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## TERMS OF REFERENCE PROCUREMENT OF CONSULTING SERVICES IN THE ASSESSMENT OF CEMENT MARKET IN LUZON, PHILIPPINES

### I. Background

The Philippine Competition Commission (PCC) is an independent quasi-judicial body mandated to implement Republic Act No. 10667 or the Philippine Competition Act (PCA). The PCA prohibits anti-competitive agreements, abuses of dominant position and anti-competitive mergers and acquisitions (M&A), as the law aims to enhance market competition for the benefit of consumers and businesses. The Commission, *motu proprio* or upon notification, has the power to review mergers and acquisitions having a direct, substantial and reasonably foreseeable effect on trade, industry, or commerce in the Philippines, based on factors deemed relevant by the Commission.

The Mergers and Acquisitions Office (MAO) assesses whether a merger or acquisition is likely to substantially prevent, restrict, or lessen competition in the relevant market. It considers the broad range of possible factual contexts and the specific competitive effects that may arise in different transactions, such as preliminary indications that customers may be adversely affected, existence of a high degree of market concentration, the structure of the relevant markets concerned, the market position of the entities concerned, the actual or potential competition from entities within or outside of the relevant market, the alternatives available to suppliers and users, and their access to supplies or markets, and any legal or other barriers to entry.

It is typically difficult for MAO to cover all the above-mentioned aspects within the limited timeframe allowed by the PCA. Thus, obtaining market research data will help streamline data gathering and fact verification.

### II. Objectives

With reference to the MAO's aim to investigate M&A transactions that substantially prevent, restrict, or lessen competition in the relevant markets pursuant to Section 20 of the PCA, the market research subject of these terms of reference (TOR) shall provide in-depth market-related information on the cement industry in the Philippines. The results of the market research will be used to identify the value chain in the cement industry, market players, market structure, regulatory framework, industry-wide or firm-specific business practices, cost and revenue streams and other information that may impact the competitive conditions in the cement industry.



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### III. Scope of work

#### A. Outputs and Deliverables

The Consultant is expected to deliver or conduct the following outputs/activities:

1. **Work Plan**, which shall contain the proposed data gathering methodology. The draft and final work plan shall be presented to MAO, for comments and/or approval.
2. **Research activities**, which must include gathering both primary and secondary sources of data from reliable and verified sources, through the conduct of in-depth interviews and survey with respondents from industry stakeholders. The total number of respondents should be at least one thousand two hundred (1,200), distributed or allocated to different industry stakeholders such as but not limited to (i) cement manufacturers (1%), (ii) importers (15%) (iii) dealers and distributors (32%), (v) customers (e.g. construction companies, real estate developers, retail distributors, wholesalers, pre-fabricators, concrete manufacturers, traders, and etc.) (50%), (vi) trade associations (1%), and (vii) government agencies that regulate cement (e.g., Department of Trade and Industry, the Philippine Tariff Commission, etc.) (1%).

The Consultant shall turnover all the information or data gathered during the course of the market research in a format acceptable to the PCC (i.e. in comma separated value (.csv) files for quantitative data, computer readable .doc, .docx, or .rtf files for qualitative data), such as but not limited to raw data, transcripts, worksheets, files, recordings, documents, and other records related or in connection with the Market Research Report which are not proprietary to the company.

3. **Market Research Report**, which shall contain the following information:
  - a. Industry Background;
  - b. Description of the value chain;
  - c. Profile of the top ten (10) market participants for every segment of the value chain;
  - d. Market size and market shares across key areas in Mindanao;
  - e. Analysis of logistics and distribution of cement in key areas in Mindanao, Philippines;
  - f. Analysis of the marketing strategies of key industry players;
  - g. Barriers to entry and exit;
  - h. Market demand and supply, customer segmentation, and customer behavior; and
  - i. Comprehensive analysis of pricing and cost of cement products for the past five years

The draft and final Market Research Report shall be presented by the Consultant to MAO, for comments and/or approval.

#### B. Delivery Timetable and Payment Schedules

MAO proposes to engage the Consultant for approximately **forty-five (45) calendar days** from the issuance of the Notice to Proceed (NTP). The outputs and activities required from the Consultant are expected to be delivered and conducted following schedule below:

<b>Deliverables</b>	<b>Completion Timeline</b>	<b>% of the contract price</b>
1. Original signed draft Work Plan and Presentation of the Work Plan properly dated and duly accepted by the PCC; and proof of presentation (e.g. ppt slides)	Within 3 calendar days from the issuance of NTP	10%
2. Original signed Final Work Plan properly dated and duly accepted and approved by the PCC	Within 3 calendar days from receipt of MAO's final comments on the Work Plan	20%
3. Original signed draft Market Research Report properly dated and duly received by the PCC; and proof of presentation (e.g. ppt slides)	Within 30 calendar days from the approval of the Final Work Plan	20%
4. Original signed final Market Research Report, properly dated and duly accepted and approved by the PCC.	Within 5 calendar days from receipt of MAO's final comments on the Market Research Report.	30%
5. Presentation of the Final Market Research Report properly dated and duly accepted and approved by the PCC; proof of presentation (e.g. ppt slides); and Turnover of all the information or data gathered from the market research in a format acceptable to the PCC, such as but not limited to raw data, transcripts, worksheets, files, recordings, documents, and other records related or in connection with the Market Research Report, which are not proprietary to the company.	Within 4 calendar days from the acceptance of Final Market Research Report	20%

All payments shall be endorsed by the Director of the MAO; and each tranche payment to the Consultant shall be released upon PCC's acceptance of the deliverables listed above and supported by a Certificate of Satisfactory Service Rendered to be issued by MAO.

#### **IV. Approved Budget for the Contract (ABC) and Mode of Procurement**

The Approved Budget for the Contract (ABC) for the entire services is **Two Million Pesos (Php 2,000,000.00)** inclusive of all applicable government taxes and service charges. The Consultancy Services shall be a fixed price contract. Any extension of contract time shall not involve any additional cost to the PCC.

The procurement of the Consulting Services shall be undertaken through a competitive public bidding, pursuant to RA No. 9184 and its revised Implementing Rules and Regulations (IRR).

#### **V. Qualifications and Selection of the Contractor**

PCC-MAO proposes to engage an established consultancy firm to implement this project. The consultancy firm and the personnel to be assigned to this project that possess the qualifications indicated below shall be preferred.

## A. Eligibility of prospective bidder/s

To determine if the prospective bidder is eligible to participate in this bidding, legal, technical, and financial documents shall be submitted, as stated in the Invitation to Apply for Eligibility and to Bid (IAEB) and the Instructions to Bidders (ITB), pursuant to Sections 24.1 and 24.3 of the revised IRR of RA No. 9184.

## B. Shortlisting of eligible bidder/s

Only eligible bidders will be considered for shortlisting. In shortlisting bidders, the following criteria will be used:

Criteria	Minimum qualifications	Bases	Weight (%)
<b>Applicable experience and capability of the bidder</b>	<ul style="list-style-type: none"> <li>Engaged with at least three (3) companies/institutions either in private or public/government sector, in any of the following: market research study, preparation of survey instruments and sampling designs, provision of trainings for enumerators, data encoders, conduct of survey, collection and analysis of data, and reporting of survey results.</li> <li>With two (2) years of experience in providing consultancy service, market research, and other similar service.</li> </ul>	Records of previous engagement and quality of performance in projects related market research projects and other similar fields, and geographical distribution of current/ impending projects.	50%
<b>Qualification of personnel who may be assigned to the project</b>	<p><b><u>Lead Consultant/Project Manager:</u></b></p> <ul style="list-style-type: none"> <li>With MS/MA units in Engineering, Chemistry, Business, Social Sciences or Research</li> <li>Eight (8) hours of training in project management</li> <li>Five (5) years of experience in conducting market research</li> <li>Assigned and performed as lead consultant or project manager in at least one (1) market research project</li> </ul> <p><b><u>Technical Staff:</u></b></p> <ul style="list-style-type: none"> <li>At least three (3) Consultants/ Technical Staff with the following preferred qualifications:</li> <li>With a bachelor's degree in Engineering, Chemistry, Business, Social Sciences or Research</li> <li>Four (4) hours training in project management</li> <li>One (1) year of experience in conducting market research</li> </ul>	Signed curriculum vitae submitted indicating the preferred relevant work experience and educational background, and trainings attended supported by certificates of attendance / participation	30%
<b>Current work-load relative to capacity</b>	<ul style="list-style-type: none"> <li>At most five (5) projects</li> </ul>	Records of on-going (including awarded but not yet started contracts) and previous engagements	20%

Maximum of five (5) bidders, who will meet the hurdle score of at least 80 points, shall be shortlisted and invited to submit technical and financial proposals.

**C. Evaluation of the technical and financial proposals of the shortlisted bidders**

The technical and financial proposals of the shortlisted bidders will be evaluated using the Quality Cost-Based Evaluation (QCBE), with the following weights and requirements:

Criteria (weight, %)	Basis
<b>Technical Proposal (85%)</b>	
Qualification of personnel who may be assigned to the project (30%)	<i>As specified in the qualifications above.</i>
Applicable experience and capability of the firm (20%)	
Current work-load relative to capacity (10%)	
Plan of approach and methodology (40%)	Timelines, written proposal, overall quality of proposed work
<b>Financial proposal (15%)</b>	

The bidder with the highest total rated score based on the technical and financial proposals submitted, provided that the score shall pass the hurdle rate of 80 percent, shall be the Highest Rated Bidder.

**VI. Confidentiality of data and information**

The Consultant that will be engaged by the PCC shall submit outputs directly to the designated project manager within PCC for review and endorsement for payment. All the materials, data and information used and generated through this project will be the sole property of PCC. The consultant shall not use nor disseminate these documents for their own research purposes without the written consent of the PCC.

**VII. Conflict of interest**

The Consultant must be independent from the entities which operate in the business of the particular sector covered by the scope of this engagement and must have no conflict of interest. There is conflict of interest when the Consultant has an interest in the business of the entities operating, whether directly or indirectly, in the particular sector covered by this engagement, and the interest of such Consultant, or his rights or duties therein, may be opposed to or affected by the performance of his duty as Consultant.

**VIII. Liquidated damages**

If the contractor fails to deliver any or all of the goods and/or to perform the services within the period specified in this contract, the Procuring Entity shall, without prejudice to its other remedies under this contract and under the applicable law, deduct from the contract price as liquidated damages, the applicable rate of one-tenth (1/10) of one percent (1%) of the cost of unperformed portion of every day of delay. The maximum deduction shall be ten percent (10%) of the amount

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of the contract. Once the maximum is reached, the procuring entity reserves the right to rescind the contract, without prejudice to other courses of action and remedies open to it.

**IX. Dispute resolution**

A. Should any dispute related to the TOR and/or rights of the parties arise, the same shall be submitted to mutual consultation, mediation and arbitration, in the order of application. The venue of the proceedings shall be in Quezon City.

B. In case of a court suit, the venue shall be the courts of competent jurisdiction in Quezon City, to the exclusion of all other courts; and

C. Any amendment or additional terms and conditions to the TOR must be in writing, signed and acknowledged by the Parties.

Approved: 
<b>ATTY. KRISTAL LYN T. UY</b> Director IV, Mergers and Acquisitions Office
Conforme:
<b>Name and Signature</b> Date