
TERMS OF REFERENCE

Consulting Services for PCC Market Study on Philippine Construction Industry

I. RATIONALE AND BACKGROUND

The Philippine Competition Commission (PCC) is an independent quasi-judicial body mandated to implement Republic Act 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.

As stated in the National Competition Policy chapter of the Philippine Development Plan 2017-2022, the government has committed resources for the conduct of studies in priority sectors where the largest impact on consumer welfare and market efficiency are expected. For 2020, the Commission has identified construction industry (“subject sector”) as one of its priority sectors.

The construction industry in the Philippines plays an important role in economic development, providing services for households and in building infrastructure vital for the functioning of other industries including transportation, power, electricity, water, housing, and information and communications technology, among others. Through its linkages with other industries, the construction sector generates significant economic activity, both as provider of production inputs and a consumer of services and products from other sectors.¹

The PCC requires the expertise and experience of a contractor in the subject sector to complete the market study.

II. OBJECTIVES

Resources for this project shall be directed for the completion of a market study on the competitive landscape of the subject sector in the Philippines. Specifically, the study shall:

1. Provide an overview of the subject sector, including description of market structure and major industry participants;
2. Provide an overview of current industry trends and developments, emerging technologies and/or changes in supply and demand dynamics;
3. Identify structural issues that potentially limit market competition (in terms of concentration, vertical intergration);
4. Identify common industry practices or concerted practices which may substantially lessen competition (exclusive dealing arrangement, bundling of service);
5. Identify policies and regulations that may affect firm entry and expansion and assess the role of state owned enterprises involved in the subject sector;
6. Conduct 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

¹ Lifted from PCC Policy Note No. 1 Series of 2017

- or group of firms potentially abuse their market power;
7. Estimate welfare impacts in addressing competition concerns in the industry; and
 8. Propose possible recommendations to address anti-competitive elements in the market.

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's framework and methodology 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 cascade the research methodology used in the market study;
- 5) Conduct data gathering activities such as focus group discussions² (FGDs), key informant interviews³ (KIIs), or surveys⁴ with relevant stakeholders and resource 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 and finalize the research report;
- 8) Present the findings in a public consultation; and
- 9) Draft a policy brief with the assistance of PCC economist/s as a by-product of the market study.

IV. SERVICES TO BE PROVIDED BY THE PCC

The following are the services to be rendered by the PCC:

1. Provide the contractor a directive to facilitate the completion of the market study;
2. Constantly coordinate with the contractor on the planning and implementation of the market study; and
3. Pay the contractor's project cost inclusive of mandatory taxes and in accordance with the set payment schedule.

The contractor shall be engaged by the PCC and shall submit outputs directly to the designated project manager within PCC for review and endorsement for payment.

V. APPROVED BUDGET FOR THE CONTRACT AND MODE OF PROCUREMENT

The Approved Budget for the Contract (ABC) is **Two Million and Five Hundred Thousand Pesos (PhP 2,500,000.00)**, inclusive of all applicable government taxes, and shall include all remunerations, cost or profits arising from or in relation to the services rendered in connection with and/or in preparation for this engagement, such as data purchases, focus group discussions, small group seminar presentations, and other meetings.

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

² Both genders must be represented in the conduct of FGDs.

³ Both genders must be represented in the conduct of KIIs.

⁴ This must include gender questions to capture differences in responses.

VI. TIMELINES, DELIVERABLES AND SCHEDULE OF PAYMENT

The contractor shall be engaged for ten (10) months upon the receipt of Notice to Proceed. Reports and other relevant documents are to be submitted to and should be duly received by the PCC project manager. Below is the summary of the deadline of submissions for each deliverable:

MILESTONES	DELIVERABLES	% of contract amount
Approved and accepted Inception Report	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) Submission date: Within thirty (30) days from the receipt of Notice to Proceed	15%
Approved and accepted Progress Report	Original signed progress report properly dated and duly accepted and approved by the PCC Submission date: Within sixty (60) days from the acceptance of Inception Report	25%
Approved and accepted Draft Report and Preliminary Findings	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) Submission date: Within ninety (90) days from the acceptance of Progress Report	30%
Approved and accepted Final 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) Submission date: Within one hundred-twenty days (120) from the acceptance of Draft Report and Preliminary Findings	30%
TOTAL	Completion of engagement within ten months from the issuance of the Notice to Proceed	100%

All printed documents to be submitted to the PCC should be properly and duly signed by the Project Manager or the highest officer/personnel in-charge of the project.

