INSTRUCTIONS TO BIDDERS

PROJECT MANAGEMENT FIRM (PMF)
TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION
AND UNDERGROUND STORAGE TANKS (USTs)

1. Scope of Services

1.1 The Asian Development Bank (ADB), a multilateral development finance institution headquartered in Manila, Philippines, invites you to submit a bid for the Project Management Firm (PMF) for the Design and Construction of New ADB Gas Station and Underground Storage Tanks (USTs) (hereinafter referred to as the “Services”).

1.2 The scope and details of the Services required are described in the Work Performance Statement (Appendix 1).

2. Qualifications of the Bidder

2.1 To be qualified for the bidding, the bidder must:

(i) