

detailing all activities done, problems encountered, and resolutions to problems encountered.

5.4. **ROW Survey.** The Consultant shall perform the ROW Survey to gather data on existing property lines, areas where unwritten rights may exist, and any other evidence that makes up the land-net (all the evidence that controls the subdivision of the land) for use in conjunction with the existing land records and ROW requirements to determine, delineate, appraise, demarcate, monument, and map the SCRP ROW.

5.4.1. **ROW Improvements Survey.** The ROW Improvements Survey will identify the affected existing structures, utilities, trees, etc. within each affected lot which shall be used for the preparation of the Land Acquisition and Resettlement Action Plan (LARAP) and as basis for payments of the ROW claims.

5.4.2. **ROW Improvements Plan.** The Consultant shall prepare the ROW Improvements Plan which shall consist, but not limited, to the following:

- a. ROW limits as defined in the Alignment Study;
- b. Plans plotted in grid coordinate system;
- c. Technical description of control monuments/reference points;
- d. Stationing at 100-meter interval;
- e. Match lines of stationing in every sheet of plans;
- f. Name of municipalities and barangays to be traversed/affected;
- g. Land classification (residential, agricultural, commercial, or industrial);
- h. Areas of affected structures; improvements, trees, etc.;
- i. Name of claimant(s) or owner(s) of affected structures, improvements, trees, etc.;
- j. Tabulation per sheet showing the names of improvement, claimant(s)/owner(s) and type of improvement affected (i.e. store house, concrete fence, etc.);
- k. Type of structures (i.e. concrete, wood, light materials, etc.);
- l. Type of plantations/orchards (mango, banana, etc.);
- m. Survey waiver drafted in every sheet of plans;
- n. Date of survey;



- o. Name, license number, date and place of issuance, signature, and seal of Geodetic Engineer;
- p. Name(s) of signatory(s)/approving official(s) in every sheet of plans; and
- q. Legends/symbols/abbreviations.

5.4.3. **Report.** The Consultant shall prepare a ROW Survey Report compiling all required deliverables for this Scope of Works, as well as detailing all activities done, problems encountered, and resolutions to problems encountered.

5.5. **Parcellary Survey.** The Parcellary Survey will identify affected lots within the ROW limits as defined in the Alignment Study and segregate the affected lots for the purpose of registering them in favor of the Government of the Philippines (GoP).

5.5.1. **Parcellary Data.** DOTr, through the Land Registration Authority (LRA), will provide digital parcel maps and list of the corresponding titled properties along the project corridor containing the following data:

- a. Title Type,
- b. Title Number,
- c. Owner's Name,
- d. Plan, Block, and Lot Number,
- e. Title Registration Date,
- f. Location,
- g. Land Area (as indicated on the Title),
- h. Original Certificate of Title Number,
- i. Title Number of the Immediately Preceding Title, and
- j. Technical Description.

5.5.2. **Research Works.** The Consultant shall undertake verification research of the parcellary data and gather the following data:

- a. From the Assessor's Office – Tax Declarations of Real Properties, Tax Map, and Land Classification;
- b. From Register of Deeds (RD) – Certified Copies of the Transfer of Certificate of Title (TCT)/Original Certificate of Title (OCT);

- c. From Land Management Bureau (LMB) – Cadastral Map, Lot Technical Descriptions, and Approved Subdivision Plans;
- d. From Department of Agrarian Reform (DAR) – areas subject to land reform or vast estate landholdings, where there is voluntary offer to sell by owners;
- e. From National Commission of Indigenous People (NCIP) – maps of areas of ancestral domain;
- f. From Department of National Defense (DND) – maps showing areas of military reservations;
- g. From Protected Areas Management Bureau (PAMB) – maps of protected areas;
- h. From Subic Bay Metropolitan Authority (SBMA) – relevant data and maps;
- i. From Clark Development Corporation (CDC) – relevant data and maps; and
- j. From Clark International Airport Corporation (CIAC) – relevant data and maps.