All payments shall be endorsed by the Director of the Economics Office supported by the original signed statement of account or billing statement, the issuance of a Certificate of Satisfactory Service Rendered for the deliverables for each tranche payment, and each tranche payment to the service provider shall be released upon PCC's review and acceptance of the deliverables above, and completeness of all necessary documents required for the processing of payment.

The detailed description of the deliverables are as follows:

- a. **Inception Report** – This 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 Contractor 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 Contractor shall present the general framework of the study to the PCC in a roundtable discussion.
- b. **Progress Report** – This report shall include a brief write-up on the progress of the Project. At this stage, the Contractor is expected to start data collection, KIIs, and FGDs. The Contractor shall also provide a general information of the industry.
- c. **Draft Report with Preliminary Findings** - This report shall include an assessment of the preliminary findings gathered from the Project. This report will be presented in a research seminar. Moreover, the Contractor should be able to present a structural screening exercise to determine whether conditions in the market are conducive to the formation and stability of a cartel. At the discretion of PCC, industry regulators and other relevant stakeholders may be invited to elicit their inputs and views.
- d. **Final Report** – This 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. This shall also include a policy brief, which shall serve as a by-product of the project.

VII. QUALIFICATIONS OF THE SERVICE PROVIDER AND ITS PERSONNEL

The service provider should meet all the requirements set by the Government Procurement Reform Act (R.A. No. 9184) to be eligible to participate in the procurement.

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.

A. Eligibility of the 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), and required documents pursuant to Sections 24.1 and 24.3 of the revised IRR of RA No. 9184.

B. Shortlisting of eligible bidders

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”). For individual consultants not registered under a sole proprietorship, a BIR Certificate of Registration shall be submitted, in lieu of DTI registration and Mayor’s/Business permit.

Only eligible bidders will be considered for shortlisting. Pursuant to Section 24.5.3 of the revised IRR of RA 9184, the following criteria shall be considered in short listing the eligible prospective bidders:

Criteria	Minimum Qualifications	Bases	Weight (%)
Experience and Capability of the bidder	<ul style="list-style-type: none"> • The constructor should have been in business/consultancy/research for at least eight (8) years (In case of an individual consultant or team of consultants), with at least (10) years of total experience as researcher, of which at least five (5) years is related to construction or infrastructure research of the Project Manager/Principal Investigator) • Engaged with at least three (3) different companies/institutions (at least one of which should be with a government agency/institution) • Engaged with at least one (1) institution belonging to the public/government sector in similar or relevant nature of work as mentioned above 	<p>(a) DTI or SEC registration submitted indicating the year of registration and/or other relevant documents; (b) list of completed and on-going contracts*; (c) copies of Certificates of Satisfactory Service Rendered / Certificates of Completion</p> <p>*If individual bidder, signed curriculum vitae submitted relative to relevant work experience, projects/researches led, and trainings attended</p>	40%
Quality of personnel to be assigned to the project (Project Manager/Principal Investigator/Lead Consultant)	<p>The lead consultant should have:</p> <ul style="list-style-type: none"> • PhD in Economics, Public Policy, or a related field • Extensive knowledge on the Philippine construction industry, with at least (8) years of total experience as researcher, of which at least five (5) years is related to construction or infrastructure industry research • Proven publication track record with at least three (3) publications (e.g., books, journal articles, discussion papers, working papers) • Ability and willingness to mentor 	<p>Original signed curriculum vitae submitted indicating relevant work experience and educational background, publication track record, and trainings attended supported by certificates of attendance / participation</p> <p><i>Note: Pursuant to Section 33.3 of the revised IRR, there should be no replacement of key personnel before the awarding of the contract, except for justifiable reason, such as illness, death, or resignation provided it is duly supported by relevant certificates, or any delay caused by the procuring entity. Once the contract has been awarded, no replacement shall be allowed until after fifty percent (50%) of the personnel's man-months have been served, except for justifiable reasons, subject to appropriate sanctions as prescribed in the</i></p>	40%

Criteria	Minimum Qualifications	Bases	Weight (%)
		<i>Philippine Bidding Documents (PBD).</i>	
Overall work commitment	At most 5 ongoing projects (including awarded but not yet started contracts)	Originally signed records of on-going (including awarded but not yet started contracts) and previous engagements <i>Note: Contract/s that will terminate on or before 90 calendar days, from the deadline of submission of eligibility documents for this project, shall not be considered as 'ongoing'.</i>	20%
TOTAL			100%

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

C. Evaluation of the Technical Proposals of the Shortlisted Bidder

The technical and financial proposals of the shortlisted bidders will be evaluated using the Quality-Based Evaluation (QBE) pursuant to the pertinent provisions of R.A. No. 9184.

