

TERMS OF REFERENCE

Consulting Service for the Issues Paper on the Refined Petroleum Industry in the 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, abuse of dominant position and anti-competitive mergers and acquisitions, as the law aims to enhance market competition for the benefit of consumers and businesses.

Under the national competition policy chapter of the Philippine Development Plan 2017-2022, the government has committed resources for the conduct of market studies to assist the PCC to better understand industry structures and practices and identify potential constraints to competition. To guide the PCC in systematically prioritizing sectors it will investigate, a market scoping study on the manufacturing sector was conducted recently. The results of the market scoping indicate refined petroleum industry as one of the sectors on which further research is needed. It is in this light that this issues paper will be conducted.

Refined Petroleum products refers to products formed in the process of refining crude petroleum through distillation, cracking, solvent refining and chemical treatment coming out as primary stocks from the refinery¹. The commonly used refined petroleum products by the typical Filipino include diesel, gasoline, and kerosene.

The PCC requires the expertise and experience of consultants in the energy sector of the Philippines to complete an issues paper which is beyond the capability of PCC.

In view of the foregoing, resources shall be directed towards the engagement of a consultant, who shall complete an issues paper on the competitive landscape of the refined petroleum industry in the Philippines, with specific focus on the following varieties: (i) diesel, (ii) gasoline, (iii) and kerosene. The study shall provide an overview of the industry and detailed description of each variety, including an assessment of competition issues. The study shall also identify potentially anti-competitive laws and regulations that affect firm entry and expansion in the industry, and recommendations on possible measures to address competition issues.

II. Objectives

The objectives of this issues paper are as follows:

- 1) Describe the Philippine refined petroleum industry, with focus on diesel, gasoline, and kerosene highlighting any characteristics that are specific to the country including:
 - a. the structure of supply
 - i. the entire supply chain including key players and roles at each level
 - ii. the distribution systems and service networks prevailing in the market and their importance

¹ Source: Philippine Department of Energy

- iii. product differentiation in terms of costs, attributes or quality
 - b. the structure of demand
 - i. customer preferences (e.g., brand loyalty, the provision of pre- and after-sales services, the provision of a full range of products)
 - ii. the different groups of customers with a description of the “typical customer” of each group
 - iii. the importance of exclusive distribution contracts and other types of contract
 - c. profitability, costing and pricing schemes at each level of supply chain
 - d. the role of policies and regulations;
 - e. current industry trends and developments, including the role of imports, emerging technologies and/or changes in supply and demand dynamics
- 2) Conduct a behavioral or structural screening exercise to determine whether conditions in the industry are conducive to the formation and stability of a cartel or whether dominant firms or group of firms potentially abuse their market power;
- 3) Using the Structure-Conduct-Performance (SCP) paradigm, identify potential competition issues at each stage of the supply chain; and
- 4) Propose recommendations to address the identified competition issues.
- 5) Discuss the retail petroleum industry in Benguet, Philippines, specifically:
 - a. key players and roles at each level of the supply chain
 - b. customer preferences
 - c. costing and pricing schemes at each level of supply chain
 - d. the role of policies and regulations
 - e. current industry trends and developments
 - f. behavioral and structural screening exercise to determine whether conditions in Benguet are conducive to the formation and stability of a cartel, or whether dominant firms of group of firms potential competition issues

III. Scope of Work

The Contractor shall:

- 1) Submit an inception report, including a detailed work and financial plan in consultation with PCC;
- 2) Present the study framework in a PCC round-table discussion;
- 3) Assign tasks to, monitor, and review work of a research assistant assigned to the project;
- 4) Work closely with the designated PCC economist/s to quickly cascade the methodology in conducting market studies;
- 5) Conduct focus group discussions (FGDs), key informant interviews (KIIs), or surveys with relevant stakeholders and resources persons – as necessary – to gather information needed for the study;
- 6) Present the preliminary results in a research seminar. At the discretion of PCC, industry regulators and other stakeholders may be invited;
- 7) Draft the report with the assistance of a research assistant and PCC economist/s. The issues paper shall be published as a PCC working paper;
- 8) Present the findings through a public consultation; and
- 9) Draft a policy brief with the assistance of PCC economist/s as a by-product of the issues paper

At the minimum, the report should contain a discussion of the following:

- 1) supply chain of the refined petroleum industry;

- 2) product categories' description and differentiation, substitutability, and geographic market definition;
- 3) market structure including estimates for the last three years of the total market size (value and volume) and market shares of each player (value and volume) in the Philippine market and in the global market (if applicable);
- 4) trends and forecasts of demand and supply at every stage of the value chain;
- 5) structural and behavioral factors that potentially limit market competition;
- 6) laws and regulations that preclude market entry and/or entrepreneurship;
- 7) common industry practices that may be anti-competitive;
- 8) proposed measures to correct anti-competitive elements in the market; and
- 9) a case study on the retail petroleum market in Benguet, Philippines as an annex.