5.5.3. **Extent of Research Work.** The Consultant shall exhaust all possible measures to obtain all necessary data of the lands to be acquired. Lands with no available data shall be clearly mentioned/specified in the report for further research during the acquisition stage.

5.5.4. **Parcellary Survey Plans.** At the conclusion of the Parcellary Survey, the Consultant shall prepare the Parcellary Survey Plan, which shall contain, but not limited, to the following information:

- a. Title sheet;
- b. In a separate sheet, indicate in tabular form the summary listing of names of claimants/owners of the affected areas, stations, barangays, and municipality;
- c. Project areas plotted in grid coordinate systems;
- d. Approved design rail alignment (centerline) with stationing at interval of 100 meters and ROW limits as defined in the Alignment Study; and
- e. In every sheet of plan, indicate the following:
 - i. Name of claimant(s) or owner(s) of lot with corresponding lot number and area (remaining and affected) in square meters;

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- ii. Technical description of all lots affected by the ROW and tie lines in tabular form;
- iii. All corners shall be indicated with small circle with their respective number and description;
- iv. Name, license number, date and place of issuance, signature, and seal of Geodetic Engineer;
- v. Name(s) of signatory(s)/approving official(s); and
- vi. Survey waiver.

5.5.5. **Subdivision Plans.** All subdivision plan of suitable scale corresponding to each finalized loop, indicating only the lot (claimant number and area), shall be prepared in mylar paper. This plan shall be compiled together with the computation of the technical description of the lot. The subdivision plan shall be certified by BCDA following the prescribed format of the LMB, together with other survey returns to be approved by the said agency that will be used for land registration purposes. Data in the submittal of the Subdivision Plans include:

- a. The list of affected lots should give complete information on the subject lots (lot numbers, registered claimant/owner, total area, and area affected);
- b. Lot data computation of affected lots where affected area is delineated from the mother lot and shall be prepared on prescribed LMB forms; and
- c. Miscellaneous data, which shall include all research materials and documents pertaining to the affected lots such as copies of the OCT/TCT, technical description of the lot, tax declaration of the real property, and approved subdivision plans in LMB forms.

5.5.6. **Additional Requirements.** In addition to the above, the Parcellary Survey Plans and Subdivision Plans shall include, but not limited, to the following:

- a. Prior to submission to LMB and other concerned agencies/offices, the Consultant shall submit one (1) set of subdivision plans to BCDA for use as reference in the review;
- b. Parcellary Survey Plans and Subdivision Plans, and their technical descriptions, shall be stored in electronic format and submitted to BCDA for permanent storage;
- c. The Subdivision Plans in mylar prints and approved by the Director of LMB shall be submitted to BCDA together with the survey report; and

d. All other survey requirements not expressly specified herein must conform to the provisions of the *Manual for Land Surveys in the Philippines (DENR Administrative Order or DAO 98-12)*.

5.5.7. **Monumenting/Placing of Permanent Reference Points.** Standard cylindrical monuments used in defining and marking corners of lots shall be made of concrete at least 150 millimeters in diameter and 400 millimeters in depth, and must be embedded 350 millimeters in the ground at the corners of lots within the ROW. The top shall be centered by a galvanized iron spiked where measurements shall be made. Reference points shall also be installed for monuments that may be used by various activities in adjacent areas. The reference points shall be permanent and installed at locations where they could not be easily removed and/or disturbed.

5.5.8. **Report.** The Consultant shall prepare a Parcellary Survey Report compiling all required deliverables for this Scope of Works, as well as detailing all activities done, problems encountered, and resolutions to problems encountered.

5.6. **Land Appraisal.** The Consultant shall conduct a land appraisal of the ROW to be acquired, through a Government Financial Institution (GFI). Lands will be appraised on their market values depending on their location (city or municipality) and category (residential, commercial, industrial, or agricultural). The Consultant shall also make a comparison of these market values with the corresponding Bureau of Internal Revenue (BIR) zonal values.

5.6.1. **Report.** The Consultant shall prepare a Land Appraisal Report compiling all required deliverables for this Scope of Works, as well as detailing all activities done, problems encountered, and resolutions to problems encountered.

5.7. **Land Acquisition and Resettlement Action Plan.**

5.7.1. **Methodology.** The LARAP will be prepared based on RA 10752 (*An Act Facilitating the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects*). The proposed methodology or process for activities to be conducted is described in the conceptual LARAP prepared in conjunction with the Feasibility Study and attached as Annex B in this TOR.

5.7.2. **Land Acquisition Cost.** The Consultant shall prepare estimates of acquisition costs per lot parcel identified in the Parcellary Survey and using the market values from the Land Appraisal.

5.7.3. **Inventory of Loss.** The Consultant shall conduct an Inventory of Loss (IOL) where affected assets and owners within the railway alignment's Corridor of Impact (COI) will be identified. Ground survey will be

conducted to estimate the dimensions of affected structures/facilities and the number of trees/crops affected. Maps indicating affected structures, trees, crops, etc. will be prepared, as well as photographs of these affected structures, trees, crops, etc. Estimates of replacement costs of structures and improvements therein per lot will also be prepared based on RA 10752, as well as current market values of crops and trees therein. Other community-based structures and facilities must also be included in the inventory.

- 5.7.4. **Socio-Economic Survey.** The socio-economic information on the affected households will be obtained through the conduct of a Socio-Economic Survey (SES), which will be conducted simultaneous with the IOL. The SES will be the basis in establishing the compensation parameters and in designing the livelihood restoration and income restoration programs. The SES results will also serve as a baseline of the living conditions of Affected Households (AH) that will form part of the monitoring and evaluation data that will assess the extent to which the measures of the resettlement plan are effective in mitigating land acquisition and resettlement impacts.
- 5.7.5. **Stakeholder Consultation Meetings and Focus Group Discussions.** The Consultant shall assist BCDA in holding stakeholder consultation meetings and focus group discussions for project affected persons (PAPs) and stakeholders, including local government units (LGUs). Presentation materials will be prepared, as well as recording and documenting all meetings, including preparation of highlights of meetings that will be attached in the Final Report. The Consultant shall also conduct information, education, and communication (IEC) activities for affected LGUs.
- 5.7.6. **Relocation Sites.** The Consultant shall assist BCDA in identifying relocation sites for affected informal settler families (ISFs) in consultation with the respective LGUs.
- 5.7.7. **Gender Impact Assessment.** The Consultant shall conduct the Gender Impact Assessment (GIA) covering the following:
 - a. Review of policies, legal, and institutional framework on gender considerations of the Philippines, particularly for the infrastructure subsector, along with consultations with concerned government agencies or women association if necessary;
 - b. Identification of the livelihood constraints and opportunities of project-affected women, especially female heads of households and members of vulnerable groups;
 - c. Conduct of a survey with the potential female users of the SCRIP in order to determine issues and/or barriers to access, as well as to



analyze their needs and incorporate gender considerations in the design and operation of the SCRCP;

- d. Determination of employment opportunities for women during construction and operations of SCRCP; and
- e. Preparation of Final Report of the GIA.

5.7.8. **LARAP Implementation Cost.** The Consultant shall prepare a detailed LARAP and calculate the corresponding implementation cost, including compensation cost for all affected lands, structures and other improvements, crops and trees, livelihood programs, and relocation.

5.7.9. **Report.** The Consultant shall prepare a Land Acquisition and Resettlement Action Plan Report compiling all required deliverables for this Scope of Works, as well as detailing all activities done, problems encountered, and resolutions to problems encountered.

5.8. **Environmental Compliance Certificate.** The Consultant shall secure the ECC for SCRCP. The Project is considered as an Environmentally Critical Project (ECP), and as such, an EIS is expected to be required for the application for the ECC. The EIS shall be prepared in accordance with Philippine laws and guidelines which are part of the Philippine Environmental Impact Statement System (PEISS):

- a. Revised Procedural Manual for DAO 03-30, DENR Environmental Management Bureau (EMB), 2007 – This prescribes the manual of procedures for the processing of applications for the ECCs and Certificates of Non-Coverage (CNCs).
- b. Presidential Proclamation (PP) 2146 – This identifies projects that are defined as “Environmentally Critical Projects” and describes areas which fall within “Environmentally Critical Areas” which are identified to have the potential to induce adverse environmental impacts and as such are subject to the PEISS.
- c. Presidential Decree (PD) 1586 – This establishes the EIS System including other environmental management related measures.
- d. EMB Memorandum Circular No. 2014-005 – This establishes the guidelines for coverage screening and standardized requirements under the PEISS.

