30) Reservation Clause

30.1 Notwithstanding the eligibility, short-listing, or post-qualification of a Consultant and without incurring any liability, the HoPE or its duly authorized representative at any stage of the procurement, reserves the right to review its qualifications, reject any and all bids, declare a failure of bidding or not award the contract in the following situations:

a) 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.

b) 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.

30.2 Based on the following grounds, the HoPE or its duly authorized representative 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 or influences or tends to influence the bidding process;

b) If the BAC is found to have failed in complying with the law or 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 government, in instances where (i) 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) the project is no longer necessary as determined by the HoPE; and (iii) the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

F. Award of Contract

31) Contract Award

31.1 Subject to **ITB** Clause 29, the HoPE or its authorized representative shall award the contract to the Consultant whose bid has been determined to be the HRRB.

31.2 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.

31.3 Within ten (10) calendar days from receipt by the winning Consultant of the Notice of Award, the following conditions should be complied with before the contract may be awarded:

a) Submission of the following documents:

i) Valid JVA, if applicable; or

ii) SEC Certificate of Registration of the foreign corporation, or the SEC Certificate of Registration of the foreign consulting firm, and/or the authorization or license issued by the appropriate government agency or 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 33;

c) Signing of the contract as provided in **ITB** Clause 32.

32) Signing of the Contract

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

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

32.3 The following documents shall form part of the contract:

a) Contract Agreement;

b) Bidding Documents;

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

d) Performance Security;

e) Notice of Award of Contract; and

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

33) Performance Security

33.1 To guarantee the faithful performance of its obligations under the contract, the winning Consultant shall post a performance security, prior to the signing of the contract. Furthermore, the winning Consultant shall be required to update the performance security posted prior to the issuance of a contract amendment, if any.

33.2 Sectors enumerated under Section 76.1[4] of the IRR are allowed to post a Performance Securing Declaration (PSD) as specified in the **BDS**.

33.3 The performance security shall be in the form selected by the Procuring Entity in the amount indicated in the **BDS**, which shall not be 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 the Percentage of the Total Contract Price)
a) Cash or cashier's/manager's check issued by a bank; *For biddings conducted by LGUs, the cashier's or 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 or guarantee or irrevocable Letter of Credit issued by a bank. If issued by a foreign bank, it shall be confirmed or authenticated by a local bank.*	
c) *Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.*	Thirty percent (30%)

[4] Section 76.1. The GPPB, once data is available from relevant agencies, shall maintain a registry of entities belonging to the following sectors:

a) Farmers, as certified by the Department of Agriculture (DA);
b) Fisherfolk as certified by the Bureau of Fisheries and Aquatic Resources (BFAR);
c) Persons with disabilities as certified by the National Council for Disability Affairs (NCDA) pursuant to RA No. 7277, otherwise known as the Magna Carta for Disabled Persons, as amended;
d) Solo parents as certified by the Department of Social Welfare and Development (DSWD);
e) Microenterprises and social enterprises as certified by the MSMED Council;
f) Startups, Spin-offs, and other forms of entity involved in Science, Technology, and Innovation (DOST), as may be applicable;
g) Cooperatives duly registered with the CDA pursuant to RA No. 6938, otherwise known as the Cooperative Code of the Philippines, as amended; and
h) Other relevant sectors as may be determined by the GPPB to ensure inclusivity and diversity in the procurement process.

33.4 The performance security shall be denominated in Philippine Peso and posted in favor of the Procuring Entity, which shall be forfeited in the event it is established that the winning Consultant is in default in any of its obligations under the contract.

34) Notice to Proceed

The Procuring Entity shall issue the Notice to Proceed to the winning Consultant not later than three (3) calendar days from the date of approval of the contract by the appropriate signatories. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful Consultant.

35) Protest Mechanism

Decision of the BAC in all stages of procurement may be protested to the HoPE in accordance with Section 83 of the IRR.

Bid Data Sheet

ITB Clause	
1.1	The Procuring Entity is Philippine Ports Authority. The evaluation procedure is: Quality Cost Based Evaluation (QCBE) QCBE – Technical and Financial Scores are combined to determine the winner. ABC is stated and Financial Proposal above this amount are rejected. The identification number of the Contract is HO-CON-PPDD-26-0001.
1.2	Conduct of Feasibility Studies based on the scope of services.
1.3	The Project shall not be phased.
2	The Funding Source is: The Government of the Philippines (GoP) through the PPA's Corporate Budget for C.Y. 2026. The name of the project is **CONSULTANCY SERVICES FOR THE CONDUCT OF FEASIBILITY STUDIES AND FORMULATION OF MASTER PLANS AT SELECTED PORTS (HO-CON-PPDD-26-0001).**
4.1	No further instructions.
8	No further instructions.
9.1	The Procuring Entity will hold a pre-bid conference for this Project on: Date: _____ Time: _____ Place: _____
10.1	The Procuring Entity's address is: **Philippine Ports Authority** **PPA Bldg., A. Bonifacio Drive, South Harbor, Port Area, Manila** **MARK JON S. PALOMAR** **Chairperson, HO-BAC-EP-CON** Telephone Nos.: 85278374-77 loc. 610 E-mail Address: mjspalomar@ppa.com.ph PPA Website: www.ppa.com.ph
12.1(b)	Not applicable.
12.1(c)	The minimum required experience of proposed professional staff is as follows: Five (5) years prior to the submission and receipt of bids.

13.5	Taxes: 1. Income Tax ..... 2. Business Tax .....
13.7	The ABC is ₱41,906,555.00. Any bid with a financial component exceeding this amount shall not be accepted.
14.1	The bid prices shall be quoted in Philippine Peso.
14.3	No further instructions.
15.1	Bids will be valid for one hundred twenty (120) calendar days from bid opening.
16.1	The Bid Security shall be in the form of a Bid Securing Declaration, and choose at least two (2) from any of the following: 1. The amount of not less than ₱838,131.10, if bid security is in cash; 2. The amount of not less than ₱838,131.10, if bid security is in cashier's check; 3. The amount of not less than ₱838,131.10, if bid security is in manager's check; 4. The amount of not less than ₱2,095,327.75 if bid security is in bank draft; 5. The amount of not less than ₱2,095,327.75 if bid security is in guarantee; 6. The amount of not less than ₱2,095,327.75 if bid security is irrevocable LoC; or 7. The amount of not less than ₱2,095,327.75 if bid security is Surety Bond.
16.2	The bid security shall be valid for 120 calendar days from bid opening.
16.3	In case of extension of bid validity and bid security validity period, substitution of the bid security form is allowed. Bid Securing Declaration and the following forms may be used: *[choose at least two (2)]* a) Cash or Cashier's or Manager's Check issued by a bank. b) Bank draft/guarantee or irrevocable LoC issued by a Bank: Provided, however, that it shall be confirmed or authenticated by a local bank, if issued by a foreign bank. c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
16.5(b)(iii)	No further instructions.
18.1	Each Bidder shall submit one (1) original and six (6) copies of the Technical and Financial Proposals, properly labeled, book-bound, stitched and hard-bound with index tab.

	Failure to comply with the requirements shall be a ground for disqualification.
18.2	No further instructions.
19	The address for the submission of bids is: BAC Office 5th Floor, PPA Building, A. Bonifacio Drive, South Harbor, Port Area, Manila The deadline for the submission of bids is _____.
22.2	The place of the bid opening is: BAC Office 5th Floor, PPA Building, A. Bonifacio Drive, South Harbor, Port Area, Manila The date and time of bid opening is _____.
23.1	No further instructions.
26.1	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 26.2. 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 exact weights shall be approved by the HoPE upon the recommendation of the BAC and indicated in the Bidding Documents. The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the HRB. 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 HRB, the BAC shall, within three (3) calendar days, notify and invite the Consultant with the HRB for negotiation in accordance with **ITB** Clause 28.
26.3	The numerical weight and the minimum required St for each criterion are as follows:

	For Technical: 85% For Financial: 15% The minimum St required to pass is 70%. The attention of the Consultant is drawn to Technical Proposal Forms – Bids must adhere to the maximum number of pages outlined in Clause 12.2.
27.1	The opening of Financial Proposals shall be on: Date: _____ Time: _____ Place: _____ Financial Proposals shall be opened in public.
27.2	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 (2) weeks after the notification date unless otherwise specified in **ITB** Clause 27.1. 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 13 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 14. 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 Í 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 Í T% + Sf Í 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.
28.1	The address for negotiations is: Philippine Ports Authority, PPA Building, A. Bonifacio Drive, South Harbor, Port Area, Manila
28.2(e)	No negotiations pertaining to the Financial Proposal shall be undertaken.
29.1	No additional requirements.
32.3(f)	No additional requirements.
33.2	Not applicable.
33.3	The Performance Security shall be in the form: *[choose one from any of the following:]* 1) The amount of not less than _____ *[Insert 5% of the total contract price],* if performance security is in cash; 2) The amount of not less than _____ *[Insert 5% of the total contract price],* if performance security is in cashier's check; 3) The amount of not less than _____ *[Insert 5% of the total contract price],* if performance security is in manager's check; 4) The amount of not less than _____ *[Insert 5% of the total contract price]* if performance security is in bank draft; 5) The amount of not less than _____ *[Insert 5% of the total contract price]* if performance security is in guarantee; 6) The amount of not less than _____ [*Insert 5% of the total contract price*] if performance security is irrevocable LoC; or 7) The amount of not less than _____ [*Insert 30% of the total contract price*] if performance security is Surety Bond.

Section IV. General Conditions of Contract

1) General Terms

In this contract, the following terms shall be interpreted as indicated:

1.0 The "Procuring Entity" means the organization engaging the services of a consultant or consulting firm, as named in the **SCC**.

1.1 The "Consultant" means the short-listed consultant with the HRRB determined by the Procuring Entity as such in accordance with the ITB and as named in the **SCC**.

1.2 "Funding Source" means the entity indicated in the **SCC**.

1.3 "Services" means the work to be performed by the Consultant, as provided in the **Appendix I**.

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 laws. For purposes of this Clause, "applicable laws" refer to laws and any other instruments having the force of law in the Philippines as they may be issued and enforced from time to time.

4.2 The Consultant shall perform the Services in accordance with the applicable laws and shall take all practicable steps to ensure that the personnel of the Consultant, which are employed and assigned to the performance of the Services or any part thereof, complies with the applicable laws. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

5) Governing Law and Language

5.1 This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines.

5.2 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. All correspondence and other documents pertaining to this Contract exchanged by the parties shall be written in English.

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 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 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 Contract Agreement, Bidding Documents, Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents or statements submitted, Performance Security, Notice of Award of Contract, and other contract documents that may be required by existing laws and/or the Procuring Entity specified in **GCC** Clause 1.1, 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, 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 effectivity 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 37 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, or electronic mail, to such Party at the address specified in the **SCC**, which shall be effective when delivered and duly received as may be applicable.

15.2 A Party may change its address upon notice pursuant to the provisions listed in the **SCC.**

16) Warranty as to Eligibility

16.1 The Consultant represents, warrants, and confirms that it is eligible, *i.e.*, has the legal personality to act as a consultant in accordance with Part I, Section II, Short-listing Documents issue for this project.

16.2 The Consultant shall perform its obligations under this Contract in accordance with the highest accepted professional standards and expertise. 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 54 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.

18.1 Subject to the ceilings specified in **GCC** Clause 54 hereof, the Procuring Entity shall pay to the Consultant: (i) remuneration as set forth in **GCC** Clause 54.2; and (ii) reimbursable expenditures as set forth in **GCC** Clause 54.4. Said remuneration shall not be subject to price adjustment.

18.2 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 Peso.

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 to the 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 30 or 31 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 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) calendar 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 27 and 30 hereof with the exception of the direct and proximate result of force majeure.

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

25.10 In the case of disagreement between the parties as to the existence, or extent of force majeure, the matter shall be submitted to arbitration in accordance with GCC Clause 37 hereof.

26) Contract Amendment

Changes to the consultancy contract affecting the project scope, key personnel, schedule of deliverables and payments, timelines or contract duration may be made if necessary to achieve the objectives of the project. In such cases, an equitable adjustment in contract price may be mutually agreed upon by the Procuring Entity and the consultant in writing, using similar rates or unit prices in the contract, or if not available, using applicable or current rates and prices to cover the amended or additional items in the consultancy contract; Provided, That the total increase in cost does not exceed twenty percent (20%) of the contract price.

Subject to GCC Clause 42.5, changes to the consultancy contract affecting the project scope, key personnel, schedule of deliverables and payments, timelines or contract duration may be made if necessary to achieve the objectives of the project.

27) Suspension

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

a) shall specify the nature of the failure; and

b) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

27.2 The Consultant may, without prejudice to its right to terminate this Contract pursuant to **GCC** Clause 31, by written notice of suspension, suspend the

Services if (i) the Procuring Entity fails to deliver government-furnished equipment, resources, reports or data as stipulated in the contract; (ii) peace and order conditions make it extremely dangerous, if not impossible, to work; or (iii) delay in the payment of the Consultant's claim for progress billing beyond sixty (60) calendar days from the time the Consultant's claim has been certified by the Procuring Entity as being supported by complete documentation and a notice from the Consultant has been received by the Procuring Entity that such payment is overdue, unless there are justifiable reasons which shall be communicated in writing to the Consultant.

28) Extension or Adjustment of Contract Time

The adjustment or extension of contract time in Consulting Services shall consider both the elapsed time between the effective order suspending operation and the order to resume work in cases when the total suspension or the suspension of activities along the critical path is not due to the fault of the Consultant.

29) Liquidated Damages

When the Consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the Consultant shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay. In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the contract may be rescinded or terminated by the Procuring Entity, without prejudice to other courses of action and remedies available under the circumstances. In case the contract is rescinded or terminated, the Procuring Entity may take over the contract or award the same to a qualified consultant through negotiated procurement. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.

In case the delay in the completion of the services exceeds ten percent (10%) of the specified contract time plus any time extension duly granted to the Consultant, the Procuring Entity may rescind the contract. It then forfeits the Consultant's performance security and takes over the prosecution of the contract or awards the same to a qualified consultant through negotiated procurement.

30) Termination by the Procuring Entity

30.1 The Procuring Entity shall terminate this Contract when any of the following conditions attends its implementation:

a) In case of breach of contract by the Consultant, or where the Consultant fails to deliver or perform the Outputs and Deliverables within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Consultant prior to the delay, and such delay amounts to at least ten percent (10%) of the contract price;

b) In case of force majeure, or where the Consultant is unable to deliver or perform a material portion of the Outputs and Deliverables for a period of not less than sixty (60) calendar days after the Consultant's receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased;

c) In case of termination of contract for convenience, where there is a determination of existence of any of the following conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary: (i) If 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) the HoPE has determined the existence of conditions that make project implementation impractical or unnecessary, such as, but not limited to, fortuitous event/s, changes in laws and government policies; (iii) Funding for the project has been withheld or reduced by higher authorities through no fault of the Procuring Entity; or (iv) any circumstance analogous to the foregoing;

d) If the Consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction; in which event, termination will be without compensation to the Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Consultant;

e) In case it is determined prima facie that the Consultant, including any joint venture partner therein, has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following: corrupt, fraudulent, collusive, coercive, and obstructive practices; drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and any other act analogous to the foregoing. For purposes of this Clause, corrupt, fraudulent, collusive, coercive, and obstructive practices shall have the same meaning as that provided in **ITB** Clause 4.1(a);

f) The Consultant fails to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to GCC Clause 15.2 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Procuring Entity may have subsequently approved in writing;

g) The Consultant's failure to comply with any final decision reached as a result of arbitration proceedings pursuant to GCC Clause 37 hereof; or

h) The Consultant fails to perform any other obligation under the Contract.

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

31) Termination by the Consultant

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

a) The Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant's notice specifying such breach;

b) Substantial failure of the Procuring Entity to perform its obligations under the contract;

c) Prolonged suspension by the Procuring Entity, through no fault of the Contractor, which affects the substantial part of the Contract;

d) The Procuring Entity's failure to comply with any final decision reached as a result of arbitration pursuant to **GCC** Clause 37 hereof;

e) As the direct and proximate result of force majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days; or

f) The Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to **GCC** Clause 37 hereof within eighty-four (84) calendar days after receiving written notice from the Consultant that such payment is overdue.

32) Procedures for Termination of Contracts

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

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

b) **Notice to Terminate** - Upon recommendation by the Procuring Entity, the HoPE shall terminate this Contract only by a written notice to the Consultant conveying such termination. The notice shall state:

   i) That the contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;

   ii) The extent of termination, whether in whole or in part;

   iii) An instruction to the Consultant to show cause as to why the contract should not be terminated; and

   iv) Special instructions of the Procuring Entity, if any.

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

c) **Show Cause** - Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Consultant shall submit to the HoPE a verified position paper stating why this Contract should not be terminated. If the Consultant fails to show cause after the lapse of the seven (7) day

period, either by inaction or by default, the HoPE shall issue an order terminating this Contract.

d) **Rescission of Notice of Termination** - The Procuring Entity may, at any time before receipt of the Consultant's verified position paper to withdraw the Notice to Terminate if it is determined that certain services subject of the notice had been completed or performed before the Consultant's receipt of the notice.

e) **Decision** - Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate this Contract. It shall serve a written notice to the Consultant of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Consultant of the notice of decision. The termination shall only be based on the ground/s stated in the Notice to Terminate.

f) **Contract Termination Review Committee** - The HoPE may create a Contract Termination Review Committee (CTRC) to assist in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the HoPE.

g) **Take-over of Contracts** – If a Procuring Entity terminates the contract due to default, insolvency, or for cause, it may enter into a Negotiated Procurement pursuant to Section 35(c) of RA No. 12009 and its IRR.

h) **Notice by Contractor or Consultant** – The Consultant must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

33) Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to **GCC** Clauses 30 or 31 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by **GCC** Clauses 38 or 39 hereof.

34) Payment upon Termination

Upon termination of this Contract pursuant to **GCC** Clauses 30 or 31 hereof, the Procuring Entity shall make the following payments to the Consultant:

a) remuneration pursuant to **GCC** Clause 54 hereof for Services satisfactorily performed prior to the effective date of termination;

b) reimbursable expenditures pursuant to **GCC** Clause 54 hereof for expenditures actually incurred prior to the effective date of termination; and

c) in the case of termination pursuant to **GCC** Clause 30.1(b) hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of this

Contract including the cost of the return travel of the Personnel and their eligible dependents.

35) Disputes about Events of Termination

If either Party disputes whether an event specified in **GCC** Clause 30.1 or in **GCC** Clause 31 hereof has occurred, such Party may refer the matter to arbitration pursuant to **GCC** Clause 37 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

36) Cessation of Rights and Obligations

Upon termination of this Contract pursuant to **GCC** Clauses 30 or 31 hereof, or upon expiration of this Contract pursuant to **GCC** Clause 24, all rights and obligations of the Parties hereunder shall cease, except:

a) such rights and obligations as may have accrued on the date of termination or expiration;

b) the obligation of confidentiality set forth in **GCC** Clause 17 hereof; and

c) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in GCC Clauses 52.1 (b) and 52.1(c) hereof, any right which a Party may have under the Applicable Law.

37) Settlement of Disputes

37.1 Any dispute arising from the implementation of a contract covered by RA No. 12009 and its IRR shall first be resolved and settled amicably by mutual consultation or agreement.

37.2 Should the Parties fail to resolve their dispute or difference after thirty (30) calendar days, the parties shall resort to alternative dispute resolution (ADR) in accordance with RA No. 9285 or the "Alternative Dispute Resolution Act of 2004", RA No. 876 or the Arbitration Law, Executive Order No. 1008 or the Construction Industry Arbitration Law, and other pertinent laws, regulations, and issuances, as the case may be.

If the Parties resort to arbitration, either solely or in conjunction with other modes of ADR, the governing rules of procedure or the rules of arbitration between the parties shall be specified in the **SCC**.

38) Documents Prepared by the Consultant and Software Developed to be the Property of the Procuring Entity

38.1 All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Procuring Entity under this Contract shall become and remain the property of the Procuring Entity, and the Consultant shall, prior to termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof.

The Consultant may retain a copy of such documents and software. The plans, drawings, specifications, designs, reports, other documents and software,

including restrictions on future use of such documents and software, if any, shall be specified in the **SCC**.

38.2 All computer programs developed by the Consultant under this Contract shall be the sole and exclusive property of the Procuring Entity; Provided, however, That the Consultant may use such programs for its own use with prior written approval of the Procuring Entity.

If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements. In such cases, the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program/s concerned.

39) Equipment and Materials Furnished by the Procuring Entity

Equipment and materials made available to the Consultant by the Procuring Entity or purchased by the Consultant using funds from the Procuring Entity, shall be considered the property of the Procuring Entity and shall be properly marked as such. Upon termination or expiration of this Contract, the Consultant shall submit to the Procuring Entity an inventory of such equipment and materials and shall dispose the same in accordance with the Procuring Entity's instructions. While in possession of such equipment and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure the same at the expense of the Procuring Entity in an amount equal to their full replacement value.

40) Services, Facilities and Property of the Procuring Entity

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

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

b) the manner in which the Consultant shall procure any such services, facilities and property from other sources; and

c) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to **GCC** Clause 53 hereinafter which should be within the agreed contract ceiling.

41) Consultant's Actions Requiring Procuring Entity's Prior Approval

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

a) appointing such members of the Personnel as are listed in Appendix III merely by title but not by name;

b) replacement, during the performance of the contract for any reason, of any Personnel as listed in Appendix III of this Contract requiring the Procuring Entity's prior approval; and

c) any other action that may be specified in the **SCC**.

42) Personnel

42.1 The Consultant shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

42.2 The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Personnel are described in Appendix III.

42.3 The Key Personnel listed by title as well as by name in Appendix III are hereby approved by the Procuring Entity. In respect of other Key Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the Procuring Entity for review and approval a copy of their biographical data and, in the case of Key Personnel to be assigned within the GoP, a copy of a satisfactory medical certificate attached as part of Appendix III. If the Procuring Entity does not object in writing; or if it objects in writing but fails to state the reasons for such objection, within twenty-one (21) calendar days from the date of receipt of such biographical data and, if applicable, such certificate, the Key Personnel concerned shall be deemed to have been approved by the Procuring Entity.

42.4 The Procuring Entity may request the Consultants to perform additional services not covered by the original scope of work but are determined by the Procuring Entity to be critical for the satisfactory completion of the Services, subject to **GCC** Clause 56.6.

42.5 No changes shall be made in the Key Personnel, except for justifiable reasons as may be determined by the Procuring Entity, as indicated in the **SCC**, and only upon prior approval of the Procuring Entity. If it becomes justifiable and necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications. If the Consultant introduces changes in Key Personnel for reasons other than those mentioned in the **SCC**, the Consultant shall be liable for the imposition of damages as described in the **SCC**.

42.6 Any of the Personnel provided as a replacement under **GCC** Clauses 42.5 and 42.7, the rate of remuneration applicable to such person as well as any reimbursable expenditures the Consultant may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Procuring Entity. Except as the Procuring Entity may otherwise agree, the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

42.7 If the Procuring Entity finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action as defined in the Applicable Law, or has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the

Procuring Entity's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.

43) Working Hours, Overtime, Leave, etc.

43.1 Working hours and holidays for Key Personnel are set forth in Appendix III. Any travel time prior to and after contract implementation shall not be considered as part of the working hours.

43.2 The Key Personnel shall not be entitled to claim payment for overtime work, sick leave, or vacation leave from the Procuring Entity since these items are already covered by the Consultant's remuneration. All leaves to be allowed to the Personnel are included in the staff-months of service set forth in Appendix III. Taking of leave by any Personnel should not delay the progress and adequate supervision of the Services.

43.3 If required to comply with the provisions of **GCC** Clause 46.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix III may be made by the Consultant by prior written notice to the Procuring Entity, provided that:

a) such adjustments shall not alter the originally estimated period of engagement of any individual by more than ten percent (10%); and

b) the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in **GCC** Clause 53.1 of this Contract. Any other such adjustments shall only be made with the Procuring Entity's prior written approval.

44) Counterpart Personnel

44.1 If so provided in Appendix III hereto, the Procuring Entity shall make available to the Consultant, as and when provided in such Appendix III, and free of charge, such Counterpart Personnel to be selected by the Procuring Entity, with the Consultant's advice, as shall be specified in such Appendix III. Counterpart Personnel shall work with the Consultant. If any member of the Counterpart Personnel fails to perform adequately any work assigned to such member by the Consultant which is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

44.2 The responsibilities of the Counterpart Personnel shall be specified in Appendix III, attached hereto, and the Counterpart Personnel shall not perform any work beyond the said responsibilities.

44.3 If Counterpart Personnel are not provided by the Procuring Entity to the Consultant as and when specified in Appendix III, and or if the Counterpart Personnel lack the necessary training, experience or authority to effectively undertake their responsibilities, the Procuring Entity and the Consultant shall agree on how the affected part of the Services shall be carried out, and the additional payments, if any, to be made by the Procuring Entity to the Consultant as a result thereof pursuant to **GCC** Clause 53, hereof.

45) Performance Security

45.1 Within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity, but in no case later than the signing of the contract by both parties, the Consultant shall furnish the performance security in any the forms chosen by the Procuring Entity prescribed in the **ITB** Clauses 33.2 and 33.3.

45.2 The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the Consultant is in default in any of its obligations under the contract.

45.3 The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.

45.4 The performance security may be released by the Procuring Entity and returned to the Consultant after the issuance of the Certificate of Final Acceptance subject to the following conditions:

a) There are no pending claims against the Consultant or the surety company filed by the Procuring Entity;

b) The Consultant has no pending claims for labor and materials filed against it; and

c) Other terms specified in the **SCC**.

45.5 The Procuring Entity shall allow a proportional reduction in the original performance security in case of a reduction of the contract value, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

46) Standard Performance

46.1 The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods.

46.2 The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with third parties.

46.3 The Consultant shall furnish to the Procuring Entity such information related to the Services as the Procuring Entity may from time-to-time reasonably request.

46.4 The Consultant shall at all times cooperate and coordinate with the Procuring Entity with respect to the carrying out of its obligations under this Contract.

47) Consultant Not to Benefit from Commissions, Discounts, etc.

The remuneration of the Consultant pursuant to **GCC** Clause 54 hereof shall constitute the Consultant's sole remuneration in connection with this Contract or the Services and, subject to **GCC** Clause 48 hereof, the Consultant shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations hereunder, and the Consultant shall use its best efforts to ensure that its Personnel and agents similarly shall not receive any such additional remuneration.

48) Procurement by the Consultant

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

49) Reports

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

50) Assistance by the Procuring Entity on Government Requirements

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

50.2 The Procuring Entity shall use its best efforts to ensure that the Government shall:

a) provide the Consultant and Personnel with work permits and such other documents as shall be necessary to enable the Consultant or Personnel to perform the Services;

b) arrange for the foreign Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, and any other documents required for their stay in the Philippines for the duration of the Contract;

c) facilitate prompt clearance through customs of any property required for the Services and of the necessary personal effects of the foreign Personnel and their eligible dependents;

d) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services; and

e) grant to foreign Consultant, including its Personnel, the privilege, pursuant to the Applicable Law, of bringing into the Government's country reasonable amounts of foreign currency for purposes of the Services or for the personal use of the foreign Personnel and their dependents.

51) Access to Land

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

52) Accounting, Inspection and Auditing

52.1 The Consultant shall:

a) Keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as to clearly identify all relevant time changes and costs, and the bases thereof;

b) Permit the Procuring Entity or its designated representative and or the designated representative of the Funding Source at least once for short-term Contracts, and annually in the case of long-term Contracts, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Procuring Entity; and

c) Permit the Funding Source to inspect the Consultant's accounts and records relating to the performance of the Consultant and to have them audited by auditors approved by the Funding Source, if so required.

52.2 The basic purpose of this audit is to verify payments under this Contract and, in this process, to also verify representations made by the Consultant in relation to this Contract. The Consultant shall cooperate with and assist the Procuring Entity and its authorized representatives in making such audit. In the event the audit discloses that the Consultant has overcharged the Procuring Entity, the Consultant shall immediately reimburse the Procuring Entity an amount equivalent to the amount overpaid. If overpayment is a result of the Consultant having been engaged in what the Procuring Entity (or, as the case may be, the Funding Source) determines to constitute corrupt, fraudulent, or coercive practices, as defined in **GCC** Clause 30.1(e) and under the applicable laws, the Procuring Entity shall, unless the Procuring Entity decides otherwise, terminate this Contract.

52.3 The determination that the Consultant has engaged in corrupt, fraudulent, coercive practices 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 in including imprisonment under applicable laws.

53) Contract Cost

53.1 Except as may be otherwise agreed under **GCC** Clause 10, payments under this Contract shall not exceed the ceiling specified in the **SCC**. The Consultant shall notify the Procuring Entity as soon as cumulative charges incurred for the Services have reached eighty percent (80%) of this ceiling.

53.2 Unless otherwise specified in the **SCC**, the cost of the Services shall be payable in Philippine Pesos and shall be set forth in the Appendix IV attached to this Contract.

54) Remuneration and Reimbursable Expenditures

54.1 Payments of Services do not relieve the Consultant of any obligation hereunder.

54.2 Remuneration for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services including other additional factors indicated in the **SCC** after the date determined in accordance with **GCC** Clause 22, or such other date as the Parties shall agree in writing, including time for necessary travel via the most direct route, at the rates referred to, and subject to such additional provisions as are set forth, in the **SCC**.

54.3 Remuneration for periods of less than one month shall be calculated on an hourly basis for time spent in home office (the total of 176 hours per month shall apply) and on a calendar-day basis for time spent away from home office (1 day being equivalent to 1/30th of a month).

54.4 Reimbursable expenditures actually and reasonably incurred by the Consultants in the performance of the Services are provided in the **SCC**.

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

a) The Procuring Entity shall cause to be paid to the Consultant an advance payment as specified in the **SCC**, and as otherwise set forth below. The advance payment shall be due after the Consultant provides an irrevocable standby letter of credit in favor of the Procuring Entity issued by an entity acceptable to the Procuring Entity in accordance with the requirements provided in the **SCC**.

b) As soon as practicable and not later than fifteen (15) calendar days after the end of each calendar month during the period of the Services, the Consultant shall submit to the Procuring Entity, in duplicate, itemized statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to **GCC** Clauses 53.1 and 54 for such month. Separate monthly statements shall be submitted in respect of amounts payable in foreign currency and in local currency. Each separate monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures.

c) The Procuring Entity shall cause the payment of the Consultant's monthly statements within sixty (60) calendar days after the receipt by the Procuring Entity of such statements with supporting documents. Only such portion of

a monthly statement that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Procuring Entity may add or subtract the difference from any subsequent payments. Interest shall be paid for delayed payments following the rate provided in the **SCC**.

55) Final Payment

55.1 The final payment shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Services shall be deemed completed and finally accepted by the Procuring Entity and the final report and final statement shall be deemed approved by the Procuring Entity as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Procuring Entity unless the Procuring Entity, within such ninety (90)-day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final statement. The Consultant shall thereupon promptly make any necessary corrections within a maximum period of ninety (90) calendar days, and upon completion of such corrections, the foregoing process shall be repeated.

55.2 Any amount which the Procuring Entity has paid or caused to be paid in accordance with this clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Procuring Entity within thirty (30) calendar days after receipt by the Consultant of notice thereof. Any such claim by the Procuring Entity for reimbursement must be made within twelve (12) calendar months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with the above.

56) Lump Sum Contracts

56.1 For Lump Sum Contracts when applicable, notwithstanding the terms of **GCC** Clauses 10, 18.1, 34(c), 44.3, 54.2, 54.3, 54.4, 54.5, and 55.1, the provisions contained hereunder shall apply.

56.2 Personnel - Any replacement approved by the Procuring Entity in accordance with **ITB** Clause 28.3 shall be provided by the Consultant at no additional cost.

56.3 Staffing Schedule - Should the rate of progress of the Services, or any part hereof, be at any time in the opinion of the Procuring Entity too slow to ensure that the Services are completed in accordance with the Staffing Schedule, the Procuring Entity shall so notify the Consultant in writing and the Consultant shall at its sole cost and expense, thereupon take such steps as necessary, subject to the Procuring Entity's approval, or as reasonably required by the Procuring Entity, to expedite progress so as to ensure that the Services are completed in accordance with the Staffing Schedule.

56.4 Final payment pursuant to the Payment Schedule in Appendices IV and V shall be made by the Procuring Entity after the final report has been submitted by the Consultant and approved by the Procuring Entity.

56.5 Termination - Upon the receipt or giving of any notice referred to in **GCC** Clause 32 and if the Consultant is not in default under this Contract and has partly or substantially performed its obligation under this Contract up to the date of termination and has taken immediate steps to bring the Services to a close in prompt and orderly manner, there shall be an equitable reduction in the maximum amount payable under this Contract to reflect the reduction in the Services, provided that in no event shall the Consultant receive less than his actual costs up to the effective date of the termination, plus a reasonable allowance for overhead and profit.

56.6 An equitable adjustment in contract price may be mutually agreed upon by the Procuring Entity and the Consultant in writing using similar rates or unit prices as provided in **SCC**, or it not available, using applicable or current rates and prices to cover the amended or additional items in the consultancy contract, provided that the total increase in cost does not exceed 20% of the contract price.

57) Liquidated Damages for Delay

When the consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the consultant shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.

In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the contract may be rescinded or terminated by the Procuring Entity, without prejudice to other courses of action and remedies available under the circumstances. In case the contract is terminated, the Procuring Entity may take over the contract or award the same to a qualified consultant through negotiated procurement. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.

In case the delay in the completion of the services exceeds ten percent (10%) of the specified contract time plus any time extension duly granted to the consultant, the Procuring Entity may terminate the contract. It then forfeits the consultant's performance security and takes over the prosecution of the contract or awards the same to a qualified consultant through negotiated procurement.

Section V. Special Conditions of Contract

Special Conditions of Contract

GCC Clause	
1.1	The Procuring Entity is Philippine Ports Authority.
1.2	The Consultant is _____
1.3	The Funding Source is: The Government of the Philippines (GoP) through the PPA's Corporate Budget for C.Y. 2026.
6.2(b)	For a period of two years after the expiration of this Contract, the Consultant shall not engage, and shall cause its Personnel not to engage, in the activity of a purchaser (directly or indirectly) of the assets on which they advised the Procuring Entity under this Contract nor in the activity of an adviser (directly or indirectly) of potential purchasers of such assets. The Consultant also agrees that their affiliates shall be disqualified for the same period of time from engaging in the said activities.
7	Not applicable.
8	The person designated as resident project manager in Appendix III shall serve in that capacity, as specified in **GCC** Clause 8.
10	No further instructions.
12	The Authorized Representatives are as follows: For the Procuring Entity: **MARK JON S. PALOMAR** **Chairperson, HO-BAC-EP-CON** For the Consultant: _____
15.1	The Procuring Entity's address for Notices is: Address: Philippine Ports Authority, PPA Building, A. Bonifacio Drive, South Harbor, Port Area, Manila Name of Contact: **MARK JON S. PALOMAR** **Chairperson, HO-BAC-EP-CON** Fax and Telephone No.s: 85278374-77 loc. 610 The Consultant's address for Notices is: Address: _____ Name of Contact: _____ Fax and Telephone No.: _____
15.2	No further instructions.
18.2	Consultant's account where payment may be made: _____
19	No further instructions
20)	All partners to the joint venture shall be jointly and severally liable to the Procuring Entity.
22	None

24	The time period shall be twelve (12) months or such other time period as the parties may agree in writing.
37.2	Any and all disputes arising from the implementation of this contract may be submitted to arbitration or other forms of alternative dispute resolution in the Philippines according to the provisions of Republic Act No. 9285, as required in Section 88 of the IRR of RA 12009. To ensure efficiency in the procurement process, parties to the dispute are encouraged to select the most expeditious mode of dispute resolution.
38.1	The drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Procuring Entity under this Contract that shall become and remain the property of the Procuring Entity are as follows: (a) Technical and Survey Reports (b) Special Reports (c) Draft Final Report (Hard and Electronic Copy) (d) Final Report (Hard and Electronic Copy)
41(c)	The Consultant's actions requiring the Procuring Entity's prior approval are as follows: (a) Progress Billing (b) Key Personnel Replacement (c) Contract Time Extension
42.5	The Consultant may change its Key Personnel only for justifiable reasons as may be determined by the Procuring Entity, such as death, serious illness, incapacity of an individual Consultant, resignation, among others, or until after fifty percent (50%) of the Personnel's man-months have been served. Violators will 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.
45.4(c)	No further instructions.
53.1	The total ceiling amount in Philippine Pesos is ₱41,906,555.00.
53.2	No further instructions.
54.2	No additional instructions.
54.4	The following expenditures in foreign currency shall be reimbursed in local currency at the exchange rate used on the date of Bid opening: 1) a per diem allowance for each of the foreign or local Personnel for every day in which such Personnel shall be absent from his home office and shall be outside the country of the Government for the purpose of the Services at the daily rate specified in Appendix IV;

	2) the following transportation costs: a) the cost of international transportation of the foreign Personnel and, as specified below, eligible dependents of the foreign Personnel, by the most appropriate means of transport and the most direct practicable route to and from the Consultant's home office; in the case of air travel, this shall be by less than first class; b) the cost of transportation to and from the Government's country of eligible dependents who shall be the spouse and not more than two (2) unmarried dependent children under eighteen (18) years of age of those of the foreign Personnel assigned to resident duty in the Government's country for the purpose of the Services for periods of six (6) consecutive months or longer, provided that the stay of such dependents in the Government's country shall have been for not less than three (3) consecutive months, duration. If the project period for resident staff of the foreign Personnel shall be thirty (30) months or more, one extra economy class air trip for their eligible dependents for every twenty-four (24)-month project shall be reimbursed; c) for the air travel of each of the foreign Personnel, and each eligible dependent, the cost of excess baggage up to twenty (20) kilograms per person, or the equivalent in cost of unaccompanied baggage or air freight; and d) miscellaneous travel expenses such as the cost of transportation to and from airports, airport taxes, passport, visas, travel permits, vaccinations, etc., at a fixed unit price per round trip as specified in Appendix IV; 3) the cost of communications (other than those arising in the Government's country) reasonably required by the Consultant for the purposes of the Services; 4) the cost of printing, reproducing and shipping of the documents, reports, drawings, etc. specified in Appendix IV; 5) the cost of acquisition, shipment and handling of the following equipment, instruments, materials and supplies required for the Services: *[insert amount]*; 6) the cost of shipment of personal effects up to *[insert amount]*; 7) the cost of programming and use of, and communication between, the computers for the purposes of the Services at the rate set forth in Appendix IV; 8) the cost of training of the Procuring Entity's personnel outside the Government's country, as specified in Appendix IV;

	9) the cost of laboratory tests on materials, model tests and other technical services authorized or requested by the Procuring Entity, as specified in Appendix IV; 10) the cost of items not covered in the foregoing, but which may be required by the Consultant for completion of the Services, subject to the prior authorization in writing by the Procuring Entity; and 11) any such additional payments in foreign currency for properly procured items as the Parties may have agreed upon. The reimbursable expenditures in local currency shall be as follows: 1) the cost of the following locally procured items: local transportation, office accommodations, camp facilities, camp services, soil testing, equipment rentals, supplies, utilities and communication charges arising in the Government's country, all if and to the extent required for the purpose of the Services, at rates specified in Appendix IV; 2) the cost of equipment, materials and supplies to be procured locally in the Government's country as specified in Appendix IV; 3) any such additional payments in local currency for properly procured items as the Parties may have agreed upon pursuant to this Contract; and 4) the ordinary and necessary cost of such further items as may be required by the Consultant which are actually, directly, and necessarily used for the purpose of the Services, as agreed in writing by the Procuring Entity.
54.5(a)	No advance payment is allowed.
54.5(c)	The interest rate is: 0%
56.6	The applicable or current rates and prices to cover the amended or additional items in the consultancy contract, which does not exceed 20% of the contract price.

Section VI. Terms of Reference

TERMS OF REFERENCE FOR THE CONSULTANCY SERVICES FOR THE CONDUCT OF FEASIBILITY STUDIES AND FORMULATION OF MASTER PLANS AT SELECTED PORTS

1. INTRODUCTION

1.1. The Philippine Ports Authority (PPA) wishes to engage the services of a consulting firm to Conduct Feasibility Studies and Formulate Master Plans for selected ports in accordance with the Guidelines on the Procurement of Consulting Services for Government Projects and following the provisions of **Republic Act No. 12009** and its IRR.

1.2. These Terms of Reference are intended to convey the Scope of Services required of the Consultant.

1.3. This undertaking shall cover the following ports:

1. Luneta Ferry Terminal, Manila
2. Manila International Cruise Terminal, Brgy. Tambo, Parañaque, Metro Manila
3. Anilao, Mabini, Batangas
4. Mainaga, Mabini, Batangas
5. Mulanay, Quezon
6. San Vicente, Brgy. Poblacion, San Vicente, Palawan
7. Codon, Catanduanes
8. Pulupandan, Negros Occidental
9. Brgy. Poblacion, Municipality of Alicia, Zamboanga Sibugay
10. Sultan Naga Dimaporo, Lanao del Norte

2. OBJECTIVES OF THE STUDY

2.1. The general objective of this package of feasibility studies and master plans is to meet the increasing port services required for various regions agri-industrial development and tourism enhancement and to determine the long-term directions in the development of the selected ports and to evaluate the **technical soundness, operational and economic feasibility and financial viability** of any proposed short-term improvements at and/or expansion of these selected ports as well as to undertake **Initial Environmental Examinations** (IEE) and to recommend the conduct of full-blown **Environmental Impact Assessments** (EIA), if and where warranted.

2.2. The specific objectives are as follows:

1. To determine the future traffic and to analyze the present technical and operational conditions of the ports including the surrounding environmental conditions and to present an actual port orientation relative to the prevailing current, wind, tidal monsoon conditions/history, and current flow;

2. To determine the required improvements and/or additional port facilities and equipment to be provided, if any, to handle the future traffic and the manner by which the ports should be operated and managed;

3. To assess the strategic importance of the port;

4. To determine the effect of climate change in the port;

5. To determine if inclusion of the port in the Road RO-RO Transport System (RRTS), and in the Major RORO Routes is feasible and to make appropriate recommendations thereon;

6. To determine the economic feasibility of the proposed projects, that is, from the viewpoint of the national economy;

7. To determine the financial viability of the proposed projects **if private operators** were to undertake the financing, construction, maintenance, operation and management of the Port;

8. To determine the financial viability of the proposed projects **if PPA** were to undertake the financing, construction, maintenance, operation and management of the Port;

9. To determine **if a joint venture between PPA and private sector** is financially viable and doable;

10. To determine the impact of the proposed projects on the overall and long-term financial viability of the PPA under the three scenarios (by private port operators, by PPA itself and PPA-Private Sector joint venture);

11. To conduct IEEs of the proposed projects with regard to their respective surrounding areas and to define the courses of action to be undertaken to mitigate such impact and, if and where warranted, to recommend the conduct of full-blown EIAs.

12. To assess the port in terms of its requirements for **computerization** and in compliance under the International Ship and Port Facility Security (**ISPS**) Code.

3. SCOPE OF WORK

The Consultant shall render all the required and necessary services to achieve the abovementioned objectives in accordance with internationally accepted standards, conventions and practices for the conduct of Port Feasibility Studies and Master Plans. The Scope of Services to be undertaken by the Consultant shall include but shall not be limited to the following:

3.1. PREVIOUS STUDIES AND INVESTIGATIONS

1. The Consultant shall review previous studies, if any, related to the projects. The Consultant shall also review past investigations made within the project sites such as surveys and investigations and determine the adequacy of available data and information in relation to the requirements of this Study.

2. Within **two (2) months from the start of the Study**, the Consultant shall submit an **Inception Report** incorporating among others its findings on the previous studies and reports and recommend additional surveys and investigations that may be required.

3.2. EXISTING CONDITIONS AND DEMAND

1. The Consultant shall review and analyze past and present oceanographic, meteorological, seismic and other data relating to the physical and natural conditions likely to affect the planning, design, orientation and operation of the selected ports with the implementation of the respective proposed projects. The Consultant shall also analyze the siltation condition of the port as one of the factors to be considered in the design and orientation of the port.

2. The Consultant shall investigate the existing port facilities to determine their physical conditions with the end in view of recommending any repairs and/or rehabilitation works to be undertaken. Within **four (4) months from the start of the Study**, the Consultant shall submit a separate **Technical Paper on Existing Facilities,** for each study port.

3. The Consultant shall define and analyze the present system of port operations to include the handling systems and procedures, adequacy of cargo handling equipment, open and closed storage areas, port labor force, utilization of the port facilities, productivity as well as determine the capacity of the various existing port facilities. The Consultant shall analyze also the waiting and service times of vessels, berth throughput and berth occupancy.

4. The Consultant shall analyze the adequacy of cargo handling services, ancillary services like pilotage, safety and security within the Port and its harbor, equipment maintenance facilities, garbage/waste disposal, etc. The Consultant shall also analyze the adequacy of the land and water access to the ports.

5. Based on the analysis of port operations, physical and natural conditions and other factors, the Consultant shall analyze the present productivity and capacity of the selected ports and, if warranted, analyze and recommend achievable productivities and capacities of the ports. Within **six (6) months from the start of the Study**, the Consultant shall submit a separate **Technical Paper on the Existing Operational System** for each study port.