Criteria	Bases	Weight (%)
Quality of personnel to be assigned to the project	As specified in the qualifications above, and the submission of a duly notarized Omnibus Sworn Statement using the prescribed format of R.A. No. 9184	30%
Experience and capability of the service provider		20%
Plan of approach and methodology	Timelines, clarity, feasibility, innovativeness and comprehensives of the written proposal and the overall quality of proposed work	50%
TOTAL		100%

The bidder with the highest rated scored 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.

IX. CONFIDENTIALITY OF DATA AND INFORMATION

The contractor shall be engaged by the PCC and shall submit outputs directly to the designated project manager within PCC for review and endorsement for payment. The contractor shall not use nor disseminate these documents for their own research purposes without the written consent of the PCC. All the materials, data, and information used and generated through the survey shall be under the sole ownership of PCC. The contractor 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 Contractor 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 Contractor 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 the Contractor, or his/her rights or duties therein, may be opposed to or affected by the performance of his/her duty.

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. RADO, JR.
Director IV, Economics Office
Philippine Competition Commission

CONFORME:
_____ Name of Contractor
_____ Signature of Contractor / Authorized Representative
_____ Designation
_____ Date

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

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING	
Applicable experience and capability of the bidder (40%)	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 10 years of total experience as researcher, of which at least 7 years in construction or infrastructure 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 case of a firm</i>) OR at least 8 years of total experience as researcher, of which at least 5 years in construction or infrastructure 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 8 years of total experience as researcher or less than 5 years in construction or infrastructure 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 or at least one project not rated as “Above Satisfactory”		
	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 or at least one project not rated as “Above Satisfactory”		
	Qualification of personnel who may be assigned to the project <i>(Project Manager/ Principal Investigator/Lead Consultant)</i> (40%)	Educational Attainment (40%)	100	PhD in Economics, Public Policy or related field	
			0	Holder of a degree lower than PhD in Economics, Public Policy; or PhD holder in not related field	
		Work Experience (30%)	100	At least 10 years of total experience as researcher, of which at least 7 years in construction or infrastructure sector research	
80			At least 8 years of total experience as researcher, of which at least 5 years is in construction or infrastructure sector research		

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING
		0	Less than 8 years of total experience as researcher or less than 5 years is in construction or infrastructure 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)	
Current workload relative to capacity (20%)	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	
		0	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 (<i>Project Manager/ Principal Investigator</i>) (30%)	Educational Attainment (40%)	100	PhD in Economics, Public Policy or related field		
		0	Holder of a degree lower than PhD in Economics, Public Policy; or PhD holder in not related field		
	Work Experience (30%)	100	At least 10 years of total experience as researcher, of which at least 7 years in construction or infrastructure sector research		
		80	At least 8 years of total experience as researcher, of which at least 5 years is in construction or infrastructure sector research		
		0	Less than 8 years of total experience as researcher or less than 5 years is in construction or infrastructure sector research		
	Proven Publication Track Record (30%)	100	With at least 5 publications (e.g. books, journal articles, discussion papers, working papers)		
		80	With at least 3 publications (e.g. books, journal articles, discussion papers, working papers)		
		0	With less than 3 publications		
	Experience and capability of bidder (20%)	Years in Business/ Consultancy/Research (50%)	100	With at least 10 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 7 years in construction or infrastructure sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)	
			80	With at least 8 years in business/consultancy/research (<i>in case of a firm</i>) OR at least 8 years of total experience as researcher, of which at least 5 years in construction or infrastructure 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 8 years of total experience as researcher and less than 5 years in construction or infrastructure sector research (<i>of the Project Manager/Principal Investigator, in case of an individual</i>)		
Engagement with companies/institutions (25%)		100	With at least 5 companies/institutions		
		80	With at least 3 companies/institutions		
		0	Less than 3 company/institution		
Engagement with government agencies (25%)		100	With at least 2 government agencies/institutions		
		80	With at least 1 government agency/institution		

CRITERIA	PARAMETERS	RATING SYSTEMS		RATING
		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 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	