IV. Approved Budget for the Contract

The Approved Budget for the Contract (ABC) is One Million Nine Hundred Eighty Thousand Pesos (1,980,000.00), inclusive of all applicable government taxes, and shall include all remunerations, costs or profits arising from or in relation to the services rendered in connection with and/or in preparation for this engagement, such as of data purchases, focus group discussions, small group seminar presentations, and other meetings. The mode of procurement shall be Negotiated Procurement – Two Failed Biddings.

V. Timelines, Deliverables and Schedule of Payment

The Consultant shall be engaged for ten (10) months upon the receipt of Notice to Proceed, in accordance with the following timeline:

Deliverable/s	Timeline
Original signed inception report with detailed financial and work plan properly dated and duly accepted and approved by the PCC; and proof of presentation of study framework (e.g. ppt slides)	Thirty (30) days from the receipt of Notice to Proceed
Original signed progress report properly dated and duly accepted and approved by the PCC	Within sixty (60) days from the acceptance of Inception Report
Original signed draft report properly dated and duly accepted and approved by the PCC; and proof of presentation of preliminary results in a research seminar (e.g. ppt slides)	Within ninety (90) days from the acceptance of Progress Report
Original signed final report and policy brief properly dated and duly accepted and approved by the PCC; certification of the turn-over of data and do-files properly dated and duly accepted and approved by the PCC; and proof of presentation of findings in a public consultation (e.g. ppt slides)	Within one hundred and twenty days (120) from the acceptance of Draft Report and Preliminary Findings

All payments shall be endorsed by the Director of the Economics Office (EO); and each tranche payment to the Consultant shall be released upon PCC's acceptance of the deliverables listed above supported by a Certificate of Satisfactory Service Rendered to be issued by the EO. The tranche payment schedule shall be as follows:

Milestones	% of contract amount
Approved and accepted Inception Report	20%

Approved and accepted Progress Report	20%
Approved and accepted Draft Report and Preliminary Findings	30%
Approved and accepted Final Report	30%

The detailed description of the deliverables are as follows:

- a. **Inception Report** – shall include a detailed work and financial plan. The inception report will be important in ensuring a clear understanding of project management and engagement processes. This will be useful in clarifying and removing any uncertainties that might exist before the project commences, and establishing expectations regarding methodologies, deliverables, outcomes, and potential challenges. This will ensure a mutual understanding of the objectives, scope, and other requirements of the project. In this report, the Consultant is expected to identify the needed data, discuss the design and approach, including the proposed methodology for the project. After the acceptance of the inception report, the Consultant shall present the general framework of the study to the PCC in a roundtable discussion.
- b. **Progress Report** - shall include a brief write-up on the progress of the Project. At this stage, the Consultant is expected to start data collection, KIIs, and FGDs. The Consultant shall also provide a general information of the industry. (Expected number of pages: 2-3 pages)
- c. **Draft Report with Preliminary Findings** - shall include an assessment of the preliminary findings gathered from the Project. At the minimum, the Consultant is expected to provide discussions on the following key points: (i) description of the supply chain; (ii) product categories and geographic markets; (iii) trends and forecasts of demand and supply; (iv) market structure including a profile of each major player; (v) factors that potentially limit market competition; (vi) laws and regulations that preclude market entry and/or entrepreneurship; and (vii) proposed measures to correct anti-competitive elements in the market. Moreover, the Consultant should be able to present a structural and behavioral screening exercise to determine whether conditions in the market are conducive to the formation and stability of a cartel and whether dominant firms or group of firms potentially abuse market power. This report will be presented in a research seminar. At the discretion of PCC, industry regulators and other relevant stakeholders may be invited to elicit their inputs and views.
- d. **Final Report** – shall reflect the suggested inputs and revisions that have been adopted by PCC from earlier presentations and discussions of the draft Report. The findings covered by the Final report will be disseminated and presented in a public consultation.

VI. Required Minimum Qualifications of the Contractor

The bidding is open to individual consultants and firms who are legally registered in PhilGEPS and has secured a BIR Tax Certificate and/or Clearance, and/or duly registered with DTI/SEC/CDA.

For eligibility and shortlisting purposes, the firm must submit the legal, technical and financial documents under Section 24 of the IRR of the RA 9184 (“Government Procurement Reform Act”).