6. The Consultant shall review and analyze past data on cargo, vessel, passenger and vehicle traffic. The analyses of the cargo traffic shall be segregated into foreign and domestic cargo, inward and outward as well as containerized (lift-on/lift-off, roll-on/roll-off or other type of handling), dry bulk, liquid bulk, break-bulk and other non-containerized cargo. The various commodity types shall be analyzed as to volume, level of containerization and other characteristics. The particulars of vessels in terms of length overall (LOA), GRT, DWT, required water depth, etc., shall also be looked into. The passenger traffic shall be classified into foreign and domestic and categorized into disembarking, embarking, and cruise passengers. The vehicle traffic shall be segregated into outbound and inbound, and by classification (type 1, type 2, type 3, and type 4 vehicles).

7. The Consultant shall prepare forecasts of cargo, vessel, passenger and vehicle traffic, with details of the methods and parameters used in the projection. The projections must show in detail the source and segregation of foreign and domestic cargo, inward and outward cargo, disembark, embark and cruise passengers, containerized (volume and TEUs/Boxes) and non-containerized cargo. In the forecasts of containerized cargo, the Consultant shall analyze the type of commodities, determine the future level of container usage. In the forecasts of vehicle traffic, the Consultant shall indicate the projected average load/operating weight of vehicles, with factor/s used in converting the vehicles into its load/operating weight, and percentage distribution of vehicles per classification. The forecasts of vessel traffic must indicate the projected average shipload, number of ship-calls and other particulars that are required for the proposed developments.

   The traffic forecasts should not be limited only to the normal traffic but the Consultant shall assess and take into account relevant economic activities and development within the influence area of the port that may generate additional traffic, if any.

   Likewise, the Consultant shall take into consideration existing and planned development or expansion of nearby ports which may affect the forecasting of port traffic. The Consultant shall assess probable diversion of traffic taking into consideration travel time and transport costs, among others. If such diverted traffic is likely, the projection should show separately the normal from the generated/induced and/or diverted traffic.

The Consultant shall present the regional and local socio-economic framework and its port hinterlands, considering that these are some of the sources of the port's cargo traffic and correspondingly on the port's required future expansion.

8. The projection of traffic shall be on a yearly basis for the next ten years (2027 to 2036) and every five years thence for the next fifteen years for a total of 25 years.

9. The Consultant shall submit a Port Traffic Forecast Model, which should be in a traceable formula format (methods/assumptions/parameters used in the projection of port traffic including analysis of past or future data shall be shown in a Microsoft Excel work sheets).

10. The Consultant shall ensure that all traffic forecasts are determined impartially, fairly and as a result of extensive consultations, if necessary through public hearings, with all stakeholders. Within **seven (7) months from the start of the Study**, the Consultant shall submit a separate **Technical Paper on Traffic Forecasts** for each study port describing the methodology, assumptions and parameters used in preparing the forecasts.

11. The Consultant shall formulate a Master Plan for each of the selected ports based on 25-year forecasts. As much as possible, the Consultant shall prepare the short, medium and long term plan and at least three alternative schemes of the Master Plan taking into consideration the physical and natural conditions, among others. The advantages and disadvantages for each alternative shall be presented together with the recommended option.

    Where there are limitations on the existing location of the port in terms of its future expansion, and/or limitation in terms of land- and water-side access to the existing port, the Consultant shall assess other sites for the port expansion and recommend a suitable port site. Such recommendation shall be incorporated in the Master Plan.

    The Consultant shall also analyze the existing and future road access to the port to prevent a situation where usage of modern facilities will be hindered due to poor road access.

12. On the basis of the projections (demand) and the capacity of the port (supply), the Consultant shall determine the need to improve and/or expand the port facilities using the projected traffic of 2036 as the design traffic. Within **eight (8) months from the start of the Study**, the Consultant shall submit a separate **Technical Paper on the Port Master Plan** for each study port.

3.3. PROPOSED DEVELOPMENT AND OPERATION

1. Taking into consideration the comments of various stakeholders on the Consultant's initial traffic forecasts, the Consultant shall refine the traffic forecasts as well as the Master Plan that PPA will adopt.

2. On the basis of the design traffic year of 2036, the Consultant shall determine the port facilities required and define the improvements, additional port facilities and/or expansion to handle the traffic in the design year.

3. The Consultant shall determine the types of berths, the optimum number of such berths, the berth lengths, storage areas and other port facilities required both on the landside and waterside as well as the preliminary design of the structures and estimated costs of such facilities within a ± 15% level of accuracy. The Consultant shall also undertake the preliminary design and prepare cost estimates for any repair/rehabilitation work on the existing facilities, if any. The estimated costs shall be prepared based on a pay-item basis.

4. The Consultant shall define the appropriate cargo handling systems and procedures, the type and number of equipment appropriate for the proposed physical development, organizational structure and staffing for the private operators, including the determination of the investment, repair/maintenance and operating costs. Such investment and operating costs shall be segregated between that of PPA, if any, and the private operator.

5. The Consultant shall prepare the preliminary design criteria for both the physical structures and the proposed cargo handling equipment.

6. The Consultant shall prepare the detailed port layout plans including details of major items and dimensions of the same in metric units as well as the implementation schedules.

7. Within **nine (9) months from the start of the Study**, the Consultant shall submit a **Technical Report on the Preliminary Engineering and Port Development Plan,** to include cost estimates of the recommended development project in each study port.

8. Within **ten (10) months from the start of the Study**, the Consultant shall submit an **Interim Report** showing all their findings based on the Scope of Work of Items 3.1, 3.2 and 3.3 above and as contained in the Technical Papers previously submitted incorporating all the comments and suggestions of all stakeholders.

3.4. ECONOMIC EVALUATION

1. The Consultant shall prepare the conceptual framework for the economic evaluation explaining criteria to be used for the evaluation of economic benefits, the concepts to be used in the analysis of the project costs into its economic and financial values, treatment for the shadow pricing to arrive at the economic costs and benefits and the discount rate to be used, among others.

2. The Consultant shall identify, explain and quantify the quantifiable economic benefits and economic costs.

   The economic benefits shall constitute an increase in output or savings in resource use, e.g. reduced vehicle operating costs, travel time savings, reduced vessel service/waiting time, inventory cost savings, etc. On the other hand, the basic guidelines in identifying the costs of a project stem from the definition of cost itself or activities that involve use of real resources. Cost items are usually classified into two (2) types which are capital costs and operating and maintenance costs.[1]

3. The Consultant shall then determine the economic feasibility of each of the projects (i.e. economic internal rate of return, economic net present value and benefit-cost ratio) based on the calculated stream of economic benefits and costs. The period of economic evaluation shall be for 25 years.

4. The Consultant shall undertake sensitivity analyses on the economic evaluation.

5. The Consultant shall submit an Economic Model, which should be in a traceable formula format (assumptions/inputs shall be shown in a summary sheet that are linked to the relevant work sheets of the model) and contain information that are up-to-date.

3.5. FINANCIAL EVALUATION

1. The Consultant shall prepare the conceptual framework for the financial evaluation explaining the criteria to be used for evaluating financial costs and revenues.

2. The Consultant shall identify and quantify all relevant financial costs and financial revenues.

3. The Consultant shall determine the financial viability of each of the projects (i.e. free cash flows to firm and equity holders, project and equity internal rates of return, project and equity net present value, weighted average cost of capital, cost of equity components based on Capital Asset Pricing Model (CAPM)) under various development and tariff

[1] Based on the Investment Coordination Committee (ICC) Project Evaluation Procedures and Guidelines.

scenarios involving private sector participation (e.g. Public-Private Partnership (PPP) modality, Joint Venture Agreement), and involving development solely by PPA. Should the Project be **not financially viable** using the existing tariff, the Consultant shall determine the tariff scenarios that would yield Financial Internal Rates of Return of 10 percent 15 percent and 20 percent.