5.8.1. **EIA Process.** The Consultant shall prepare all necessary documents needed in securing the ECC for the Project, including the EIA and EIS. The Philippine EIA process consists of six (6) sequential stages:

- a. Screening,
- b. Scoping,
- c. EIA Study and Report Preparation,

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- d. EIA Report Review and Evaluation,
- e. Decision Making, and
- f. Monitoring, Validation, and Evaluation/Audit.

The first three (3) stages shall be conducted by the Consultant, whereas the rest of the stages are by DENR.

5.8.2. **Related Activities.** The Consultant shall perform the following activities in relation to the preparation of the EIS:

- a. Collect the baseline information and carry out the field surveys on the project affected area;
- b. Identify the project impacts, and predict and assess the impacts on natural and social environment;
- c. Draw up the mitigation measures and monitoring plan;
- d. Prepare the materials for the stakeholder consultation meetings to be hosted by BCDA, and attend, record, and prepare highlights of the said meetings;
- e. Conduct IEC activities for affected LGUs and other social preparation activities for the public scoping;
- f. Prepare the draft EIS report and required documents for application of the ECC; and
- g. Assist BCDA during the review by the DENR/EMB of the ECC application.

5.8.3. **Report.** The Consultant shall prepare an Environmental Impact Assessment Report compiling all required deliverables for this Scope of Works, as well as detailing all activities done, problems encountered, and resolutions to problems encountered.

6. OBLIGATIONS OF THE CONSULTANT

6.1. **Responsibilities of the Consultant.** Generally, but without limiting the Consultant's responsibilities elsewhere stated under this TOR which shall form part of the Contract, the Consultant shall:

- 6.1.1. Accept full responsibility for the Works to be performed under this TOR; and
- 6.1.2. Perform the Works in an efficient and diligent manner.



- 6.2. **Records.** The Consultant shall keep accurate and systematic records and accounts with respect to the Works in such form and with such details as is customary and sufficient to establish accurately that the costs and expenditures have been duly incurred.
- 6.3. **Information and Progress Reports.** In addition to the reports required in the TOR, the Consultant shall furnish BCDA monthly progress reports and any such information relative to the Works as BCDA may from time to time reasonably request and as the Commission on Audit (COA) may require on post audit.
- 6.4. **Assignment and/or Sub-Contract.** Except with prior written approval of BCDA, the Consultant shall neither assign nor sub-contract any part of the Works to any other person or firm.
- 6.5. **Prohibition on Professional Engagement.** No full-time staff of the Consultant during his assignment under the Contract shall, without the written consent of BCDA, engage directly or indirectly, either in his name or through the Consultant, in any activity in the Philippines which will conflict with the performance of his duties or assignment under the Contract.
- 6.6. **Confidentiality.** Except with the prior written consent of BCDA, the Consultant or its Principals and Staff shall not at any time communicate to any person or entity any information disclosed thereto for the purpose of the Works, nor shall the Consultant or its Principals and Staff make public any information as to the recommendations formulated in the course of or as a result of the Works.
- 6.7. **Independent Contractor.** Nothing contained herein shall be construed as establishing or creating between BCDA and the Consultant the relationship of employer and employee or principal and agent, it being understood that the position of the Consultant and anyone else performing the Works is that of an independent contractor.

