



**Office of Administrative Services**  
Procurement and Contracts Administration Unit

To: Attention:	Email: Country: Philippines
From: Olivier J. Leonard Senior Procurement Specialist	Date:

**Subject: Request for Proposal (RFP) — TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB’S ASSET MANAGEMENT SYSTEM TO ISO 55001**

**1. Scope of Services**

- 1.1 The Asian Development Bank (ADB), a multilateral development finance institution headquartered in Manila, Philippines, invites you to submit a Proposal for the Technical Support Services for the Development of ADB’s Asset Management System to ISO 55001 (hereinafter referred to as the “Services”).
- 1.2 The successful bidder/s (herein referred to as “Contractor”) shall provide ADB with required Services in the manner set forth in the Terms of Reference (**Appendix 1**).
- 1.3 The Services will be complete in all respect, and will include the costs of manpower, supplies, materials, labor, tools and equipment, supervision, transportation and other costs incidental thereto.
- 1.4 The Bids/Responses should be completed and submitted to ADB in accordance with the provisions contained herein.

**2. Qualification of Bidders**

- 2.1 To be qualified for the bidding the bidder must:
  - 2.1.1 Have the nationality on an eligible country in accordance with the List of ADB Eligible Member Countries, with at least 5 years of legal existence. A Bidder shall be deemed to have the nationality of a Member Country if it is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country;

- 2.1.2 Have a sound financial standing (i.e. positive net worth) over the last three (3) years, from 2015 to 2017. As a minimum, the Bidder's net worth, calculated as the difference between total assets and total liabilities, should be positive;
- 2.1.3 Has at least 5 years of experience in providing Technical Support Services for ISO Standards certification with at least 2 projects certified in ISO standards;
- 2.1.4 Has completed at least 1 project that is similar in the scope of work, defined as the provision of technical support services in the development of an Asset Management System to ISO 55001:2014 standards;
- 2.1.5 Be an accredited technical support service provider for ISO 55001 standards development; and
- 2.1.6 Not be under a declaration or record of ineligibility for corrupt and/or fraudulent practices issued or kept by ADB.

### 3. Contents of Request for Proposal

3.1	Terms of Reference	-	<b>Appendix 1</b>
3.2	Service Level Agreement	-	<b>Appendix 1.1</b>
3.3	Technical Bid Form	-	<b>Appendix 2</b>
3.4	Technical Bid Proposal Form	-	<b>Appendix 3</b>
3.5	Technical Evaluation Criteria	-	<b>Appendix 4</b>
3.6	Financial Bid Form	-	<b>Appendix 5</b>
3.7	Form of Secretary's Certificate	-	<b>Appendix 6</b>
3.8	Bid Securing Declaration	-	<b>Appendix 7</b>
3.9	Form of Performance Security	-	<b>Appendix 8</b>
3.10	Form of Contract Agreement	-	<b>Appendix 9</b>
3.11	Bidder's Information Sheet	-	<b>Appendix 10</b>

### 4. Composition of Proposal

The Proposal will be composed of the following:

- (i) Completed Technical Bid Form (**Appendix 2**), Technical Bid Proposal Form (**Appendix 3**);
- (ii) Completed Financial Bid Form (**Appendix 5**);
- (iii) Secretary's Certificate or Written Power of Attorney (**Appendix 6**). Furnish a Notarized authorization letter stating the name and official position held by the person authorized to sign the Bid and the formal Contract. The person authorized to sign the Bid should also sign the conforme in the certification;
- (iv) Signed Bid Securing Declaration Form (**Appendix 7**); and

- (v) Completed Bidder's Information Sheet (**Appendix 10**)

## 5. Bid Currency

The rates will be quoted in Philippine Pesos or US Dollar or any acceptable currency of an ADB member country. The rates of exchange will be the ADB Oracle GL Daily rates of 12 September 2018 (date of bid submission deadline).

## 6. Price

6.1 Unless otherwise specifically stated in the Contract, the prices will be deemed to include, inter alia, (i) labor costs; (ii) use of facilities, tools and equipment; (iii) supplies and materials including wastage; (iv) transportation to ADB-HQ; (v) administrative, supervision and overhead expenses; (vi) profit; and (vii) incidental expenses for the provision of the required Services. Since ADB is exempted from paying taxes and duties under the Articles of Agreement Establishing the Asian Development Bank (Charter) and the Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank (Headquarters Agreement) the Contractor will calculate its prices for the service items **exclusive of Contractor's tax, Value-Added Tax (VAT) and Expanded Value-Added Tax (EVAT)**.

6.2 The Bid price offered in the Bid Form will be flat rates for full execution of the Services in every respect. The Bidder will be deemed to have taken account of all the requirements, whether expressed or implied, covered by all parts of the Bid documents and other stipulated documents, and to have priced the items in the Bid Form accordingly.

6.3 The Bid price under the terms and conditions specified in the Contract will be deemed to be firm and fixed. No claim for adjustments in the Contract prices based on the Bids will be considered by ADB for any change in foreign exchange rate, for any increase in wage rates, for any escalation costs of office materials and supplies. Any such change, increase or escalation, will be deemed to have been taken into account and included in the Bid price.

## 7. Validity of Proposal

The Proposal will be valid for a period of ninety (90) calendar days after the submission deadline date prescribed by ADB.

## 8. Bid Security

ADB will waive the Bid security requirement, provided the Bidder signs the Bid Securing Declaration (**Appendix 7**) accepting that, if the Bidder withdraws or modifies its Bid during the period of validity, or the Bidder is awarded the Contract, and it fails to sign the

Contract or submit a Performance Security, then the Bidder will be disqualified from bidding in any or all future Contract with ADB.

**9. Clarifications to the Bid**

For clarifications regarding this RFP, please email Mr. Raymund Alberto at [ralberto@adb.org](mailto:ralberto@adb.org) or Ms. Genylen Mabulay at [gmabulay@adb.org](mailto:gmabulay@adb.org). All clarifications should be sent to the above e-mail addresses on or before **5:00pm of 31 August 2018 (Manila Time)**.

**10. Deadline for Submission of Proposal**

The sealed Proposal (comprising of: one original copy and one duplicate copy should reach ADB (by hand-carry or courier) not later than **4:00pm of 12 September 2018 (Manila Time)**. Please mark and submit your sealed Proposal to the following address:

<p>ASIAN DEVELOPMENT BANK 6 ADB Avenue, Mandaluyong City, Philippines</p> <p>Attention: Mr. Olivier J. Leonard Senior Procurement and Contracts Specialist Procurement and Contracts Administration Office of Administrative Services</p> <p><b>"SEALED PROPOSAL FOR TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET MANAGEMENT SYSTEM TO ISO 55001"</b></p> <p>Do not open before 12 September 2018, 4pm.</p> <p>Bidder: _____</p>
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**11. Evaluation of Proposal**

The Proposal will be evaluated based on a "Pass-Fail" Evaluation framework established by ADB in the Technical Evaluation Criteria (**Appendix 4**).

**12. ADB's Right to Accept or Reject Any Bid**

ADB reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for ADB's action.

### **13. Non-conformities, Errors and Omissions**

- 13.1 Provided that a Proposal is substantially responsive, ADB may waive any non-conformity or omission in the Proposal that does not constitute a material deviation.
- 13.2 Provided that a Proposal is substantially responsive, ADB may request that the Contractor submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Proposal related to documentation requirements. Such omission will not be related to any aspect of the price of the Proposal. Failure of the Contractor to comply with the request may result in the rejection of its Proposal.
- 13.3 In case of discrepancies between price given in words and that given in figure for the same item, the prices given in words will prevail. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price per item that is obtained by multiplying the unit price and quantity, the unit price will prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount stated in the Financial Proposal and the sum of the Total Amount will be corrected. If the Contractor does not accept the corrected amount of Proposal, its Proposal will be considered as withdrawn, and the Contractor will be disqualified to participate for any future projects of ADB.

### **14. Award of Contract**

ADB will award the contract to the bidder that submitted the lowest substantially complying and responsive bid. Where, during the evaluation, the prices offered by the Contractor are significantly higher than market references. ADB reserves its right to negotiate the prices with a view to obtain the best value for money for ADB.

### **15. Execution of the Contract**

The Contractor to whom the Contract is awarded is required to enter into and execute a Contract Agreement (**Appendix 9**) in accordance with the form, conditions and requirements in the RFP, and to furnish the required (1) Performance Security, (2) Comprehensive General Liability Insurance, and other stipulated documents

### **16. Performance Security**

- 16.1 The successful Bidder will post a Performance Security in the form of a Manager's Check or Bank Guaranty, the sum of 10% of total Contract price in favor of ADB to guarantee its faithful performance of the Contract. (see **Appendix 8**).
- 16.2 Failure of the successful Bidder to submit to ADB the required Performance Security will constitute sufficient ground for annulment of the award.

**17. Special Character of ADB**

The Contractor's special attention is drawn to the special character of ADB as an international financial institution with status, privileges and immunities as established under the Charter and the Headquarters Agreement. The Contractor is advised to study these documents, copies of which are available from ADB free of charge, during normal office hours, to assess his or her rights and obligations under the Contract.

**18. Confidentiality/Non-disclosure**

- 18.1 The information contained in this RFP, or accumulated through other written or verbal communications, is confidential. It is for information purposes only, and is not to be disclosed or used for any other purpose. All information contained herein is private and is protected by law.
- 18.2 Information received in response to this RFP will be held in strict confidence, and will not be disclosed to any party other than ADB without written consent. A non-disclosure agreement can be arranged, if requested.

Yours truly,



**OLIVIER J. LEONARD**  
Senior Procurement Specialist  
Procurement Division 1

## TERMS OF REFERENCE

### TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET MANAGEMENT SYSTEM TO ISO 55001

#### A. Background and Objective of the Engagement:

1. ISO 55001:2014 is the most current and worldwide accepted Asset Management System (AMS) standard. Asset management supports the realization of value while balancing financial, environmental and social costs, risk, quality of service and performance related to physical assets. An ISO 55001 compliant asset management system can have several benefits to ADB such as a) demonstrated compliance against international standards; b) measurable asset management objectives; c) enabler to deliver organizational objectives; d) managed risk; e) developing criteria for decision making based on requirements by stakeholders; f) reporting on performance and KPI's to manage the objectives; and g) further alignment between organizational objectives as well as different units.

2. In the 2<sup>nd</sup> quarter of 2017, an ISO 55001 gap analysis of ADB institutional assets<sup>1</sup> was conducted to assess its readiness for ISO 55001 certification and identify areas for improvement. The result of the gap analysis showed the maturity of ADB physical asset management system within level 1 (aware), 2 (development) and 3 (competent/ISO 55001). In comparison to the ISO 55001 standard, 20% were rated competent, while 56% in development and 24% in aware levels.

#### B. Scope of Work

3. The Contractor shall coordinate with the Unit Head, Asset Management and Commercial Services Unit through his authorized representative, the preparation of the work schedules for the implementation of the required services which may be revised from time to time to improve the performance and efficiency. The Contractor shall provide all the necessary technical and administrative support for the development of the asset management system process based on ISO 55001; and assist ADB staff in determining the asset management system elements based on the 10 recommendations in the gap analysis report.

- (1) Define scope of the asset management system
- (2) Assess and improve high level criteria for decision making based on stakeholder requirements and importance
- (3) Assess asset management policy and provide required documentation
- (4) Assess strategic asset management plan (SAMP) including high level asset management objectives and provide required documentation
- (5) Assess asset management objectives, KPI's and controls at lower levels and provide required documentation
- (6) Assess risk management approach and provide required documentation
- (7) Introduce management of change procedure
- (8) Introduce internal audit program for ISO 55001
- (9) Introduce asset management system review cycle
- (10) Design processes for reacting to non-conformities

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<sup>1</sup> Gap Analysis ISO 55001 Asian Development Bank dated 7 July 2017

4. The Contractor shall provide a minimum of two personnel (1 Project Manager and 1 Technical Support / Administrative Staff), who will be mainly responsible for the effective planning, management and control of documents for ISO 55001.

5. The Contractor shall work closely with relevant ADB staff and compile all the documentation requirements towards ISO 55001 certification. The Contractor shall also provide inputs that can further improve the requested documentation.

6. The Contractor shall prepare monthly progress report within ten (10) days following the end of each month.

### **C. Standards and Policies**

7. The Contractor should deploy staff with extensive knowledge and experience with ISO 55001.

8. The Contractor, and its deployed personnel should comply with the policies and applicable administrative orders governing ADB's business activities.

### **D. Deliverables**

9. The following deliverables are required from the Contractor:

- a. Conduct strategic and tactic level workshops specified in the Timeframe based on the specific output requirements
- b. Consolidate inputs gathered from the workshops based on the documentation requirements of ISO 55001 standards to address the recommendations identified in the Scope of Work
- c. Assess asset management objectives, KPI's and controls, risk management approach, and management of change process for ISO 55001
- d. Develop an internal audit program for ISO 55001
- e. Design and assess the processes for addressing non-conformities
- f. Assess and improve the strategic asset management plan
- g. Develop an asset management system review cycle
- h. Assess the internal audit program for ISO 55001
- i. Complete an internal audit and its post assessment

### **E. Timeframe**

10. The service will be for one year to cover various activities:

ACTIVITIES (in phases)	Estimated PERIOD* (no. of days)
I. Define Asset Management System	
Conduct Strategic Level Workshops	10
- Assist in the analysis of internal and external stakeholder requirements to improve high level criteria for decision making	
- Review organizational objectives stated in the relevant administrative orders to derive the AM policy	



- Consolidate inputs from interfacing departments to develop SAMP including high level AM objectives	
- Establish documents for review and approval	5
Conduct Tactic Level Workshops	10
- Guide and document the alignment of AM objectives and KPI's at lower levels	
- Assist in the adoption and documentation of a method of risk management	
- Assist in the implementation and documentation of operational planning and control processes within the AM plans	
- Assist in the development and documentation of management of change process	
Conduct Strategic Level Workshop	5
- Update SAMP	
- Review of documents and obtain management's approval	5
II. Internal Audit Program	
Conduct Tactical Level Workshops	15
- Assess AM objectives and KPI's at lower levels	
- Assess risk management approach	
- Assess approach for developing AM plans	
- Assess management of change process	
- Develop internal audit program for ISO 55001	
- Design processes for reacting to non-conformities	
Strategic Level Workshop	5
- Assess SAMP	
- Develop AM System review cycle	
- Design processes for reacting to non-conformities	
- Review of documents	5
Tactic Level Workshops	5
- Assess internal audit program for ISO 55001	
- Assess processes for reacting to non-conformities	
Strategic Level Workshop	5
- Assess SAMP	
- Assess AM System review cycle	

- Assess processes for reacting to non-conformities	
III. Outsourced Internal Audit	30
Total no. of days	100

\* Estimated period allocations are based on the conducted gap study and may be revised upon further assessment of current situation.

#### **F. Contractor's Performance Evaluation**

11. The Contractor's performance shall be evaluated after completion of each phase in the agreed timeline using the established criteria in the Service Level Agreement (**Appendix 1.1**). The SLA shall be furnished to the Contractor and its evaluation mutually reviewed, following which the Contractor shall take appropriate action on the performance of the contract. Non-responsiveness of the Contractor to improve the contract performance shall be a ground for termination of the contract.

12. The performance of the Contractor shall be rated by ADB (Unit Head, OAFA-AC or his authorized representative). The rating shall be used as the basis for calculating Contract rate deduction if the rating indicates any unacceptable performance.

#### **G. Working Hours**

13. ADB's Official Holidays: ADB's official holidays are observed on the dates as shown below:

(a) New Year's Day	-	1 January
(b) Holy Thursday	-	According to Calendar
(c) Good Friday	-	According to Calendar
(d) Labor Day	-	1 May
(e) Philippine Independence Day	-	12 June
(f) All Saints' Day	-	1 November
(g) Bonifacio Day	-	30 November
(h) Christmas Day	-	25 December
(i) Rizal Day	-	30 December
(j) New Year's Eve	-	31 December

When any of the above holidays fall on a Saturday or Sunday, the preceding Friday or the following Monday will be observed as a holiday (except for the New Year's Eve Holiday). Should 31 December be the compensatory holiday for Rizal Day or New Year's Day, or fall on a Saturday/Sunday, the New Year's Eve holiday will be the last work day of the year, which could be 28 or 29 December. Office hours and holidays are subject to change at the option of ADB.

14. Generally, ADB does not observe the special holidays being declared by the Philippine Government. The Contractor may conduct their work on the said day/s.

## SERVICE LEVEL AGREEMENT

Contract No.

Contractor:

Technical Support Services for the Development of ADB's Asset Management System to ISO 55001

For the Period

Service Objectives	Service Level Specifications		Rating	Performance Rating		Performance Acceptability	Rating	
				Results	Points			
1	Reliability	M1.1	Scheduled activities are completed as per agreed timeline. (Note: results are measured in terms of number of incidence of scheduled activities not met per period covered).	20	0-10%	20.0	High	
					10-25%	16.0	Satisfactory	
					25-50%	10.0	Minimum	
					>50%	5.0	Not acceptable	
	M1.2	Timely submission of error-free reports/documents within schedule. (Note: results are measured in terms of total number of incidence of delay in the submission of the required reports per period covered)	20	0-10%	20.0	High		
				10-25%	16.0	Satisfactory		
				25-50%	10.0	Minimum		
				>50%	5.0	Not acceptable		
2	Quality	M2.1	Output adds value to the process of achieving the contractual objectives through the course evaluation..	20	90-100%	20.0	High	
					75-89%	16.0	Satisfactory	
					50-74%	10.0	Minimum	
					>50%	5.0	Not acceptable	
3	Assurance	M3.1	Effective management of staff to deliver expected results (Note: results are measured in terms of number of incidence that show ineffective management of staff that resulted to a significant undesirable situation.)	10	0-10%	10.0	High	
					10-25%	8.0	Satisfactory	
					25-50%	6.0	Minimum	
					>50%	4.0	Not acceptable	
4	Tangibles	M4.1	No criminal offense, security infraction, harassment, or complaint on willful disobedience of ADB authorized representative within ADB premises.	10	0	10.0	High	
					1	4.0	Not acceptable	
5	Empathy	M5.1	Number of confirmed negative recurring feedback or complaint on the performance of the service.	10	0	10.0	High	
					1-2	8.0	Satisfactory	
					3-4	6.0	Minimum	
					≥5	4.0	Not acceptable	
6	Responsiveness	M6.1	Number of times failed to respond to administrative service or written communication within 48 hours.	10	0	10.0	High	
					1-2	8.0	Satisfactory	
					3-4	6.0	Minimum	
					≥5	4.0	Not acceptable	
<b>OVERALL SERVICE RATING</b>				<b>100</b>				

**NOTE:**

90-100 POINTS : HIGHLY SATISFACTORY

80 - 89 POINTS : SATISFACTORY

65 - 79 POINTS : FAIR ( Written Warning)

55 - 64 POINTS : NEEDS IMPROVEMENT (5% Reduction in Contract Price)

45 - 54 POINTS : POOR (15% Reduction in Contract Price)

BELOW 44 POINTS : VERY POOR (25% Reduction in Contract Price)

**If the performance of the Contractor falls below "FAIR" for three (3) consecutive periods, ADB reserves the right to terminate the Contract.**

At the end of each review period, the parties will indicate to each other the result of measurement for each activity or service stated in this SLA within 7 working days. If there is an agreement upon the result, it shall be recorded in the SLA. If necessary, a verbal or a written warning shall be provided or a fine will be imposed. The sum shall be deducted from the next invoice to be served by the Contractor to ADB.

In case of disagreement on the results, the parties shall come to an amicable solution as soon as possible, acting in good faith at all times. All communications shall be through Unit Head, Asset Management and Commercial Services, Facilities and Asset Management Division, Office of Administrative Services (OAFa-AC) or through his authorized representative.

For ADB: \_\_\_\_\_  
 Rated by: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Date: \_\_\_\_\_

For ADB: \_\_\_\_\_ Discussed with: \_\_\_\_\_  
 Noted by: \_\_\_\_\_ For Contractor: \_\_\_\_\_  
 Position: \_\_\_\_\_ Position: \_\_\_\_\_  
 Date: \_\_\_\_\_ Date: \_\_\_\_\_

REMARKS:

Approved by:

Hendy Widjaja  
 Unit Head, Asset Management and Commercial Services

DATE: \_\_\_\_\_

cc: Director, OAFa

**TECHNICAL BID FORM**

**TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET  
MANAGEMENT SYSTEM TO ISO 55001**

(Date)

To: Asian Development Bank  
6 ADB Avenue, Mandaluyong City  
1550 Metro Manila, Philippines

Attention: Senior Procurement and Contracts Specialist  
Procurement and Contracts Administration  
Office of Administrative Services

I/We, the undersigned, declare that:

- (a) I/We have examined and have no reservations to the Bid Documents;
- (b) I/We offer to provide the Services in conformity with the Bid Documents;
- (c) My/Our Bid shall be valid for a period of ninety (90) calendar days from the date fixed for the bid submission deadline in accordance with the Bid Documents, and it shall remain binding upon myself/us and may be accepted at any time before the expiration of that period;
- (d) I/We confirm that I/We am/are financially qualified and compliant to bid for this project in accordance with the minimum requirements for qualification of bidders for this project;
- (e) If My/our Bid is accepted, I/we commit to post a Performance Security in the form of a Manager's Check or Bank Guaranty, the amount of ten percent (10%) of total Contract price for the due performance of the Contract;
- (f) I/We are not participating, as Bidders, in more than one Bid in this bidding process in accordance with the Bid Documents;
- (g) My/our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the Contract, has not been declared ineligible by the ADB;
- (h) I/We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance of Bid, shall constitute a binding contract between myself/us, until a formal Contract is prepared and executed;
- (i) I/We understand that you are not bound to accept the lowest bid or any other bid that you may receive.

Yours truly,

\_\_\_\_\_  
(Name and Signature of Authorized Officer)

\_\_\_\_\_  
(Designation of Authorized Officer)

\_\_\_\_\_  
(Name of Bidder/Company)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number/Facsimile Number/Email)

## TECHNICAL BID PROPOSAL FORM

### TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET MANAGEMENT SYSTEM TO ISO 55001

To: Asian Development Bank  
6 ADB Avenue, Mandaluyong City  
1550 Metro Manila, Philippines

Attention: Senior Procurement and Contracts Specialist  
Procurement and Contracts Administration  
Office of Administrative Services

The Technical Bid Proposal Form forms part of our bid for the above-mentioned requirement, and complements and supplements our Bid price offer for the same. ***Please use additional sheets, if necessary, following the same format.***

#### A. QUALIFICATIONS AND EXPERIENCE OF THE FIRM

1. Have an independent, current legal existence as a validly registered company incorporated in an ADB-member country for a minimum of five (5) years. Please submit Articles of Incorporation and current General Information Sheet (GIS) acknowledged by the Securities and Exchange Commission (SEC) for domestic firms / Certificate of Status for foreign firms.

