for 120 days from the date of the opening of the bids.
15.1	The bid security shall be limited to a Bid Securing Declaration or any of the following forms and amounts: 1. The amount of not less than **Two Hundred Sixty Thousand Pesos (260,000.00)** *[2% of ABC]*, if bid security is in cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit; or 2. The amount of not less than **Six Hundred Fifty Thousand Pesos** *[5% of ABC]*, if bid security is in Surety Bond.
15.2	The bid security shall be valid for 120 days from the date of the opening of bids.

15.5(b)(iii)	No further instructions
17.1	No further instructions.
17.3	Each Bidder shall submit ONE (1) original and SIX (6) copies of the Technical and Financial Proposals in two (2) separate sealed bid envelopes, which should be submitted simultaneously. Each of the bid documents should be individually sealed. All bid documents shall be book-bound, hard-bound and properly labelled with index tabs. Failure to comply with the requirement is a ground for automatic disqualification of the bidder.
18	The address for submission of bids is: BAC Office 5th Floor, PPA Building, Bonifacio Drive South Harbor, Port Area, Manila The deadline for submission of bids is: **<<Date>> at 9:00 A.M.**
21.2	The opening of the Technical Proposal is: **<<Date>> at 10:00 A.M.** Function Room, 7th Floor PPA Building, Bonifacio Drive, South Harbor Port Area, Manila
22.1	No further instructions.
25.1	The following processes for the opening and evaluation of bids shall be adopted: a) The technical proposal together with the financial proposal shall be considered in the ranking of consultants. The technical proposals shall be evaluated first using the criteria in **ITB** Clause 25.2. The financial proposals of the consultants who meet the minimum technical score shall then be opened. b) The financial and technical proposals shall be given corresponding weights with the financial proposal given a minimum weight of

	fifteen percent (15%) up to a maximum of forty percent (40%). The weight of the technical criteria shall be adjusted accordingly such that their total weight in percent together with the weight given to the financial proposal shall add to one hundred percent (100%). The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the Highest Rated Bid. c) The HoPE shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC. d) After approval by the HoPE of the Highest Rated Bid, the BAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for negotiation in accordance with **ITB** Clause 27.
25.3	The numerical weight and the minimum Technical Score (St) required for each criterion are as follows: I. TECHNICAL PROPOSAL - 70% a. Quality of Key Members to be Assigned – 30% b. Plan of Approach and Methodology - 40% II. FINANCIAL PROPOSAL - 30% TOTAL 100% The minimum St required to pass is **seventy percent (70%)**
26.1	The opening of Financial Proposals shall be on *[insert date and time]* at **Function Room, 7th Floor** **PPA Building, Bonifacio Drive, South Harbor** **Port Area, Manila** Financial Proposals shall be opened in public.
26.2	After the evaluation of quality is completed, the Procuring Entity shall notify those Consultants whose Bids 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 Procuring Entity shall simultaneously notify the Consultants that have secured the minimum

	qualifying mark, indicating the date and time set for opening the Financial Proposals. The opening date shall not be sooner than two weeks after the notification date unless otherwise specified in **ITB** Clause 26.1. 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 Procuring Entity shall prepare minutes of the public opening. The BAC 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 Procuring Entity shall reject the proposal. The BAC shall correct any computational errors, and convert prices in various currencies to the Philippine Peso at the rate indicated in **ITB** Clause 13. The Financial Proposal shall not exceed the ABC and shall be deemed to include the cost of all taxes, duties, fees, levies, and other charges imposed under the applicable laws. The evaluation shall include all such taxes, duties, fees, levies, and other charges imposed under the applicable laws; where special tax privileges are granted to a particular class or nationality of Consultant by virtue of the GoP's international commitments, the amount of such tax privileges shall be included in the Financial Proposal for purposes of comparative evaluation of Bids. The lowest Financial Proposal (Fl) shall be given a Financial Score (Sf) of 100 points. The Sf of other Financial Proposals shall be computed based on the formula indicated below: $$Sf = 100 \times Fl/F$$ Where: Sf is the financial score of the Financial Proposal under consideration, Fl is the lowest Financial Proposal, and F is the Financial Proposal under consideration. Using the formula $S = St \times T\% + Sf \times F\%$, the Bids shall then be ranked according to their combined St and Sf using the weights (St is the technical score of the Technical Proposal under consideration; T = the weight given to the Technical Proposal; F = the weight given to the Financial Proposal; T + F = 1) indicated below: T _____ *[From 0.6 to 0.85]*; and

	F _____ *[From 0.15 to 0.4]*; provided that the total weights given to the Technical and Financial Proposals shall add up to 1.0.
27.1	The address for negotiations is Function Room, 7th Floor, PPA Building, Bonifacio Drive, South Harbor, Port Area, Manila
27.2(e)	No negotiations pertaining to the Financial Proposal shall be undertaken.
28.2	The latest income and business tax returns are those within the last six months preceding the date of bid submission.
31.4.6	The following document shall be submitted: 1. Certification from Oracle Corporation that the Bidder is an Oracle Partner
32.1	No further instructions
33.2	The effective date of the contract is the date of receipt by the winning Consultant of the Notice to Proceed.

Section III. General Conditions of Contract

1. Definitions

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

(a) "Applicable Law" means the laws and any other instruments having the force of law in the Philippines as they may be issued and enforced from time to time.

(b) "Consultant" refers to the short listed consultant with the HRRB determined by the Procuring Entity as such in accordance with the ITB.

(c) "Consulting Services" refer to services for Infrastructure Projects and other types of projects or activities of the Government of the Philippines (GoP) requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Procuring Entity to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.

(d) "Contract" means the agreement signed by the Parties, to which these General Conditions of Contract (GCC) and other sections of the Bidding Documents are attached.

(e) "Effective Date" means the date on which this Contract comes into full force and effect.

(f) "Foreign Currency" means any currency other than the currency of the Philippines.

(g) "Funding Source" means the entity indicated in the **SCC**.

(h) "GCC" means these General Conditions of Contract.

(i) "Government" means the Government of the Philippines (GoP).

(j) "Local Currency" means the Philippine Peso (Php).

(k) "Member," in case the Consultant is a Joint Venture (JV) of two (2) or more entities, means any of these entities; and "Members" means all these entities.

(l) "Party" means the Procuring Entity or the Consultant, as the case may be, and "Parties" means both of them.

(m) "Personnel" means persons hired by the Consultant or by any Subconsultant as employees and assigned to the performance of the Services or any part thereof; "Foreign Personnel" means such persons who at the time of being so hired had their domicile outside the Government's country; "Local Personnel" means such persons who at

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

(n) "Procuring Entity" refers to any branch, constitutional commission or office, agency, department, bureau, office or instrumentality of the Government, including GOCC, GFI, SUC, LGU, and autonomous regional government procuring Goods, Consulting Services, and Infrastructure Projects.

(o) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented.

(p) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix I.

(q) "Subconsultant" means any person or entity to whom/which the Consultant subcontracts any part of the Services in accordance with the provisions of **GCC** Clause 50.

(r) "Third Party" means any person or entity other than the Government, the Procuring Entity, the Consultant or a Subconsultant.

2. Headings

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

3. Location

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

4. Law Governing Contract and Services

4.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

4.2 The Consultant shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Subconsultant, as well as the Personnel of the Consultant and any Subconsultant, complies with the Applicable Law. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

4.3 If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased on a no loss-no gain basis, and corresponding adjustments shall be made to the ceiling amounts specified in GCC Clause 52, provided that the cost is within the Approved Budget for the Contract (ABC).

5. Language

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

6. Consultants and Affiliates Not to Engage in Certain Activities

6.1 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Subconsultant and any entity affiliated with such Subconsultant, shall be disqualified from providing goods, works, or consulting services for any project resulting from or closely related to this Contract other than the Services and any continuation thereof provided there is no current or future conflict.

6.2 The Consultant shall not engage, and shall cause their Personnel as well as their Subconsultants and their Personnel not to engage, either directly or indirectly, in any of the following activities:

(a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract; and

(b) after the termination of this Contract, such other activities as may be specified in the **SCC**.

7. Authority of Member in Charge

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

8. Resident Project Manager

If required by the **SCC**, the Consultant shall ensure that at all times during the Consultant's performance of the Services in the Government's country, a resident project manager, acceptable to the Procuring Entity, shall take charge of the performance of such Services.

9. Entire Agreement

This Contract, including the documents specified in Section 37.2.3 of the 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.

10. Modification

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

11. Relationship of Parties

11.1 Nothing contained herein shall be construed as establishing a relation of employer and employee or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of its Personnel and Subconsultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

11.2 The Consultant shall during the performance of the Services be an independent contractor, retaining complete control over its Personnel, conforming to all statutory requirements with respect to all its employees, and providing all appropriate employee benefits.

12. Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

13. Good Faith

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

14. Operation of the Contract

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

15. Notices

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

the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the address specified in the **SCC**.

15.2 Notice shall be deemed to be effective as specified in the **SCC**.

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

16. Warranty as to Eligibility

16.1 The Consultant represents, warrants, and confirms that it, as well as its Subconsultant, if any, is eligible, *i.e.*, has the legal personality to act as a consultant in accordance with the Eligibility Documents issued for this project.

16.2 The Consultant shall fulfill its obligations under this Contract by using knowledge according to the best accepted professional standards. The Consultant shall exercise all reasonable skill, care and diligence in the discharge of duties agreed to be performed and shall work in the best interest of the GoP.

17. Confidentiality

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

18. Payment

18.1 In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make to the Consultant such payments and in such manner as is provided by **GCC** Clause 53 of this Contract. However, the Procuring Entity may refuse to make payments when the terms and conditions of the contract are not satisfactorily performed by the Consultant.

18.2 Subject to the ceilings specified in **GCC** Clause 52 hereof, the Procuring Entity shall pay to the Consultant: (i) remuneration as set forth in GCC Clause 53.2; and (ii) reimbursable expenditures as set forth in **GCC** Clause 53.4. Said remuneration shall not be subject to price adjustment.

18.3 All payments under this Contract shall be made to the account of the Consultant specified in the **SCC**.

19. Currency of Payment

Unless otherwise specified in the SCC, all payments shall be made in Philippine Pesos.

20. Liability of the Consultant

Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as provided by the laws of the Republic of the Philippines.

21. Insurance to be Taken Out by the Consultant

21.1 The Consultant, at its own cost, shall be responsible for taking out or maintaining any insurance policy against any risk related to the project.

21.2 The Procuring Entity undertakes no responsibility in respect of life, health, accident, travel or any other insurance coverage for the Personnel or for the dependents of any such Personnel.

22. Effectivity of Contract

The contract effectivity date shall be the date of contract signing, provided that the effectiveness of the conditions, if any, listed in the SCC have been met.

23. Commencement of Services

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

24. Expiration of Contract

Unless sooner terminated pursuant to **GCC** Clauses 27 or 28 hereof, this Contract shall terminate at the end of such time period after the effectivity date as shall be specified in the SCC.

25. Force Majeure

25.1 For purposes of this Contract the terms "force majeure" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the Consultant could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Consultant.

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

reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

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

(a) any event which is caused by the negligence or intentional action of a Party or such Party's Subconsultants 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 Procuring Entity's failure to review, approve or reject the outputs of the Consultant beyond a reasonable time period.

25.4 A Party affected by an event of force majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder immediately or within a reasonable time.

25.5 A Party affected by an event of force majeure shall notify the other Party of such event as soon as possible, and in any event not later than fifteen (15) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.

25.6 The Parties shall take all reasonable measures to minimize the consequences of any event of force majeure.

25.7 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a direct and proximate result of force majeure.

25.8 During the period of their inability to perform the Services as a direct and proximate result of an event of force majeure, the Consultant shall be entitled to continue receiving payment under the terms of this Contract as well as to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period, provided that such costs are still within the total contract price. However, the foregoing provision shall not apply if the Procuring Entity suspends or terminates this Contract in writing, notice thereof duly received by the Consultant, pursuant to GCC Clauses 26 and 27 hereof with the exception of the direct and proximate result of force majeure.

25.9 Not later than fifteen (15) days after the Consultant, as the direct and proximate result of an event of force majeure, has become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures considering the circumstances.