7. OBLIGATIONS OF BCDA

- 7.1. **Project Data.** BCDA shall make available to the Consultant for reference all existing documents pertaining to the SCRP. Whenever practicable, BCDA shall provide assistance to the Consultant in securing data from concerned government agencies/offices. BCDA shall furnish the Consultant all available plans, drawings, and such other instructions or documents that may be needed for the effective performance of its duties.
- 7.2. **Availability of Funds.** Funds required for the performance of the Works of the Consultant in the amount of **Sixty Eight Million Six Hundred Seventy Nine Thousand Four Hundred Forty Two Pesos (₱68,679,442)** is made available by BCDA through the issuance of Certificate of Budget Inclusion (CBI) for that purpose.

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7.3. Evaluation of Consultant's Outputs. BCDA shall review and evaluate the documents submitted by the Consultant as required herein.

8. MANNING REQUIREMENT

The Consultant shall provide a team comprising qualified technical personnel, support, and administrative staff (not necessarily limited to those listed below) with duties and responsibilities described in this TOR and with satisfactory experience in implementing projects of similar nature and size. The Consultant shall provide the resources to fulfill the general requirements described in this TOR. The Consultant is required to have previous experience in the design of railways, as well as having the following minimum qualifications and experience amongst its team members:

Personnel and Minimum Qualifications	Responsibilities
Team Leader – licensed Civil/Electrical/Mechanical Engineer with at least ten (10) years of managerial experience in railway or road projects	<ul style="list-style-type: none"> ▪ Overall supervision of the project team, and in the management and organization of the Project ▪ Leading the team in the preparation of all project deliveries ▪ Ensuring all reporting required by BCDA is fully and punctually delivered ▪ Any other task required to complete the Works
Geodetic Engineer – licensed Geodetic Engineer with at least ten (10) years of experience as Geodetic Engineer in railway or road projects	<ul style="list-style-type: none"> ▪ Supervision and management of all topographic survey field work and data processing ▪ Preparation of field reports ▪ Ensuring that the topographic survey activities are within survey standards ▪ Assistance to ROW team in geodetic-related activities ▪ Any other task required to complete the Works
Geotechnical Engineer – licensed Civil Engineer with at least ten (10) years of experience as Geotechnical Engineer in railway or road projects	<ul style="list-style-type: none"> ▪ Supervision and management of all geotechnical survey field work and data processing ▪ Preparation of field reports ▪ Ensuring that the geotechnical survey activities are within survey standards ▪ Any other task required to complete the Works
Railway Engineer – licensed Civil/Electrical/Mechanical Engineer with at least ten (10) years of experience as Railway Engineer in railway projects	<ul style="list-style-type: none"> ▪ Supervision and management of Alignment Study ▪ Determination of required ROW for all track-related facilities ▪ Any other task required to complete the Works
Structural Engineer – licensed Civil Engineer with at least ten (10) years of experience as Structural Engineer in railway or road projects	<ul style="list-style-type: none"> ▪ Determination of required ROW for all tunnel, bridge and viaduct-related facilities ▪ Any other task required to complete the Works
Drainage Engineer – licensed Civil Engineer with at least ten (10) years of experience as Drainage Engineer in railway or road projects	<ul style="list-style-type: none"> ▪ Determination of required ROW for all drainage-related facilities ▪ Any other task required to complete the Works

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Environmental Specialist – college graduate with at least ten (10) years of experience in environmental studies	<ul style="list-style-type: none"> ▪ Supervision and management for the preparation of EIA and EIS, including screening and scoping activities ▪ Securing of ECC for the Project ▪ Any other task required to complete the Works
ROW/Relocation Specialist – college graduate with at least ten (10) years of experience in land acquisition and resettlement works	<ul style="list-style-type: none"> ▪ Supervision and management for the preparation of LARAP, including related activities (i.e. IOL, SES, GIA, stakeholders meetings, etc.) ▪ Any other task required to complete the Works
Independent Property Appraiser – licensed property appraiser with at least ten (10) years of experience in property appraisal	<ul style="list-style-type: none"> ▪ Responsible for appraisal of land and structures/facilities ▪ Any other task required to complete the Works
Stakeholder Meeting Moderator – college graduate with at least ten (10) years of experience in conducting stakeholders meetings	<ul style="list-style-type: none"> ▪ Responsible for the conduct of stakeholders meetings, including the preparation of materials, recording, and preparation of meeting highlights ▪ Any other task required to complete the Works
Socio-Economic Specialist – college graduate with at least ten (10) years of experience in conducting socio-economic studies	<ul style="list-style-type: none"> ▪ Responsible for the conduct of SES ▪ Assist in the preparation of LARAP, especially on socio-economic-related aspects ▪ Any other task required to complete the Works
Gender Specialist – college graduate with at least ten (10) years of experience in conducting gender-related studies	<ul style="list-style-type: none"> ▪ Responsible for the conduct of GIA ▪ Assist in the preparation of LARAP, especially on gender-related aspects ▪ Any other task required to complete the Works

9. PROJECT DURATION

The duration of the Works being required under this TOR is ten (10) months.

10. APPROVED BUDGET FOR THE CONTRACT

The Approved Budget for the Contract (ABC) under this TOR is **Sixty Eight Million Six Hundred Seventy Nine Thousand Four Hundred Forty Two Pesos (P68,679,442)**, inclusive of value-added tax (VAT) and all applicable taxes and fees. Bids received in excess of the ABC shall be automatically rejected during the opening of the financial proposal.

11. MODE OF PAYMENT

In consideration of the Works being required under this TOR, the Consultant shall be paid in the following manner:

- 11.1. ***Advance Payment.*** An Advance Payment equivalent to ten percent (10%) of the Contract Price shall be made upon written request from the Consultant and the submission to and acceptance by BCDA of an irrevocable standby letter of credit of equivalent value from a commercial bank and confirmed by BCDA.

- 11.2. **First Progress Payment.** First Progress Payment equivalent to twenty percent (20%) of the Contract Price shall be made upon the completion of the Topographic and Hydrographic Surveys, the Geological and Geotechnical Surveys and Investigations, and the Alignment Study, and the submission of the First Progress Billing together with the following documents:
- a. Topographic and Hydrographic Surveys Report,
 - b. Geological and Geotechnical Surveys and Investigations Report, and
 - c. Alignment Study Report.
- 11.3. **Second Progress Payment.** Second Progress Payment equivalent to twenty percent (20%) of the Contract Price shall be made upon the completion of the ROW Survey, the Parcellary Survey, and the Land Appraisal, and the submission of the Second Progress Billing together with the following documents:
- a. ROW Survey Report,
 - b. Parcellary Survey Report, and
 - c. Land Appraisal Report.
- 11.4. **Third Progress Payment.** Third Progress Payment equivalent to twenty percent (20%) of the Contract Price shall be made upon the completion of the Land Acquisition and Resettlement Action Plan and the Environmental Impact Assessment, and the submission of the Third Progress Billing together with the following documents:
- a. Land Acquisition and Resettlement Action Plan Report, and
 - b. Environmental Impact Assessment Report.
- 11.5. **Final Payment.** Final Payment equivalent to thirty percent (30%) of the Contract Price shall be made upon securing the ECC for the Project and the submission of the Final Billing together with the following documents:
- a. Certificate of Completion issued by BCDA to the Consultant,
 - b. Sworn statement that all liabilities incurred by the Consultant have been paid and that there are no outstanding liens, garnishments, attachments, or claims relative to the Project,
 - c. Release and Quitclaim by the Consultant, in a form acceptable to BCDA, releasing BCDA from any further claims relating to the Consultancy Contract, and
 - d. Such other documents that BCDA may require.

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Consistent with the provisions of RA 9184, all consultancy contracts shall be fixed price contracts. Any extension of contract time shall not involve any additional cost.

12. SHORT LISTING OF PROSPECTIVE BIDDERS

The short list shall consist of at most five (5) prospective bidders who will be entitled to submit bids. The criteria and rating system for short listing are as follows:

1. Relevant Experience of the Consultant	40%
2. Qualification of the Key Personnel to be Assigned to the Project	50%
3. Current Workload of Key Personnel Relative to Capacity	10%
Total	100%

The Consultant must pass the required minimum score of seventy percent (70%) to be short listed. Failure of the Consultant to meet the specified requirement would result to a zero (0) rating for the specific criterion.