The Consulting Firm and/or the Project Manager/Principal Investigator, to be assigned in this project, must possess the following qualifications:

Criteria	Minimum qualifications
Applicable experience of the bidder	The consulting should have been in business/consultancy/research for at least eight (8) years,* have had engagements with 3 different companies/institutions (at least one of which should be with a government agency/institution), and with at most 3-5 on-going projects. <i>*In case of an individual consultant (or team of consultants), the basis for this criterion will be the years of experience of the Project Manager/Principal Investigator.</i>
Quality of personnel to be assigned to the project (Project Manager/Principal Investigator)	<u>Education</u> : advanced degree in Economics, Public Policy, or a related field; <u>Experience</u> : have extensive knowledge on the Philippine refined petroleum sector, with at least ten (10) years of total experience as researcher, of which at least five (5) years is in energy sector research. The Project Manager/Principal Investor should also have a proven publication track record with at least three (3) publications (e.g. books, journal articles, discussion papers, working papers). <u>Training</u> : at least 25-40 hours of relevant training in research

Note: To prove the expertise of the consultants who shall handle this project, kindly submit an original signed extensive curriculum vitae.

VII. Criteria for Shortlisting Eligible Bidder/s

Cognizant of Section 24 of the IRR of RA 9184, the following criteria and their corresponding weights shall apply in shortlisting the eligible prospective bidders.

Criteria	Weight (%)	Basis
Applicable experience and capability of the bidder	50%	If individual bidder, signed curriculum vitae submitted relative to relevant work experience and trainings attended If firm, records of previous engagements, quality, and extensive knowledge on Philippine refined petroleum sector
Qualification of personnel who may be assigned to the project	30%	Signed curriculum vitae submitted relative to relevant work experience and trainings attended
Current work load relative to capacity	20%	Records of on-going and previous engagements

The top three bidders with at least 80 percent overall score on the above-mentioned criteria will be shortlisted.

VIII. Criteria for Evaluating Shortlisted Bidders

The technical and financial proposals of the shortlisted bidders will be evaluated using the Quality-Based Evaluation (QBE).

The bidder with the highest rated score based on the technical proposal submitted, provided that the score shall pass the hurdle rate of 80 percent based on the technical evaluation component, shall be the Highest Rated Bidder. ONLY the Financial Envelope of the Highest Rated Bidder shall be opened.

The following criteria will be used in evaluating the technical proposals of the shortlisted bidders:

Criteria	Weight (%)	Basis
Quality of personnel to be assigned to the project	30%	Signed curriculum vitae submitted relative to relevant work experience and trainings attended
Experience and capability of the bidder	20%	If individual bidder, signed curriculum vitae submitted relative to relevant work experience and trainings attended If firm, records of previous engagements, quality, and extensive knowledge on Philippine refined petroleum sector
Plan of approach and methodology	50%	Timelines, clarity, feasibility, innovativeness and comprehensives of the written proposal and the overall quality of proposed work

IX. Mode of Procurement

The mode of procurement shall be Negotiated Procurement as provided under the Revised Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184.

X. Confidentiality of Data and Information

The Service Provider shall be engaged by the PCC and 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 the survey shall be under the sole ownership of PCC. The firm and any of its personnel shall, at all times, keep the confidentiality of such materials, data, and information, and shall not use nor disseminate these materials, data, and information for their own research purposes without the written consent of the PCC.

XI. Conflict of Interest

The Service Provider 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 Service Provider 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 Service Provider.

XII. 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 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.

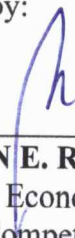
XIII. Dispute Resolution

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

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.

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

Approved by:



BENJAMIN E. RADOE, JR.
Director IV, Economics Office
Philippine Competition Commission

CONFORME:
_____ Name of Consultant / Firm
_____ Signature of Consultant / Authorized Representative
_____ Designation
_____ Date

Annex A. Detailed Rating Criteria for Shortlisting Eligible Prospective Bidder/s

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING
Quality of the contractor to be assigned to the project (Project Manager/ Principal Investigator) (50%)	Educational Attainment (30%)	100	PhD in Economics, Public Policy or related field	
		80	MS/MA holder in Economics, Public Policy or related field	
		0	BS / BA degree holder or lower.	
	Work Experience (30%)	100	At least 12 years of total experience as researcher, of which at least 7 years is in energy sector research	
		80	At least 10 years of total experience as researcher, of which at least 5 years is in energy sector research	
		0	Less than 10 years of total experience as researcher or less than 5 years is in energy sector research	
	Proven Publication Track Record (30%)	100	With at least five (5) publications (e.g. books, journal articles, discussion papers, working papers)	
		80	With at least three (3) publications (e.g. books, journal articles, discussion papers, working papers)	
		0	With less than three (3) publication/s (e.g. books, journal articles, discussion papers, working papers)	
	Training Qualification (10%)	100	With more than forty (40) hours of relevant training in research	
		80	With twenty-five to forty (25 to 40) hours of relevant training in research	
		0	With less than twenty four (24) hours of relevant training in research	
Experience and capability of bidder (20%)	Years in Business/ Consultancy/Research (50%)	100	With at least ten (10) years in business/consultancy/research (<i>in case of a firm</i>) OR at least 12 years of total experience as researcher, of which at least 7 years in energy sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)	
		80	With at least eight (8) years in business/consultancy/research (<i>in</i>	