*BIDDER'S ANSWER:*

2. Have a sound financial standing (i.e. positive net worth) over the last three (3) years, from 2015 to 2017. As a minimum, the Bidder's net worth, calculated as the difference between total assets and total liabilities, should be positive. Please submit copies of your audited financial statements.

*BIDDER'S ANSWER:*

3. Has at least 5 years of experience in providing Technical Support Services for ISO Standards certification with at least 2 projects certified in ISO standards. Please provide a company portfolio exhibiting the company's experience and project summaries of handled projects.

*BIDDER'S ANSWER:*

4. Has completed at least 1 project that is similar in the scope of work. Similar in scope of work is defined as the provision of technical support services in the development of an Asset Management System to ISO 55001:2014 standard. Please indicate the project scope, client reference and contact information.

*BIDDER'S ANSWER:*

5. The Contractor is an accredited technical support service provider for ISO 55001 standards certification. Please provide copies of certificates of accreditation by a regulatory agency or accreditation body.

*BIDDER'S ANSWER:*

6. Not be under a declaration or record of ineligibility for corrupt and/or fraudulent practices issued. Please provide status.

*BIDDER'S ANSWER:*

## **B. WORK METHODOLOGY AND TIMELINE**

1. Please provide following in relation to the conduct of the Services:
- a. **Work Methodology.** Submit a work methodology that describes how you intend to address the recommendations in ADB's ISO 55001 Gap Analysis report as specified in the Terms of Reference (TOR). The work methodology must also include all the required deliverables specified in the TOR

*BIDDER'S ANSWER:*

- b. **Project Timeline.** Provide a master project schedule showing activities / milestones and duration for each considering output requirements specified in the TOR. The project timeline must be a maximum of one year.

*BIDDER'S ANSWER:*

<b>C. ORGANIZATION</b>	
1.	<p>Please provide an organizational chart that will show the company's structure, its relationship to the on-site organization, the responsibility and decision-making level, the sequential chain of command up to the Top Management level of the company. Discuss briefly the positions and functions.</p> <p><i>BIDDER'S ANSWER:</i></p>
<b>D. PERSONNEL COMPLEMENT AND COMPETENCE OF STAFF</b>	
1.	<p>Bidder shall deploy a minimum of 2 personnel (1 Project Manager and 1 Technical Support / Administrative Staff). Please submit the Curriculum Vitae (CV) of the deployed staff specifying the years of work experience, educational qualifications, professional affiliations, and licenses for each position. The CVs shall demonstrate the suitability of personnel assigned to the project in terms of qualification and experience.</p> <p>Please note that the Project Manager should be a certified Asset Management professional with a minimum of five (5) years experience in the field of Asset Management. Please submit a copy of certification as Asset Management Professional.</p> <p><i>BIDDER'S ANSWER:</i></p>
BIDDER'S NAME:	Date:

**Important Note:**

*In order to assist the process of evaluation, bidders are required to submit documentary evidences to support their claims on the above parameters.*

TECHNICAL EVALUATION CRITERIA					
CRITERIA		MINIMUM REQUIREMENTS	PASS	FAIL	Documents Required
<b>1.0 Qualification and Experience of the Company</b>					
1.1	Have the nationality on an eligible country in accordance with the List of ADB Eligible Member Countries, with at least 5 years of current legal existence. A Bidder shall be deemed to have the nationality of a Member Country if it is constituted, or incorporated, and operates in conformity with the provisions of the laws of that country.	Registered company in an ADB member country, with at least 5 years of current legal existence.			Copy of Articles of Incorporation, and General Information Sheet (GIS) or Certificate of Status (for foreign companies)
1.2	Has a sound financial standing (i.e. positive net worth) over the last three (3) years, from 2015 to 2017. As a minimum, the Bidder's net worth, calculated as the difference between total assets and total liabilities, should be positive	Positive net worth			Audited Financial Statements from 2015 to 2017
1.3	Has at least 5 years of experience in providing Technical Support Services for ISO Standards certification with at least 2 projects certified in ISO standards	(i) 5 years of experience in providing technical support services for ISO Standards certification  (ii) At least 2 projects certified under ISO Standards			Portfolio exhibiting the company's experience in providing technical support services for ISO Standards accreditation with at least 2 projects certified under ISO Standards
1.4	Has completed at least 1 project that is similar in the scope of work. Similar in scope of work is defined as the provision of technical support services in the development of an Asset Management System to ISO 55001:2014 standards.	Describe at least 1 project similar in scope of work to ADB requirements. Please indicate the project scope, client reference and contact information.			Project summary / abstract
1.5	Accredited technical support service provider for ISO 55001 standards accreditation	Provided a copy of the certificate(s) of accreditation by a regulatory agency or accreditation body for ISO standards certification/accreditation			Certificate of Accreditation
<b>2.0 Work Methodology and Timeline</b>					
	Proposed work methodology addresses the recommendations in ADB's ISO 55001 Gap Analysis report as specified in the Terms of Reference (TOR) and includes all the specified deliverables in the TOR	Submitted a work methodology and plan that addresses the recommendations in ADB's ISO 55001 Gap Analysis report as specified in the Terms of Reference (TOR) and includes all the specified deliverables in the TOR			Proposed methodology and workplan
	Project timeline is a maximum of one year to cover the various activities involved in the project	Submitted a timeline showing the schedule of activities with a maximum project duration of one year			Proposed timeline
<b>3.0 Organization</b>					
3.1	Provide an organizational chart illustrating the relationship of the project team deployed in ADB to that of top management, as well as the responsibility and chain of command in decision-making	Submitted an organizational chart that illustrates the relationship of the project team to the company's organization. Provided a brief discussion of the positions and functions			Organizational chart with brief descriptions of positions and functions
<b>4.0 Personnel Complement and Competence of Staff</b>					
4.1	Number of staff deployed for the project	Minimum of 2 staff deployed (1 Project Manager and 1 Technical support / Administrative support staff)			CVs and certifications of assigned staff
4.2	Professional Qualifications	At least one staff deployed should be a certified Asset Management Professional with at least 5 years of experience in the field of Asset Management			CVs and certifications of assigned staff



**FINANCIAL BID FORM****TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET  
MANAGEMENT SYSTEM TO ISO 55001**\_\_\_\_\_  
(Date)

To: Asian Development Bank  
6 ADB Avenue, Mandaluyong City  
1550 Metro Manila, Philippines

Attention: Senior Procurement and Contracts Specialist  
Procurement and Contracts Administration  
Office of Administrative Services

Gentlemen and/or Ladies:

1. Having examined the Bid Documents for the above requirement, the receipt is hereby duly acknowledged, I/we, the undersigned, offer to provide the Services as described in the Bidding Documents at the Contract Price of:

**Total Contract Price:** \_\_\_\_\_ (₱ \_\_\_\_\_)

2. We undertake, if our Bid is accepted, to commence the services based on the schedule that will be submitted by ADB, and to complete and deliver the whole of the services in accordance with the Contract.

3. We agree to abide by this Bid for the period of ninety (90) calendar days from the final date fixed for receiving the same, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. If our Bid is accepted, we undertake within fifteen (15) calendar days from the date we received the Letter of Acceptance of Bid to submit a Performance Security in the form of a Manager's Check or Bank Guaranty in the sum of Pesos: \_\_\_\_\_ (10% of total Contract Price) (₱ \_\_\_\_\_), as security for the due and faithful performance or my/our obligations under the Contract. This guarantee will be valid for not less than thirty (30) days after the expiry of the Contract, or until you take it over in accordance with the Contract.

5. If our Bid is accepted, we confirm that the prices submitted by us in our Bid will be fixed and binding upon us for the whole duration of the Contract in accordance with the said conditions.

6. Unless and until a formal Contract is prepared and executed, and a satisfactory Performance Bond is executed and delivered, this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us.

7. We understand that you are not bound to accept this Bid or any other Bid, which you may receive.

8. Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to Contract execution if we are awarded the Contract, is/are listed below:

Name and Address of Agent	Amount and Currency	Purpose of Commission or Gratuities
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none")

Yours truly,

\_\_\_\_\_  
(Name and Signature of Authorized Officer)

\_\_\_\_\_  
(Designation of Authorized Officer)

\_\_\_\_\_  
(Name of Vendor/Company)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Telephone Number/Facsimile Number/Email)

**FORM OF SECRETARY'S CERTIFICATE**

SECRETARY'S CERTIFICATE

I, (name of corporate secretary), being the Corporate Secretary of (name of the company of bidder), hereinafter referred to as the "Corporation", a corporation organized under the laws of the \_\_\_\_\_, with office address at (complete address of the company), do hereby certify, that the following resolution was unanimously approved in a meeting of the Board of Directors of Corporation held on (date of the meeting) at its principal office, to wit:

Board Resolution No. \_\_\_\_\_ Series of \_\_\_\_\_

RESOLVED, the (name of company) be, as it is hereby, authorized to participate in the bidding for **TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET MANAGEMENT SYSTEM TO ISO 55001**, and in connection therewith the Corporation hereby appoints (name and designation of authorized person – same person who will sign the conforme below) as the duly authorized and designated representative of (name of company), who is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Corporation in the bidding.

The above resolution in now in full force and effect and that as of this date, no changes or amendments thereon have been made.

IN WITNESS WHEREOF, I have hereunto affixed my signature this (date) at (place).

Signature  
(Name of corporate secretary)  
Corporate Secretary

CONFORME:

Signature  
(Name of authorized person)  
Designation:  
Company:

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_, affiant exhibiting to be her/his Community Tax Certificate Number \_\_\_\_\_ issued on \_\_\_\_\_ at \_\_\_\_\_.

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of \_\_\_\_\_.

SEAL AND SIGNATURE  
NOTARY PUBLIC

**BID SECURING DECLARATION**

**TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET  
MANAGEMENT SYSTEM TO ISO 55001**

Date: \_\_\_\_\_

To:

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Asian Development Bank (ADB) starting on the date that we receive a notification from ADB, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the ITB; or
- (b) having been notified of the acceptance of our Bid by the ADB during the period of bid validity, (i) fail or refuse to execute the Contract, if required, (ii) fail or refuse to furnish the Performance Bond, in accordance with the ITB, or (iii) fail or refuse to accept the arithmetical correction of our Bid in accordance with the ITB.

We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: \_\_\_\_\_

In the capacity of \_\_\_\_\_

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

Duly authorized to sign the bid for and on behalf of: ***[insert complete name of Bidder]***

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Corporate Seal ***[where appropriate]***

**-- Note --**

*In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.*

**PERFORMANCE SECURITY FORM**

(from Contractor's Bank)

To: **ASIAN DEVELOPMENT BANK**  
6 ADB Avenue  
Mandaluyong City  
Philippines

Dear Sir:

WHEREAS, \_\_\_\_\_ (hereinafter called the "Contractor") and the Asian Development Bank have entered into, or will enter into a contract (Contract No. ADB/OAS-2018/XXX) for the Technical Support Services for the Development of ADB's Asset Management System to ISO 55001 at ADB Headquarters Building, Mandaluyong City, Philippines (hereinafter called the "Contract");

WHEREAS, the Contract provides that the Contractor shall furnish you with a Performance Security by a recognized bank for the sum specified therein as security for fulfillment by the Contractor of its obligations under and in accordance with the Contract;

WHEREAS, we have agreed to issue such a Performance Security in your favor;

NOW THEREFORE we, {bank's name}, hereby irrevocably and absolutely affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total amount of \_\_\_\_\_: (10% Total Contract Price) ( \_\_\_\_\_ ), which we undertake to pay to you, upon your first written demand, without your having to assign any reason for such demand, and irrespective of whether or not there is any dispute between the Contractor and you in respect of any other matter and irrespective of whether or not such dispute, if any, has been settled, resolved, litigated or adjudicated.