The financial analysis shall also contain the following: a) projected balance sheet of the project for its full life cycle; b) income statement of the project for its full life cycle; c) cash flows statement of a project for its full life cycle; d) calculations on bankability (e.g. debt service coverage ratio); and e) amounts to be paid and schedule of payments of firm liabilities.

4. The Consultant shall undertake sensitivity analyses on the financial evaluation.

5. The Consultant shall submit a Financial Model, which should be in a traceable formula format (assumptions/inputs shall be shown in a summary sheet that are linked to the relevant work sheets of the model) and contain information that are up-to-date.

6. Within **eleven (11) months from the start of the Study**, the Consultant shall submit a **Draft Final Report** of the master plans and feasibility studies for the review of PPA. The report shall contain all the findings, analyses, calculations, plans, drawings and recommendations. The **Final Report** shall be submitted by the Consultant **within one month from the receipt of the comments** of PPA incorporating said comments in the Report.

3.6. INITIAL ENVIRONMENTAL EXAMINATION

1. The Consultant shall undertake Initial Environmental Examinations on the impact of the proposed projects to include but not be limited to

    - Impact relating to the project location
    - Impact during construction
    - Impact during port operation

2. Such IEEs shall be undertaken in preparation, if and were warranted, for any recommended full-blown Environmental Impact Assessment (EIA) required under Philippine laws, policies, rules and regulations of the Department of Environment and Natural Resources (DENR) and other concerned government agencies. **Within ten (10) months from the start of the Study, if an EIA is recommended and justified for a particular study port, the Consultant shall prepare and submit appropriate Terms of Reference (TOR) to the PPA which will be bid out under a separate consultancy contract.**

3. The results of such IEEs shall be included in the Draft Final Report.

3.7. TERMS OF REFERENCE FOR DETAILED ENGINEERING

1. In the event that PPA shall undertake the projects itself, the Consultant shall prepare the Terms of Reference for the procurement of detailed engineering consultancy services similar in format to these TOR. This shall be in a separate cover and submitted together with the Draft Final Report of the feasibility studies.

4. SCHEDULE

The services shall be carried out for a period of twelve (12) months from the receipt by the winning bidder of the Notice to Proceed (NTP).

5. OTHER RELATED TASK

The Consultant shall be called upon by PPA to provide pertinent information on any queries, appear before commissions, boards or other judicial bodies to give evidence or otherwise submit professional opinions related to the Study, as necessary.

6. REQUIRED EXPERTISE, PROPOSALS, REPORTS, FACILITIES AND EQUIPMENT

The proposed consulting services shall be carried out by experienced consultants with the following minimum specialization which is anticipated to be required in this package of studies:

- 1 – Project Manager/Port Planner
- 1 – Deputy Project Manager/Port Design Engineer
- 1 – Civil/Structural Engineer
- 1 – Electrical Engineer
- 1 – Port Operation Specialist
- 1 – Economist
- 1 – Financial Analyst
- 1 – Cost Engineer (Civil Engineer)
- 1 – Transport Economist
- 1 – Geotechnical Engineer (Civil Engineer)
- 1 – Geodetic Engineer
- 1 – Environmental Specialist

The above personnel shall have a Bachelor's degree (or equivalent) as a **minimum qualification** and **five (5) years' relevant experience** as a minimum. All of the Consultant's personnel assigned and committed to the Study are expected to be physically fit. Any key staff or support staff may be called upon to report to the PPA Project Manager and assist the PPA staff in project development activities during the period of the Study.

The reports to be submitted are those as specified above. In addition, the Consultant may be required to submit monthly progress and special reports to be submitted on or before the 3rd day of the month. The number of copies of the reports shall be as follows.

1. Inception Report	11 copies
2. Technical Paper on Existing Facilities	3 copies per port
3. Technical Paper on Existing Operational System	3 copies per port
4. Technical Paper on Traffic Forecasts	3 copies per port
5. Technical Paper on Port Master Plan	3 copies per port
6. Technical Paper on Preliminary Engineering & Port Development Plan	3 copies per port
7. Interim Report	3 copies per port
8. Draft Final Report	3 copies per port
9. Final Report (with separate Executive Summary per port)	8 copies per port
10. Initial Environmental Examination Report (with TOR for EIA if recommended, per port)	2 copies
11. Monthly Progress Reports	10 copies
12. Special Reports	as needed
13. TOR for Detailed Engineering	2 copies per port

In addition to paper-printed copies, the Consultant shall submit the following in **electronic media, e.g. compact disc-rewritable (CD-RW), USB flash drive, in a format and form replicating the paper-print copies**:

1. Inception Report
2. Technical Paper on Existing Facilities
3. Technical Paper on Existing Operational System
4. Technical Paper on Traffic Forecasts
5. Technical Paper on Port Master Plan
6. Technical Paper on Preliminary Engineering & Port Development Plan
7. Interim Report
8. Draft Final Report
9. Final Report (with separate Executive Summary per port)
10. IEE Report or TOR for EIA if recommended
11. Monthly Progress Reports
12. Special Reports
13. TOR for Detailed Engineering

Since remuneration rates are quoted on a monthly basis while the milestone or deliverable will follow an agreed schedule (not necessarily monthly), claims for the payment of a deliverable should reflect a breakdown of the value of person-days (or person-hours whichever is agreed upon) served by each of the consultancy firm's personnel allocated to the completion of that deliverable.

The Consultant shall also include in their consultancy proposal the costs for the provisions of domestic travel expenses, communication expenses, cost of office supplies, and cost of printing/binding and reproduction of reports to be submitted, etc. that may be required by the Study.

7. RESPONSIBILITIES OF PPA

a. The PPA will provide all previous studies, available reports, documents, drawings, maps, photographs, statistics and other information related to the Project as needed. However, the Consultant is still responsible for the accuracy and adequacy of all data.

b. The PPA may provide counterpart staff. The counterpart staff, if provided, shall remain employees of PPA. The PPA staff will be headed by a Project Manager.

8. SURETY OR WARRANTY BOND FOR THE STUDY

PPA may require the posting of a surety or warranty bond by the Consultant to defray any costs to rectify any defects or deficiencies in the Study.

9. LIQUIDATED DAMAGES FOR DELAY

When the Consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the Consultant shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.

In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the contract may be rescinded or terminated by the PPA, without prejudice to other courses of action and remedies available under the circumstances. In case the contract is terminated, the PPA may take over the contract or award the same to a qualified consultant through negotiated procurement. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.

In case the delay in the completion of the services exceeds ten percent (10%) of the specified contract time plus any time extension duly granted to the Consultant, the PPA may terminate the contract. It then forfeits the Consultant's performance security and takes over the prosecution of the contract or awards the same to a qualified consultant through negotiated procurement.

10. APPROVED BUDGET FOR THE CONTRACT

The **Approved Budget for the Contract (ABC)** is **FORTY-ONE MILLION NINE HUNDRED SIX THOUSAND FIVE HUNDRED FIFTY-FIVE PESOS (₱41,906,555.00).**

11. SELECTION CRITERIA FOR PROPOSAL

The shortlisted Consultants shall be evaluated using the **Quality-Cost Based Evaluation (QCBE)** procedure under R.A. 12009 and its IRR at **eighty-five percent (85%)** for the **Technical Proposal** (with a Minimum Qualifying Mark of 70%) and **fifteen percent (15%)** for the **Financial Proposal**.

Prepared by:	Checked by:	Reviewed by:
JOANNA KATE V. SIMON	**JOVANI F. GABITAN**	**MELODY E. ESPIRIDION**
Senior Economist A	Senior Economist A	Manager, PPD

Recommending Approval:

REYNAND C. PARAFINA
Manager, PPDD

Approved by:

JAMES J. GANTALAO
Assistant General Manager
for Engineering