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING
			<i>case of a firm</i>) OR at least 10 years of total experience as researcher, of which at least 5 years in energy sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)	
		0	With less than eight (8) years in business/consultancy/research (<i>in case of a firm</i>) OR less than 10 years of total experience as researcher or less than 5 years in energy sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)	
	Engagement with companies/institutions (25%)	100	With at least five (5) companies/institutions	
		80	With at least three (3) companies/institutions	
		0	With less than three (3) companies/institutions	
	Engagement with government agencies (25%)	100	With at least two (2) government agencies/institutions	
		80	With at least one (1) government agency/institution	
		0	No engagement with government agency/institution	
Current work load relative to capacity (30%)	Number of on-going projects (Including Awarded But Not Yet Started Contracts (100%))	100	With 0-2 number of on-going projects	
		80	With 3-5 on-going projects	
		70	With more than 5 on-going projects	

Annex B. Detailed Rating Criteria for Bid Evaluation of Shortlisted Bidders

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING
Quality of the personnel to be assigned to the project (Project Manager/ Principal Investigator) (30%)	Educational Attainment (30%)	100	PhD in Economics, Public Policy or related field	
		80	MS/MA holder in Economics, Public Policy or related field	
		0	BS / BA degree holder or lower.	
	Work Experience (30%)	100	At least twelve (12) years of total experience as researcher, of which at least seven (7) years is in energy sector research	
		80	At least ten (10) years of total experience as researcher, of which at least five (5) years is in energy sector research	
		0	Less than 10 years of total experience as researcher or less than 5 years is in energy sector research	
	Proven Publication Track Record (30%)	100	With at least five (5) publications (e.g. books, journal articles, discussion papers, working papers)	
		80	With at least three (3) publications (e.g. books, journal articles, discussion papers, working papers)	
		0	With less than three (3) publications	
	Training Qualification (10%)	100	With more than forty (40) hours of relevant training in research (e.g. books, journal articles, discussion papers, working papers)	
		80	With twenty-five to forty (25 to 40) hours of relevant training in research	
		0	With less than twenty four (24) hours of relevant training in research	
Experience and capability of bidder (20%)	Years in Business/ Consultancy/Research (50%)	100	With at least ten (10) years in business/consultancy/research (<i>in case of a firm</i>) OR at least 12 years of total experience as researcher, of which at least 7 years in energy sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)	

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING	
		80	With at least eight (8) years in business/consultancy/research (<i>in case of a firm</i>) OR at least 10 years of total experience as researcher, of which at least 5 years in energy sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)		
		0	With less than (8) years in business/consultancy/research (<i>in case of a firm</i>) OR less than 10 years of total experience as researcher (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)		
	Engagement with companies/institutions (25%)	100	With at least five (5) companies/institutions		
		80	With at least three (3) companies/institutions		
		0	Less than three (3) company/institution		
	Engagement with government agencies (25%)	100	With at least two (2) government agencies/institutions		
		80	With at least one (1) government agency/institution		
		0	No engagement with government agency/institution		
	Plan of approach and methodology (50%)	Comprehensiveness of plan and approach (70%)	100	Outstanding Characteristics under “outstanding” are present with additional activities/recommendations that add value to the project. Important issues are approached in an innovative and efficient way, indicating that the offeror have understood the main issues of the assignment and have outstanding knowledge of new solutions. The proposal details ways to improve the results and the quality of the assignment by using various approaches, methodologies, and knowledge.	
			90	Very Satisfactory The proposed approach is discussed in full detail, and the methodology is specifically tailored to the characteristics of	

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING
			the assignment and flexible enough to allow its adaptation to changes that may occur during project execution.	
		80	Satisfactory The steps to carry out the different activities of the TOR is discussed generically. The approach is standard and not specifically tailored to the assignment. Although the approach and methodology are suitable, they don't include a discussion on how the offeror proposes to deal with critical characteristics of the assignment.	
		0	Unsatisfactory The approach and methodology are not acceptable for this project and not compliant with the specifications stated in the TOR.	
	Timetable of Deliverables (30%)	100	Very Good The deliverables are for submission at least two to four days before the required timeline and schedule set by the PCC.	
		80	Good The deliverables are for submission on the day of the schedule set by the PCC	
		0	Poor The proposal indicates late submission of the required deliverables	