This Security/Guarantee is effective from \_\_\_\_\_ to 30 days after the expiration date of the Contract (as stated in accordance with Paragraph 12 of the General Conditions of Contract). This Security/Guarantee cannot be canceled without your express written approval.

The giving of time to the Contractor, or the neglect or forbearance by you in requiring or enforcing payment of the sum of \_\_\_\_\_: (10% Total Contract Price) ( \_\_\_\_\_ ) or other indulgence whether in relation to the Contract or otherwise, shall not, in any way, prejudice, affect, derogate, release or absolve us from our liability under this Security/Guarantee;

No change in organization or constitutional documents or in that of Asian Development Bank or the Contractor shall affect or impair our absolute liability herein.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2018.

Signature and Seal of the Guarantor  
Name of Bank or Surety Company  
Address

**Contract No. ADB/OAS- 2018/XXX**

**TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET  
MANAGEMENT SYSTEM TO ISO 55001**

THIS CONTRACT (hereinafter "Contract") made on the \_\_\_ day of \_\_\_ 2018 between the **ASIAN DEVELOPMENT BANK** of 6 ADB Avenue, Mandaluyong City, Metro Manila, Philippines (hereinafter " ADB "), of the one part, and **(Contractor)** of (Contractor's Address) (hereinafter " Contractor"), of the other part:

WHEREAS ADB desires that the Provision of Services known as TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET MANAGEMENT SYSTEM TO ISO 55001 shall be executed by the Contractor and has accepted a Bid by the Contractor for the execution and completion of the provision of Services and the remedying of any defects therein,

ADB and the Contractor agree as follows:

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to in the General Conditions of Contract indicated in Paragraph 2 below.
2. The following documents shall be deemed to form and be read and construed as part of this Contract, viz.:
  - a) Special Conditions of the Contract
  - b) General Conditions of the Contract

This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the above Contract documents, then the documents shall prevail in the order listed above.

3. In consideration of the payments to be made by ADB to the Contractor as indicated in this Contract, the Contractor hereby covenants with ADB to provide the Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. ADB hereby covenants to pay the Contractor in consideration of the execution and completion of Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Contract to be executed in on the day, month and year indicated above.

**ASIAN DEVELOPMENT BANK**

**CONTRACTOR**

**OLIVIER LEONARD**

Senior Procurement and Contracts Specialist  
Procurement and Contracts Administration

**Contractor**

**SPECIAL CONDITIONS OF CONTRACT**  
**(Contract No. ADB/OAS-20\_\_/XXX)**

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is conflict, the provisions herein shall prevail over those in GCC.

<b>Number of GCC Clause</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
<b>1.1(e)</b>	The CONTRACTOR is .
<b>3.1</b>	The Governing Law: Philippines
<b>3.2</b>	The language is English.
<b>4.2</b>	<p>The addresses are:</p> <p>Asian Development Bank (ADB): 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines</p> <p>Attention: _____</p> <p style="padding-left: 100px;">Procurement and Contracts Administration Office of Administrative Services (OAPC)</p> <p>Telephone: 632 1916</p> <p>Facsimile: 636 2577; 631 6899</p> <p>CONTRACTOR:</p> <p>Attention:</p> <p>Telephone:</p> <p>Facsimile:</p>
<b>5.1</b>	<p>The Authorized Representatives are:</p> <p>For ADB:</p> <p style="padding-left: 100px;">Contract-related Concerns Olivier J. Leonard Senior Procurement and Contracts Specialist Procurement and Contracts Administration Unit Office of Administrative Services (OAPC)</p> <p style="padding-left: 100px;">Operation-related Concerns</p>

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>For the CONTRACTOR:</p> <p>Either Party may designate a new Authorized Representative by serving written notice on the other. The designation shall take effect immediately upon receipt of the Notice.</p>
7.1	<p>Does the CONTRACTOR have actual and/or potential conflict of interest?  <input type="checkbox"/> Yes <input type="checkbox"/> No  (See <b>Appendix 1: Conflict of Interest Disclosure Form</b>)</p>
8.1	<p>The CONTRACTOR shall provide the following Services:  (See <b>Appendix 2: Work Performance Statement</b>)</p>
9.1	<p>Contract Price:</p>
10.1	<p>The Contract Period is _____.</p> <p>The Starting Date for the commencement of Services is _____.</p> <p>The Intended Completion Date is _____.</p>
12.1	<p>Performance Security: 10% of total Contract price</p>
12.6	<p>The Comprehensive General Liability Insurance is in the amount of Pesos:  <i>Two Million Five Hundred Thousand (₱2,500,000)</i></p>
12.8	<p>Form of Good Social Management (See <b>Appendix 3</b>)</p>
13.2	<p>ADB shall provide the following free of charge: Facility (office space), electricity and telephone.</p>
13.6	<p>Standards of Conduct for Contractors (<b>Appendix 4</b>)</p>
13.14	<p>Safety and Security Procedures for Contractors' Personnel in the Headquarters Building of ADB (See <b>Appendix 5</b>)</p>
15.1	<p>Service Level Agreement: Not Applicable</p>
16.8	<p>Warranty period: Not Applicable</p>
17.1	<p>Conditions for payment: Not Applicable</p>
19.1	<p>The liquidated damages: Not Applicable</p>



Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
27.1	Other conditions for transition: Not Applicable
28.2	Conditions for sub-contracting, as applicable: Not Applicable
31.2	<ol style="list-style-type: none"> <li>1. Non-Disclosure Agreement Form for Authorized Contractor Signatory (See <b>Appendix</b> )</li> <li>2. Non-Disclosure Agreement Form for Contractor's Personnel (See <b>Appendix</b> )</li> </ol>
31.4	Conditions for making announcements: written consent from ADB.

# **General Conditions of Contract**

**(Contract No. ADB/OAS-201\_/\_)**

The General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, is a complete document expressing the rights and obligations of ADB and the CONTRACTOR.

The GCC shall not be altered. Any changes and complementary information, which may be needed, shall be introduced only through the SCC.

## **TABLE OF CONTENTS**

<b>GENERAL CONDITIONS OF CONTRACT [SERVICES]</b>	<b>1</b>
1. DEFINITIONS	2
2. SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF ADB	4
3. GOVERNING LAW AND LANGUAGE	4
4. NOTICES AND COMMUNICATION	4
5. AUTHORIZED REPRESENTATIVE	5
6. ADB'S ANTICORRUPTION POLICY	5
7. CONFLICT OF INTEREST	6
8. SCOPE OF THE CONTRACT	6
9. CONTRACT PRICE	7
10. CONTRACT PERIOD	7
11. CONTRACTOR'S OBLIGATIONS	8
12. SECURITY AND INSURANCE	8
13. CONTRACTOR'S UNDERTAKING	10
14. PERFORMANCE STANDARDS	13
15. SERVICE LEVEL AGREEMENT [SLA]	14
16. WARRANTIES AND REPRESENTATIONS	14
17. ADB'S RESPONSIBILITIES	15
18. DELAY	16
19. LIQUIDATED DAMAGES	16
20. FORCE MAJEURE	17
21. CONTRACT AMENDMENT	17
22. TERMINATION FOR DEFAULT	17
23. TERMINATION FOR INSOLVENCY AND CHANGE OF CONTROL	18
24. TERMINATION FOR UNLAWFUL ACTS	18
25. TERMINATION FOR OTHER CAUSES	19
26. PROCEDURES FOR TERMINATION	19
27. TRANSITION	20
28. TRANSFER AND SUBCONTRACTING	20
29. WAIVER	20
30. ENTIRETY AND SEPARABILITY	21
31. CONFIDENTIALITY OF CONTRACT DOCUMENTS AND INFORMATION	21
32. SETTLEMENT OF DISPUTES	22
33. COUNTERPART	23

## 1. DEFINITIONS

### 1.1. In these General Conditions of Contract:

(a) "ADB" refers to the Asian Development Bank, the organization purchasing the Services named in the SCC.

(b) "ADB Headquarters" or "Headquarters" refers to the Headquarters of ADB in Manila, Philippines.

(c) "Charter" refers to the Charter signed by member states establishing ADB.

(d) "Contract" means the agreement that ADB and the CONTRACTOR entered into, as recorded in the Contract Form that the parties signed, including all attachments and appendices and all documents incorporated by reference therein.

(e) "CONTRACTOR" refers to the party (includes individual and entity, whether public, quasi-public or private) that performs the services or performs the services and supplies the related goods using its own means, methods or manner of accomplishing the desired result pursuant to a contract with ADB and named in the SCC. This includes the contractor's personnel, representatives, successors and permitted assignees.

(f) "Contracts Administration" or "CA" refers to the cluster in the Procurement and Contracts Administration Unit, Office of the Principal Director, Office of Administrative Services that ensures ADB and the CONTRACTOR comply with their obligations under the Contract.

(g) "Contract Documents" consists of the Contract and its Appendices, including but not limited to, the Work Performance Statement, Technical Bid Requirements, Technical and Financial Bid Proposals, Fee Schedule, Secretary's Certificate, Certificate of Site Inspection, Letter of Acceptance of Bid and Notice to Proceed, List of Facilities and Equipment to be provided by ADB, List of Equipment to be Provided by the CONTRACTOR, Performance Security, List of CONTRACTOR's Personnel, ADB's Fire, Safety and Security Regulations, relevant Administrative Orders, Good Social Management Certificate, including any amendments thereto.

(h) "Contract Price" means the price stated in the SCC payable to the CONTRACTOR for the full and proper performance of its contractual obligations.

(i) "Day" means calendar day.

(j) "Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

(k) "Delay" means postponement in the completion of a service/task in accordance with the terms and conditions set forth in the Contract.

(l) "Effective Date" of the contract will be the date provided in the Notice to Proceed to be issued by ADB. Performance of all obligations shall be reckoned from the Effective Date of the Contract.

(m) "*Force Majeure*" or "Fortuitous Event" – refers to events, which the CONTRACTOR 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 CONTRACTOR.

(n) "GCC" means the General Conditions of Contract.

(o) "Headquarters Agreement" refers to the Agreement between the Asian Development Bank and the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank.

(p) "IPC" or "Institutional Procurement Committee" – the committee that the Director, Procurement Division 1 of the Operations Services and Financial Management Department chairs and is convened to oversee institutional procurement of Services and delivering Related Goods.

(q) "Notices" – refers to all written communication required under the Contract to be exchanged between the Parties, including but not limited to, requests, permissions or consent.

(r) "OAOR-SE" refers to Security, Business Continuity and Governments Unit of ADB.

(s) "OAOD" refers to the Office of the Principal Director in OAS.

(t) "OAPC" refers to the Procurement and Contracts Administration Unit in OAS.

(u) "OAPC/CA" refers to the Contracts Administration in OAPC.

(v) "OAS" refers to the Office of Administrative Services of ADB.

(w) "Party" or "Parties" refer to either or both ADB and the Contractor.