13. DETERMINATION OF THE HIGHEST RATED BID

The short-listed bidders shall be subjected to evaluation to determine the bidder with the Highest Rated Bid (HRB), wherein the criteria and rating are as follows:

1. Experience and Capability of the Consultant	40%
2. Quality of Personnel to be Assigned to the Project	30%
3. Plan of Approach and Methodology	30%
Total	100%

14. EVALUATION PROCEDURE

In order to determine the Consultant with the HRB, BCDA shall conduct an evaluation of bids using the Quality-Cost Based Evaluation (QCBE) procedure wherein the technical and financial proposals shall be given a corresponding weight equivalent to 85% and 15%, respectively.

15. PERFORMANCE SECURITY

- 15.1. ***Purpose.*** To guarantee the faithful performance by the winning Consultant of its obligations, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from BCDA and in no case later than the signing of the Contract.
- 15.2. ***Amount and Form.*** The performance security shall be denominated in Philippine Pesos and posted in favor of BCDA in an amount equal to five percent (5%) of the Contract Price in either of the following form:



- 15.2.1. Cash or cashier's/manager's check issued by a Universal or Commercial Bank, or
- 15.2.2. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank; provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank if issued by a foreign bank.
- 15.3. **Forfeiture.** The Performance Security shall be forfeited in favor of BCDA should the Consultant fail to fulfill any of its obligations under the TOR or the Contract. Additional penalties may also be imposed upon the Consultant for such failure.

16. STANDARD OF SERVICES

- 16.1. **Technical Expertise.** The Consultant shall fulfill its obligations under the Contract by using its technical expertise and according to the best-accepted professional and industry standards. The Consultant shall exercise all reasonable skill, care, diligence, and prudence in the discharge of the duties agreed to be performed and shall always work in the best interest of BCDA. To attain these, the Consultant shall provide personnel with sufficient qualifications and experience to ensure the full and satisfactory accomplishment of the required Works.
- 16.2. **BCDA Instructions and Directions.** The Works shall be conducted by the Consultant in accordance with the instructions or directions made or to be made by the BCDA at any time before its completion. The Consultant shall conduct regular consultation with BCDA in relation to the undertaking of its responsibilities.

17. GENERAL TERMS AND CONDITIONS

- 17.1. **Delay, Extension of Time, and Force Majeure.** Any delay on the agreed completion date from failure of performance by either of the Party shall not constitute a default hereunder nor shall give rise to any claim if such delay or failure is wholly attributable to acts of God, any act of sabotage, war, armed invasion, revolution, insurrection, blockade, riot, declaration of national emergency, industry-wide strike, or any other cause beyond the reasonable control of either Party, or which cannot be avoided by the Consultant or BCDA despite the exercise of due diligence.

Within ten (10) days from the occurrence of such event, the Party affected shall notify in writing the other Party of such event of force majeure and of the obligations or part of the works the performance of which is affected by such force majeure. Immediately after such notification, the parties shall meet to discuss and agree on the appropriate steps/measures to be taken to minimize the effect(s) of the force majeure; provided that the party affected shall be entitled to an extension of the contract time for the number of days of the delay incurred by reason of the causes above mentioned.

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- 17.2. **Ownership of Reports and Documents.** The reports, maps, drawings, documents, and materials compiled or prepared in the course of the performance of the Works are and shall remain the absolute properties of BCDA and shall not be used by the Consultant for purposes unrelated to the Works without the prior written approval of BCDA. Any equipment supplied by the BCDA, or for which payments are made or reimbursed, shall become and remain the property of BCDA.
- 17.3. **Representation and Warranties.** The Parties hereby represent and warrant that no government official has benefitted directly or indirectly from this Works. The Parties warrant that they have not offered or given, and will not offer or give to any employee, agent, or representative of either Party, any gratuity, with a view toward securing any business from one another, or influencing such persons with respect to terms, conditions, or performance of any contract with each other.