(x) "Project Site," where applicable, means the place or places named in the SCC.

(y) "Related Goods" means those goods necessarily required and or resulting from providing the Services, such as transportation and insurance, and any other incidental services, such as installation, commissioning, testing, provision of technical assistance, training, and other such obligations of the CONTRACTOR covered under the Contract.

(z) "SCC" refers to the Special Conditions of Contract.

(aa) "Service Level Agreement" or "SLA" – refers to terms agreed between the Parties to determine satisfactory performance under the Contract.

(bb) "Services" refers to the service specifically described in the SCC.

(cc) "User Unit" refers to the organizational unit in ADB which requested the Services and related goods, and is responsible for receiving and accounting for the Services and related goods and/or administering and monitoring performance of the services in accordance with the work-performance standards stipulated in the Contract.

(dd) "Verified Report" refers to the report submitted by the Head, OAPC in coordination with the User Unit, to the appropriate approving authority reporting the existence of grounds or causes for termination and explicitly recommending the issuance of a Notice to Terminate.

## **2. SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF ADB**

- 2.1. The CONTRACTOR acknowledges the special character of ADB as an international financial institution with status, privileges and immunities provided under the Charter and the Headquarters Agreement. None of the provisions of this Contract shall derogate from the provisions of the Charter and the Headquarters Agreement. To better assess its rights and obligations under the Contract, the CONTRACTOR can view copies of the Charter and the Headquarters Agreement from ADB website: [www.adb.org](http://www.adb.org).
- 2.2. The CONTRACTOR recognizes that under Article 56(1) of the Charter and Section 34 of the Headquarters Agreement, ADB, its property, operations and transactions are exempt from taxation and any obligation for the payment, withholding or collection of any tax or duty. The CONTRACTOR shall be solely responsible for payment of taxes on its income.
- 2.3. The CONTRACTOR and ADB shall explore alternative arrangements to implement the Contract, if any tax or duty other than taxes on net income is levied or if there is an attempt to levy any such duty or tax in connection with the performance of the Contract.

## **3. GOVERNING LAW AND LANGUAGE**

- 3.1. Unless otherwise specified in the SCC, the Contract shall be governed and interpreted according to Philippine law, subject to the privileges and immunities accorded to ADB under the Charter and the Headquarters Agreement.
- 3.2. The Contract is in English, which shall be the binding and controlling language on matters relating to the meaning and/or interpretation of the Contract, unless otherwise specified in the SCC. Notices and other correspondences pertaining to the Contract that the parties would exchange shall likewise be in English.

## **4. NOTICES AND COMMUNICATION**

- 4.1. Notices and communication required under the Contract, including, but not limited to, requests, permissions or consent, shall be in writing. Notices and communication may be personally exchanged, sent in electronic format or by traditional means of communication such as registered mail, telex, telegram, or facsimile.
- 4.2. Notices shall be effective when sent to the address specified in the SCC and personally received by the addressee or constructively through the addressee's duly authorized representative. Notices sent by registered mail shall be

effective on the date of delivery, as shown in the return card for registered mail or the postmaster's certification. Otherwise, notices sent by telex, facsimile or similar means shall be effective upon successful transmission to the Party in accordance with the contact details specified in the SCC or on the notice's effective date, whichever is later.

## **5. AUTHORIZED REPRESENTATIVE**

- 5.1. For purposes of giving Notices or communicating with each other, the contact details and authorized representative of the Parties shall be as indicated in the SCC. A Party may change or update its contact details for Notice purposes by duly notifying the other Party in advance, following the provisions listed in the SCC.
- 5.2. Orders, directives, and instructions given on behalf of ADB to the CONTRACTOR shall be communicated by the Principal Director, OAS, or an officer duly designated under ADB's rules and notified in advance to the CONTRACTOR under the SCC.
- 5.3. The Head of the User Unit is the designated officer in charge of monitoring the CONTRACTOR's performance and shall recommend, among others, proper disposition of technical issues in implementing the Contract. Communications regarding these technical issues shall be addressed to the Head of the User Unit in ADB.
- 5.4. The CONTRACTOR shall not take from unauthorized ADB staff any order beyond those related to the Services specified in the SCC. Questions regarding the authority of orders, directives or instructions given in the name of ADB should be reported to the Head of the User Unit.

## **6. ADB'S ANTICORRUPTION POLICY**

- 6.1. ADB's Anticorruption Policy requires the CONTRACTOR to observe the highest standard of ethics during the procurement and execution of this Contract. The Policy may be obtained at [www.adb.org](http://www.adb.org). Any violation of the Anti-Corruption policy will result in termination of the Contract and sanctions being imposed on CONTRACTOR, including being declared ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities.
- 6.2. Pursuant to its Anticorruption policy, ADB:
  - (a) will not award a procurement contract to a winning bidder that has directly or indirectly engaged in any corrupt, fraudulent, collusive or coercive practice in competing for the contract in question;
  - (b) may suspend the procurement process at any stage when there is sufficient evidence to support a finding that an employee, agent or representative of the bidders, service contractors and concessionaires has engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing an ADB-financed contract;
  - (c) will sanction a bidder, service contractor, concessionaire or its successor, if ADB at any time determines that such bidder, service contractor,

concessionaire or its successor has, directly or indirectly, engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing, any contract for the institutional procurement of services. Sanctions include, but are not limited to, declaring such bidder, service contractor, concessionaire or its successor ineligible to participate in ADB-financed activities indefinitely or for a stated period of time except under such conditions as ADB deems appropriate; or reimbursement to ADB of costs associated with investigations and proceedings

(d) will take appropriate actions to manage conflicts of interest including, but not limited to, rejecting a proposal for award if it determines that a conflict of interest has flawed the integrity of any procurement process.

- 6.3. The CONTRACTOR agrees to be bound by ADB's Anticorruption Policy as outlined above.
- 6.4. The CONTRACTOR shall permit ADB to inspect the CONTRACTOR's accounts and records relating to the performance of the CONTRACTOR and to have them audited by auditors appointed by ADB, if so required by ADB.

## **7. CONFLICT OF INTEREST**

- 7.1. The CONTRACTOR shall take appropriate steps to ensure that neither the CONTRACTOR nor its Personnel is placed in a position where, in the reasonable opinion of ADB, there is or may be an actual or potential conflict between the pecuniary or personal interests of the CONTRACTOR and performance of the CONTRACTOR's obligations under the Contract. The CONTRACTOR shall disclose to ADB in the manner and form prescribed in the SCC full particulars of any such conflict of interest which may arise.
- 7.2. ADB shall undertake measures to manage actual or potential conflicts of interest, including termination of the Contract, as circumstances may warrant. This is without prejudice to other remedies or rights of action which shall have accrued or shall thereafter accrue to ADB under the Contract.
- 7.3. During and twelve [12] months after the Contract Period, the Parties shall not employ or offer employment to any of the other Party's personnel who have been associated with the procurement and/or management of the Contract without that other Party's prior written consent.

## **8. SCOPE OF THE CONTRACT**

- 8.1. The Services to be provided are specified in the SCC.
- 8.2. The Services shall also include Related Goods or items that are not specifically mentioned but are necessarily required to complete performance of the Contract, as if such items were expressly mentioned herein. The Related Goods and additional requirements for complete delivery of this Contract shall be provided in the SCC.
- 8.3. In case of discrepancy, the provisions of this Contract shall prevail over the Contract Documents enumerated. In interpreting the provisions of this Contract, ADB and the CONTRACTOR may further refer to the applicable Invitation to Bid and the Bid Documents of ADB.

## **9. CONTRACT PRICE**

- 9.1. For and in consideration of the CONTRACTOR's full and faithful performance of the Services specified in the SCC during the Contract Period in Paragraph 10 below, ADB shall pay the CONTRACTOR the Contract Price stated in the SCC. The Contract Price shall not vary from the price that the CONTRACTOR quoted in its Bid, except for any change resulting from a Change Order issued in accordance with Subparagraph 9.5 below.
- 9.2. The Contract Price is payable on the date and in the manner provided in the SCC.
- 9.3. Unless otherwise specified in the SCC, ADB and the CONTRACTOR agree that the Contract Price is a firm and fixed lump sum. The CONTRACTOR warrants that the Contract Price tendered already covers actual and contingent costs that the CONTRACTOR would incur in performing the Services, including additional compulsory statutory benefits and social contributions that the CONTRACTOR's employees may be legally or officially declared entitled to after execution of this Contract.
- 9.4. The Parties may agree to adjust the Contract Price following the price adjustment provisions specified in the SCC, as applicable. However, the CONTRACTOR shall not demand price adjustments due to fluctuations in the foreign exchange rate, increase in CONTRACTOR'S actual or contingent costs, or such other similar causes.
- 9.5. Should ADB require additional services not covered by the Work Performance Statement referred to in the SCC, ADB shall pay the CONTRACTOR for such contingency services in terms of person-hours and/or materials at the rates/prices that ADB and the CONTRACTOR shall negotiate and agree when the need arises.
- 9.6. When the performance of the CONTRACTOR falls below the satisfactory standards provided in ADB's Contractor's Performance Evaluation Report, Work Performance Standards (WPS), Work Performance Measurement (WPM) or Service Level Agreement (SLA) referred to in the SCC, ADB shall compute the corresponding deduction/s to be applied to the total Contract Price following the Scheduled Rate of Deductions referred to in the SCC. ADB shall deduct the aforementioned amount from the CONTRACTOR's succeeding payments, as applicable.

## **10. CONTRACT PERIOD**

- 10.1. Unless sooner terminated pursuant to Paragraphs 22 to 25 below, the Contract shall remain valid for the period stated in the SCC. The CONTRACTOR shall deliver the Services from the Starting Date until the Completion Date indicated in the SCC.
- 10.2. The CONTRACTOR gives ADB the option to unilaterally renew this Contract for another period of at least one [1] year, provided ADB sends a written notice to the CONTRACTOR at least 30 calendar days before the expiration of the initial or extended term of the Contract. All the terms and conditions, except the Contract Period and Contract Price when successfully renegotiated before expiration of the initial or extended term, shall apply during the renewed contract period.



- 10.3. The CONTRACTOR may submit to ADB a written proposal to adjust the Contract Price for the renewed contract period at least 30 calendar days before the expiration of the initial or extended term of the Contract or within 10 calendar days from receipt of a notice to renew from ADB. The contract price or rates shall remain unchanged for the renewed contract period, if ADB exercises its option to renew, and the CONTRACTOR does not submit to ADB a proposal to increase the Contract Price within 10 calendar days from receipt of a notice to renew from ADB.
- 10.4. If ADB and the CONTRACTOR fail to agree on a new Contract Price for the renewed contract period before the initial or extended term of this Contract expires, then the Contract shall be deemed extended for a period of up to four [4] months, at the election of ADB, under the same terms and conditions. ADB shall send to the CONTRACTOR three [3] days before expiration of the Contract a written notice of provisional extension indicating the period of provisional extension. During the period of provisional extension, the CONTRACTOR and ADB shall continue to negotiate in good faith and agree on a new Contract Price.

## **11. CONTRACTOR'S OBLIGATIONS**

- 11.1. The CONTRACTOR shall perform the Services according to ADB's requirements specifically described in the SCC and other contract documents [as applicable] during the Contract Period and in consideration for the payment of the Contract Price.
- 11.2. The CONTRACTOR shall further deliver such Related Goods that necessarily result from performing the Services, if there are any.
- 11.3. Timely provision of the Service, including commencing the supply of the Services within the time agreed or on a specified date, shall be of the essence of the Contract, The CONTRACTOR shall perform the CONTRACTOR'S obligations according to the Performance Standards provided in the SCC.

## **12. SECURITY AND INSURANCE**

### Performance Security

- 12.1. To secure performance of its obligations under the Contract, the CONTRACTOR shall post sufficient security worth at least 10% of the contract value, as OAPC or the IPC may fix and indicate in the SCC. The proceeds of the Performance Security shall be payable to the ADB as compensation for any loss resulting from the CONTRACTOR's failure to complete its obligations under this Contract.
- 12.2. The Performance Security shall be denominated in Philippine Pesos/US Dollars, or in a freely convertible currency acceptable to ADB. The Performance Security shall be in one of the following forms:
  - (a) Cash, cashier's check, manager's check, or bank draft;
  - (b) Bank guarantee or an irrevocable stand-by letter of credit issued by a reputable bank in Manila, Philippines or abroad and acceptable to ADB;

- (c) Sovereign guarantee in the amount of one hundred percent (100%) of the Contract Price; or
  - (d) Such form as may be specified in the SCC.
- 12.3. The CONTRACTOR shall submit the performance security within fifteen (15) calendar days from receipt of the Notice of Award from ADB, unless otherwise specified in the SCC but in no case later than the signing of the contract by both parties.
- 12.4. Unless otherwise specified in the SCC, ADB shall discharge and return the performance security to the CONTRACTOR not later than thirty (30) days following the date of complete performance of the CONTRACTOR's obligations under the Contract, including warranty obligations, and upon issuance by the ADB of a certification to that effect.
- 12.5. ADB shall have the right to unilaterally call the Performance Security when ADB determines that:
- (a) The CONTRACTOR, in violation of or contrary to its warranties under this Contract, does not have the required license, permit, power and/or authority to enter into and fully perform its obligations under this Contract; or
  - (b) The CONTRACTOR breached the Contract and failed to remedy the breach, if ADB deems such breach remediable, within seven [7] calendar days from receipt of notice from ADB.

#### General Liability Insurance and Indemnity

- 12.6. Before commencing performance, the CONTRACTOR shall be required to acquire Comprehensive General Liability Insurance taking into account such conditions acceptable to ADB, including, but not limited to the following:
- (a) The CONTRACTOR shall be liable for and shall indemnify and hold ADB harmless against the costs of claims against ADB arising out of injury to or death of any person, or any loss of or damage to property, including the property of ADB, due to the negligence of the CONTRACTOR or person's acting for the CONTRACTOR.
  - (b) The face value of the insurance shall not be less than Pesos Two Million Five Hundred Thousand (₱2,500,000.00) for each occurrence, and the insurance shall be automatically renewed after the face value has been expended and/or validity has expired.

#### Good Social Management (GSMC)

- 12.7. The CONTRACTOR shall perform its obligations under this Contract diligently, observe good social management practices, and comply with relevant laws, regulations, decrees and orders of competent government agencies or authorities concerning the employees of the CONTRACTOR engaged in performing the Services.
- 12.8. The CONTRACTOR shall submit to ADB the Good Social Management Certificate [*Ref. to Appendix XX: Form of Good Social Management*] within

fifteen calendar days from the effective date of the Contract, which shall remain valid during the effectivity of the Contract, as indicated in the SCC.

- 12.9. The CONTRACTOR shall indemnify and hold ADB free and harmless from any and all claims made by the CONTRACTOR's personnel under Philippine labor laws and other related legislation, including but not limited to, the minimum wage law.

General Conditions for Performance Security, Insurance and GSMC

- 12.10. The CONTRACTOR shall furnish evidence that the securities, insurance and/or GSMC were taken at the time required and continues to be in effect before executing the Contract; during the Contract Period and after termination for a period specified in the SCC. The CONTRACTOR shall deposit with ADB a copy of the required GSMC, securities, insurance policy/ies and receipts for payment of the corresponding premium, as applicable, within the time required above.
- 12.11. The CONTRACTOR shall obtain and maintain such GSMC, insurance and/or performance securities as the Parties may agree, as indicated in the SCC
- 12.12. When the CONTRACTOR fails to submit, validate and/or renew any or all of the following contract requirements, namely: (a) Performance Security, (b) Comprehensive General Liability Insurance and (c) Good Social Management Certificate, ADB reserves the right to withhold payment attributed to the Contract Price until the aforesaid requirement/s is/are provided.
- 12.13. The CONTRACTOR shall not pass on under whatever form the penalty referred to in Subparagraph 12.12 above or any part thereof to its employees.
- 12.14. OAPC/CA, in coordination with the User Units, shall monitor compliance with these requirements.

**13. CONTRACTOR'S UNDERTAKING**

- 13.1. The CONTRACTOR shall immediately notify ADB in writing when:
- (a) the CONTRACTOR merges with, acquires, or transfers all or substantially all its assets to another entity;
  - (b) any person or entity acquires directly or indirectly the beneficial ownership of equity securities and, consequently, the power to elect a majority of the board of directors of the CONTRACTOR, or otherwise acquires directly or indirectly the power to control the policy making decisions of the CONTRACTOR;
  - (c) the CONTRACTOR is dissolved; applies for insolvency or bankruptcy; or otherwise admits in writing its inability to pay its outstanding obligations;
  - (d) the CONTRACTOR is administratively or judicially declared insolvent or bankrupt, placed under receivership, administration, rehabilitation or liquidation;
  - (e) the CONTRACTOR's financial condition becomes significantly unstable and threatens to jeopardize the CONTRACTOR's ability to perform its obligations under the Contract;

(f) the CONTRACTOR loses any license or authorization required to perform its obligations under the Contract; or

(g) the CONTRACTOR faces any event beyond the control of the CONTRACTOR or a situation that makes it impossible for the CONTRACTOR to carry out its obligations under this Contract.

ADB and the CONTRACTOR shall explore alternative arrangements to ensure full performance of this Contract under any or all of the above circumstances.

- 13.2. Machines or equipment that ADB issues to the CONTRACTOR for free, as indicated in the SCC, shall remain the property of ADB; and ADB may recover them from the CONTRACTOR at any time. The CONTRACTOR shall not, under any circumstances, have a lien or any other interest on such machines or equipment; and the CONTRACTOR shall at all times possess them only as fiduciary agent and bailee of ADB. The CONTRACTOR shall not commingle the machines or equipment with its own, and shall accordingly advise all sub-contractors and other interested third parties of ADB's ownership of such machines or equipment.
- 13.3. The CONTRACTOR shall compensate ADB for the loss of or damage to machines or equipment that ADB has provided to the CONTRACTOR when ADB finds that the loss or damage resulted from the willful act or gross negligence of the CONTRACTOR's personnel. Upon expiration or termination of the Contract, the CONTRACTOR shall immediately return, without need of demand, the machine(s)/equipment that ADB had supplied.
- 13.4. The CONTRACTOR shall, at all times, provide ADB with an adequate number of suitably qualified and experienced managerial, service and support staff, as appropriate, to perform the Services and/or deliver the Related Goods in accordance with the Contract documents. The CONTRACTOR shall supervise and control the CONTRACTOR's personnel at all times, but ADB may recommend re-assignment of CONTRACTOR's personnel when ADB finds their qualifications and training are inconsistent with the personal and professional qualifications agreed with the CONTRACTOR.
- 13.5. The CONTRACTOR shall, at its own expense, provide personnel performing the Services and/or delivering the Related Goods with uniforms acceptable to ADB. Such uniforms shall afford adequate protection from the usual working hazards encountered by the CONTRACTOR's personnel; distinctly identify the CONTRACTOR's personnel so that it is clear that they are not ADB personnel; and be neat and worn properly at all times by the CONTRACTOR's personnel during the performance of the CONTRACTOR's obligations under this Contract.
- 13.6. The CONTRACTOR shall ensure that the CONTRACTOR's personnel behave according to generally acceptable standards in performing the Services and/or delivering the Related Goods under the Contract. The CONTRACTOR shall further require its personnel to comply with ADB's safety and security regulations and other regulations concerning the movement and conduct of persons on ADB premises, including but not limited to, the requirement to wear appropriate identification cards while on ADB premises.
- 13.7. ADB reserves the right to refuse admittance to or remove from ADB Premises CONTRACTOR's personnel who, in ADB's judgment, are under the influence of alcohol or other drugs or, for any reason, are deemed incapable of safely and

reliably performing assigned work or whose behavior does not conform to generally accepted standards.

- 13.8. CONTRACTOR's personnel who commit an offense on ADB Premises shall be removed from ADB Premises and/or surrendered to local law enforcement authorities. For this purpose, the CONTRACTOR recognizes the authority of OAOR-SE to summon CONTRACTOR's employees for investigation. Such offenses include, but are not limited to, the following:
- (a) Theft/Pilferage. Removing or attempting to remove from ADB Premises, without Gate Pass or authority to do so, ADB properties, regardless of the condition or value of such property; or stealing personal properties while on ADB Premises.
  - (b) Damage or Disruption. Deliberately or through culpable negligence disrupting ADB operations, and/or otherwise causing damage to or destroying ADB's property.
  - (c) Drunkenness/Alcoholism. Consuming intoxicating beverages on ADB Premises or reporting for work under the influence of alcohol.
  - (d) Using Prohibited Drugs. Includes possessing, pushing, consuming or otherwise using prohibited drugs, hallucinogenic substances or narcotics on ADB Premises.
  - (e) Gambling. Gambling in any form while on ADB Premises.
  - (f) Violence. Using force, physical assault, coercion, threat, intimidation, extortion, bribery, or engaging in other unlawful activities with ADB or non-ADB personnel for any purpose whatsoever.
  - (g) Possessing Firearms and/or other deadly weapons. Carrying firearms, licensed or unlicensed, and/or other deadly weapons while on ADB Premises.
- 13.9. OAOR-SE shall issue identity cards for the CONTRACTOR's employees. The CONTRACTOR shall ensure that terminated or separated personnel return the identity cards to ADB not later than their last working day.
- 13.10. The CONTRACTOR's personnel are urged to remain within the location(s)/area(s) where they are authorized to be and/or are assigned. However, the CONTRACTOR's personnel may use ADB's cafeteria for their normal breakfast or lunch (12:30PM to 1:30PM only) while on duty. The CONTRACTOR's personnel should leave ADB Premises within a reasonable time after completing their daily functions.
- 13.11. The CONTRACTOR shall not pay any commissions, or fees; grant any rebates or give gifts or favors; or otherwise enter into any financial or business arrangements with ADB personnel or their dependents during the effectivity of the Contract.
- 13.12. In rendering the Service, the CONTRACTOR shall not unlawfully discriminate against ADB personnel either directly or indirectly on the basis of race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.

- 13.13. The CONTRACTOR shall, when working on the Premises, perform its obligations under the Contract according to ADB's environmental policy to, among others, conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 13.14. The CONTRACTOR shall comply with health and safety measures of ADB. The CONTRACTOR shall promptly notify ADB of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. ADB shall promptly notify the CONTRACTOR of any health and safety hazards which may exist or arise on ADB's premises and which may affect the CONTRACTOR in performing its obligations under the Contract.
- 13.15. The CONTRACTOR shall notify ADB immediately of any incident occurring in connection with or as a result of performing its obligations under the Contract on ADB premises, particularly where the incident causes any personal injury or damage to property which could give rise to personal injury.
- 13.16. The CONTRACTOR shall give notices and obtain certificates, permits, and other documents required under applicable laws, regulations and decrees and necessary to perform the Services under the Contract.
- 13.17. The CONTRACTOR is an independent contractor of ADB. The Contract shall not nor be deemed to create the relationship of employer and employee, master and servant, or principal and agent between ADB and the CONTRACTOR or the CONTRACTOR's employees, agents or any other persons engaged by the CONTRACTOR to perform its obligations under this Contract. Accordingly, neither Party shall be authorized to act in the name or on behalf of, or otherwise bind the other Party, save as expressly permitted by the terms of the Contract.

#### **14. PERFORMANCE STANDARDS**

- 14.1. To confirm the continued adequacy of the Service and/or compliance with the required standards, the CONTRACTOR shall allow ADB to test and/or evaluate the Service regularly or randomly during normal business hours on reasonable notice. The CONTRACTOR or its subcontractor(s) shall furnish all reasonable facilities and assistance, including access to drawings and production data and other relevant documents at no cost to ADB. Details of the tests and/or evaluation that ADB requires, if there are any, shall be specified in the SCC.
- 14.2. The ADB may reject the Service when it is evaluated to be inadequate or not conforming to the specifications referred to in the SCC. ADB shall ask the CONTRACTOR to either rectify or modify/improve the Service, as necessary and at no cost to ADB, to meet the required standard.
- 14.3. The CONTRACTOR's consent to the testing and/or evaluation of the Service or inspection of the Related Goods or any part thereof shall not release the CONTRACTOR from its warranties or other obligations under the Contract.

## **15. SERVICE LEVEL AGREEMENT [SLA]**

- 15.1 To achieve and maintain a high level of performance and where applicable, ADB and the CONTRACTOR shall execute an SLA that sets their mutual expectations, specifies the aspects of delivery of the Goods and Related Services under the Contract, and identifies indicators to measure the CONTRACTOR's level of performance.
- 15.2 The SLA between ADB and the CONTRACTOR may include conditions for incurring service level credits or earning incentives. At least 80% of the total service level incentives shall be distributed among deserving personnel of the CONTRACTOR.
- 15.3 The CONTRACTOR shall report to ADB, as necessary, actual use and/or disposition of service level incentives.

## **16. WARRANTIES AND REPRESENTATIONS**

- 16.1. The CONTRACTOR warrants that it has full capacity, authority and consent, including the consent of its parent company, where applicable, and that it possesses the necessary licenses, permits, and power to execute and perform its obligations under the Contract. The CONTRACTOR further warrants that the Contract is executed by a duly authorized representative of the CONTRACTOR.
- 16.2. As of the Commencement Date, all information contained in the CONTRACTOR's Bid remains true, accurate and not misleading, except those that the CONTRACTOR may have specifically disclosed in writing to ADB before executing the Contract;
- 16.3. To the best of the CONTRACTOR's knowledge and belief, no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, pending or being threatened against the CONTRACTOR or any of its assets that could materially and adversely affect the CONTRACTOR's ability to perform the Services under the Contract.
- 16.4. The CONTRACTOR is not subject to any contractual obligation that would materially and adversely affect the CONTRACTOR's ability to perform the Services under the Contract; nor has the CONTRACTOR done or omitted to do anything that could materially and adversely affect its assets, financial condition or position as a going business concern.
- 16.5. The CONTRACTOR has not filed nor is it facing proceedings for winding up its business or for dissolution, insolvency, bankruptcy, or the appointment of a receiver, liquidator, administrator or similar officer in relation to any of the CONTRACTOR's assets or revenue. The CONTRACTOR expressly warrants its financial viability and shall permit ADB to inspect the CONTRACTOR's accounts, financial statements and other records relevant to the performance of the CONTRACTOR under the Contract, or otherwise have these accounts and records audited externally, as ADB may deem necessary.
- 16.6. The CONTRACTOR has undertaken all financial accounting and reporting activities required under the generally accepted accounting principles that apply to the CONTRACTOR and in the country where it is registered and has complied with applicable securities and tax laws and regulations.

- 16.7. The CONTRACTOR further warrants that Related Goods supplied under this Contract have no defect/s arising from design, materials, workmanship; or damage resulting from any act or omission of the CONTRACTOR, or those that may develop under normal use of the Related Goods.
- 16.8. To ensure that the CONTRACTOR would correct or cause the correction of all defects, the CONTRACTOR extends the warranty against defects for a minimum period of three (3) months for supplies and/or one (1) year for equipment, counted after complete performance of the Contract or other such period as may be specified in the SCC. When applicable, the extended warranty shall be secured by, at the CONTRACTOR's option, retention of at least ten percent (10%) of every progress payment, or a special bank guarantee of at least ten percent (10%) of the total Contract Price, or such amount as may be specified in the SCC. The security shall be released only after the lapse of the extended warranty period, after the Related Goods provided are confirmed to be free from patent and latent defects, and all the conditions imposed under the Contract have been fully met.
- 16.9. The CONTRACTOR shall further be liable for implied warranties under applicable laws.
- 16.10. ADB shall promptly notify the CONTRACTOR in writing of any claims arising under any or all of the express and implied warranties provided in the Contract. Upon receipt of such notice, the CONTRACTOR shall, within the period specified in Subparagraph 16.8, repair or replace the defective Related Goods or parts thereof, without costs to ADB.
- 16.11. If the CONTRACTOR, after notice, fails to remedy the defect(s) within the period specified in Subparagraph 16.8, ADB may take remedial action, as necessary, at the CONTRACTOR's risk and expense and without prejudice to any other rights which ADB may have against the CONTRACTOR under the Contract and other applicable laws.

## **17. ADB'S RESPONSIBILITIES**

- 17.1. ADB shall pay the Contract Price, according to the agreed terms and manner of payment therein and subject to the following conditions:
- (a) Unless otherwise specified in the SCC payments shall be made only after the Head of the User Unit certifies that the Services were evaluated and found to have been performed according to the terms of the Contract.
- (b) Except with the prior approval of Head of the User Unit, no payment shall be made for Services not yet performed under this Contract. At the election of the CONTRACTOR, ten percent (10%) of the amount of each payment may be retained by ADB to cover the CONTRACTOR's warranty obligations described in Paragraph 15 above.
- (c) The CONTRACTOR's request(s) for payment shall be made to ADB in writing; accompanied by an invoice describing the Services performed and/or Related Goods delivered and documents required in the SCC; and upon fulfillment of other obligations stipulated in the Contract.
- (d) ADB shall pay promptly and not later than thirty (30) days after the CONTRACTOR submits an invoice or claim. The CONTRACTOR shall accept



payments as full satisfaction of the CONTRACTOR's entire claim arising out of or in connection with the Contract.

(e) The CONTRACTOR shall submit such documents supporting the CONTRACTOR's invoice or statement of account, as ADB may reasonably require.

(f) Unless otherwise agreed with the CONTRACTOR, ADB shall remit payment of the Contract Price by electronic transfer. The CONTRACTOR shall provide ADB the CONTRACTOR's bank details such as bank name, bank address/branch, account name, and account number on its invoices or request for payment.

17.2. When performance of the obligations in the Contract requires the CONTRACTOR to obtain permits, approvals, or import and other licenses from local public authorities and the CONTRACTOR requests ADB's assistance in this regard, ADB may exert best efforts to assist the CONTRACTOR in completing such requirements in a timely and expeditious manner.

## **18. DELAY**

18.1. Performance of the Service and/or delivery of the Related Goods shall be made by the CONTRACTOR according to the time schedule that ADB has provided in the SCC.

18.2. If the CONTRACTOR or its Subcontractor(s) encounters conditions impeding timely performance of the Service and/or delivery of the Related Goods, the CONTRACTOR shall notify ADB in writing of the fact of the delay, its likely duration and cause(s) within three (3) days of its occurrence. ADB shall evaluate the situation and advise the CONTRACTOR if the time for performance can be extended.

18.3. Delay in performing the obligations under the Contract shall render the CONTRACTOR liable for liquidated damages provided below, unless ADB extends the time of performance or when ADB determines that the delay was due to *Force Majeure*, as defined below and subject further to the conditions in the Contract.

## **19. LIQUIDATED DAMAGES**

19.1. If the CONTRACTOR fails to perform the Services and/or deliver the Related Goods within the period(s) specified in this Contract, ADB shall deduct from the Contract Price, Liquidated Damages equivalent to a percentage of the Contract price for every week of delay or part thereof until actual delivery or performance. The actual rate and factor of deduction and the maximum allowable deduction are specified in the SCC.

19.2. Liquidated damages shall be imposed without prejudice to other remedies under this Contract and under applicable laws. Once the maximum cumulative amount of Liquidated Damages provided in the SCC is reached, ADB may consider terminating the Contract pursuant to Paragraph 22 below.

**20. FORCE MAJEURE**

- 20.1. Neither Party shall be liable to the other for any delay in performing, or failure to perform, its obligations under the Contract when the delay or failure is caused by *Force Majeure* or fortuitous event, as defined in Paragraph 1 above. In these cases, ADB shall not call the CONTRACTOR's Performance Security, impose liquidated damages, or terminate this Contract for default.
- 20.2. In cases of *Force Majeure*, the CONTRACTOR shall promptly notify ADB in writing of the relevant circumstances. Unless otherwise directed by ADB in writing, the CONTRACTOR shall continue performing as much of its obligations as reasonably practical, and undertake reasonable alternative means of performance not prevented by the *Force Majeure*.

**21. CONTRACT AMENDMENT**

- 21.1. ADB and the CONTRACTOR shall not vary or modify the terms of the Contract except by prior written amendment signed duly executed by the parties.
- 21.2. The CONTRACTOR shall submit to the Principal Director, OAS, through OAPC, a written proposal to amend and/or modify this Contract. Proposals to amend may include, but not be limited to, changes in the scope of the Services, payment terms or completion schedule. The proposed amendment and/or modification shall not take effect until endorsed by the Principal Director, OAS and approved by the appropriate approving authority.

**22. TERMINATION FOR DEFAULT**

- 22.1. ADB shall terminate this Contract for default when:
  - (a) The CONTRACTOR fails to perform the Services and/or deliver the Related Goods within the period(s) specified in the Contract or extended periods that ADB would grant under Paragraph 18 above and before incurring delay; and the undelivered Services and/or Related Goods amount to at least ten percent (10%) of the Contract Price;
  - (b) The CONTRACTOR fails to continue delivering or performing the Services amounting to at least ten percent (10%) of the Contract Price within sixty (60) calendar days after receipt of written notice from ADB informing the CONTRACTOR that the Force Majeure had ceased; or
  - (c) The CONTRACTOR fails to perform any other obligation under the Contract.
- 22.2. When ADB terminates the Contract in whole or in part, ADB may procure services and/or related goods similar to those to be provided under the Contract, and the CONTRACTOR shall be liable for any excess costs that ADB may incur in procuring similar Services. The CONTRACTOR shall continue performing its obligations provided under parts of the Contract that remain effective.
- 22.3. Delay in performing the Services and/or delivering the Related Goods for a period equivalent to ten percent (10%) of the specified Contract Period including any extensions granted to the CONTRACTOR shall constitute default

that may result in terminating the Contract, forfeiting the CONTRACTOR's Performance Security and/or awarding the Contract to another qualified Contractor.

**23. TERMINATION FOR INSOLVENCY AND CHANGE OF CONTROL**

23.1. ADB may terminate the Contract when:

(a) the CONTRACTOR undertakes legal proceedings to dissolve or wind up its business, or be declared bankrupt and/or insolvent.

(b) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the CONTRACTOR's assets and such attachment or process is not discharged within fifteen [15] days; or,

(c) where applicable, the CONTRACTOR dies or otherwise loses legal capacity to contract.

23.2. Termination for insolvency shall not entitle the CONTRACTOR to compensation other than for Services already rendered; it shall be without prejudice to any right of action or remedy that has accrued or will accrue thereafter to ADB and/or the CONTRACTOR.

23.3. If a significant change in the ownership and/or control of the CONTRACTOR threatens to disrupt or adversely affect delivery of the Service, ADB may terminate the Contract for change of control when:

(a) the CONTRACTOR merges with, acquires, or transfers all or substantially all its assets to another entity;

(b) any person or entity acquires directly or indirectly the beneficial ownership of the CONTRACTOR and, consequently, the power to elect a majority of the board of directors of the CONTRACTOR; or

(c) any person or entity otherwise acquires directly or indirectly the power to control the policy making decisions of the CONTRACTOR.

**24. SUSPENSION OR TERMINATION FOR UNLAWFUL ACTS**

24.1. ADB may terminate this Contract, immediately in the case of paragraphs (a) and (b) below, if ADB determines that the CONTRACTOR has committed unlawful acts during the procurement of the Service or implementation of the Contract. Unlawful acts include, but are not limited to, the following:

(a) if ADB determines that the Contractor has failed to observe or comply with the Standards of Conduct (**Appendix 4** hereof) or that fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in this Contract have been given or received in connection with the selection process or in the Contract's execution;

(b) If ADB identifies significant integrity or reputational risks through any due diligence review process;

- (c) Forging or using forged documents;
  - (d) Using adulterated materials, means or methods; or using production methods contrary to the rules of science or the trade; and
  - (e) Any other act analogous to the foregoing.
- 24.2 ADB may suspend the performance of the whole or part of the Contract, or the disbursement of funds under the Contract, for a period of time as ADB deems necessary if ADB becomes aware that the Contractor may have breached the Standards of Conduct and ADB decides, in its sole discretion, to conduct an enquiry into such potential breach of the Standards of Conduct.

## **25. TERMINATION FOR OTHER CAUSES**

- 25.1. ADB may terminate the Contract, in whole or in part, at any time and for other causes, as ADB deems fit. These causes include, but are not limited to, the existence of conditions that make performance of the Service economically, financially or technically impractical and/or unnecessary; or unexpected, extraordinary circumstances that do not constitute fortuitous event(s); or changes in the law and national government policies that apply to the CONTRACTOR.
- 25.2. The Services that were already performed and/or otherwise ready for performance within thirty (30) calendar days after the CONTRACTOR's receipt of Notice to Terminate shall be accepted by the ADB under the terms and for the price/s provided in this Contract. For Services not yet performed and/or ready for performance, ADB may elect to:
- (a) have any portion delivered and/or performed and paid at the existing contract terms and prices; and/or
  - (b) cancel the remainder and pay the CONTRACTOR an agreed amount to cover partially performance and materials, parts or other necessary expenses already incurred by the CONTRACTOR.
- 25.3. The CONTRACTOR shall be allowed to recover partial loss/es incurred as a result of termination under this Paragraph, including but not limited to those resulting from purchase of raw materials for Related Goods specially manufactured for ADB and cannot be sold in open market, on a *quantum meruit* basis, as ADB and the CONTRACTOR may agree. However, the CONTRACTOR must first establish the fact of loss to the satisfaction of the ADB.

## **26. PROCEDURES FOR TERMINATION**

- 26.1. Upon finding ground(s) for termination, OAPC/CA shall issue a written notice to the CONTRACTOR stating:
- (a) That the Contract is recommended for termination, with summary statement of the acts/omissions that constitute the ground(s) for termination;
  - (b) The recommended extent of termination, whether in whole or in part;

- (c) Special instructions of ADB, if there are any; and
  - (d) Effective date of termination.
- 26.2. The CONTRACTOR may immediately submit an answer to OAPC/CA stating why the Contract should not be terminated.
- 26.3. When served with a decision to terminate the Contract, and unless otherwise provided in the notice, the Contract shall be deemed terminated immediately upon the CONTRACTOR's receipt of the notice. ADB may withdraw the Notice to terminate anytime prior to service to the CONTRACTOR if ADB determines that the CONTRACTOR already completed delivery of the Services and Related Goods and delivery is deemed acceptable to ADB.

**27. TRANSITION**

- 27.1 After the Contract period or when the Contract is pre-terminated for any of the causes provided above, the CONTRACTOR shall participate in ensuring the smooth, well-organized and seamless transition to a new Contractor. ADB and the CONTRACTOR agree to be bound by the following conditions:
- (a) The CONTRACTOR shall submit a business continuation or transition plan, which ADB must first approve before implementation.
  - (b) The CONTRACTOR shall render all outstanding Service until termination date without further delay or according to a schedule agreed with ADB and the User Unit. The CONTRACTOR shall deploy an adequate staff complement of the appropriate level or seniority to ensure efficient performance of the outstanding Service, including but not limited to, turn-over to the succeeding Contractor.
  - (c) The CONTRACTOR shall account for all equipment, facility or property of ADB, including documents and information in whatever format that the CONTRACTOR possesses or otherwise uses in performing the Services.
  - (d) The CONTRACTOR agrees to transfer or turn-over the technology, knowledge or information required to allow continuation of the function and deploy the required personnel for this purpose at costs chargeable to the new Contractor.
- 27.2 ADB and the CONTRACTOR shall agree on other conditions necessary to ensure smooth transition of the business and uninterrupted delivery of the Service.

**28. TRANSFER AND SUBCONTRACTING**

- 28.1. The CONTRACTOR shall not assign or transfer the Contract or specific rights or obligations under it without ADB's prior written consent.
- 28.2. When allowed by the nature of the Service or not prohibited in the SCC, and subject to the conditions under applicable labor legislation and provided in the SCC, the CONTRACTOR may engage a Subcontractor or a Consultant to perform the Service and/or deliver the Related Goods. The Performance Standards and other relevant provisions of the Contract shall apply to the

Subcontractor, Consultant or their respective employees, as if they were employees of the CONTRACTOR. However, the CONTRACTOR shall be solely liable to ADB for the work of the Subcontractor or Consultant.

- 28.3. Where ADB has consented to subcontracting, copies of each sub-contract shall, at the request of ADB, be sent by the CONTRACTOR to ADB as soon as reasonably practicable.

## **29. WAIVER**

- 29.1. The failure of either Party to insist upon strict performance of any provision of the Contract; or the failure of either Party to exercise, or any delay in exercising, any right or remedy under the Contract shall not constitute a waiver of that right or remedy nor diminish the obligations established by the Contract.
- 29.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing according to Paragraph 30.
- 29.3. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **30. ENTIRETY AND SEPARABILITY**

- 30.1. The Contract supersedes all prior written or verbal agreements between ADB and the CONTRACTOR and contains the reciprocal obligations of the parties pertaining to or arising out of the delivery of the Service. However, this shall not excuse any Party from liability arising from fraud or fraudulent misrepresentation.
- 30.2. Should any Paragraph, Subparagraph or part of the Contract be held by Arbitration Court to be invalid, unenforceable, or void, the decision shall not affect the validity of the entire Contract or of those parts that are not so declared or otherwise remain capable of partial or separable performance.

## **31. CONFIDENTIALITY OF CONTRACT DOCUMENTS AND INFORMATION**

- 31.1. Except with prior consent of ADB as provided in the SCC or where disclosure is expressly permitted under the Contract, the CONTRACTOR shall not communicate or otherwise disclose to a third party the Contract, any of its provisions, or other information mentioned or incorporated in the Contract. The parties shall treat each other's Confidential Information as confidential and exert diligent efforts to safeguard and avoid disclosure of the other party's Confidential Information to third parties without the owner's prior written consent.
- 31.2. Unless otherwise specified in the SCC, the CONTRACTOR and all its personnel for deployment to ADB during the Contract period, including any extension(s), shall submit a signed Non-Disclosure Agreement in accordance with the form as specified in SCC.
- 31.3. Unless ADB states otherwise, disclosures by ADB shall be deemed confidential. The CONTRACTOR may only disclose ADB's Confidential Information to the CONTRACTOR's Personnel who are directly involved and

who need to know the information in providing the Service. The CONTRACTOR shall ensure that such CONTRACTOR's Personnel are aware of and shall comply with the CONTRACTOR's obligations as to confidentiality. When ADB deems fit due to the nature of the Services, ADB may request the CONTRACTOR to require its Personnel to sign a confidentiality undertaking before commencing any work related to the Services covered by the Contract.

- 31.4. The CONTRACTOR shall not make any press announcement; publicize the Contract or any part thereof; or use ADB's name in publicity releases or advertisements during and after the term of this Contract, except with ADB's written consent and subject to the conditions provided in the SCC.
- 31.5. The Contract and Contract Documents are properties of ADB. All copies shall be returned to OAPC/CA upon completion of the CONTRACTOR's obligations and termination of the Contract.
- 31.6. The CONTRACTOR shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by ADB under the Contract. The CONTRACTOR shall extend to ADB or its representatives access to those records that ADB may request in connection with the Contract.

## **32. SETTLEMENT OF DISPUTES**

- 32.1. ADB and the CONTRACTOR shall exert effort to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of this Contract within thirty [30] days of either Party's notice of the dispute to the other. During this period, the User Unit, in consultation with OAPC/CA, and the CONTRACTOR's personnel directly involved should first attempt in good faith to settle the dispute among themselves before escalation to the Principal Director, OAS and their respective counterpart/s.
- 32.2. After the initial thirty [30] day-period, the Parties shall consider referring unresolved disputes to mediation, unless ADB considers the dispute not suitable for mediation or the CONTRACTOR does not consent. The Parties shall appoint a neutral mediator from a reputable association of accredited mediators or their own short-list of dispute resolution professionals. The mediator shall formulate a simplified procedure for mediation and complete the mediation within fifteen [15] days from his appointment.
- 32.3. Should efforts to resolve disputes under the preceding Subparagraphs fail, either party shall commence arbitration by sending notice to the other party stating in detail the issue to be resolved and that the dispute shall be referred to arbitration. The International Chamber of Commerce's [ICC] Rules of Arbitration in force upon commencement of arbitration shall apply. The arbitration shall be in English; it shall take place in Manila and be governed by Philippine law. Each party shall pay its own costs.
- 32.4. Notwithstanding unresolved disputes, the Parties shall continue to perform their respective obligations under the Contract or otherwise adopt provisional measures to ensure uninterrupted delivery of the Service.

**33. COUNTERPART**

- 33.1. This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.

*VerApril2018*



**BIDDER'S INFORMATION SHEET**

**TECHNICAL SUPPORT SERVICES FOR THE DEVELOPMENT OF ADB'S ASSET  
MANAGEMENT SYSTEM TO ISO 55001**

**General Information**

***All individual firms and each partner of a joint venture must complete the information in this form. Nationality information should be provided for all owners or applicants that are partnerships or individually owned firms.***

1.	Name of firm	
2.	Head office address .....	
3	Telephone	Contact
4.	Facsimile	Email
5.	Satellite office contact details (if any) .....	
6.	Place of incorporation/registration	Year of Incorporation/registration
7.	Main lines of business ..... ..... 1. Since: ..... 2. Since: ..... 3. Since: ..... 4. Since: .....	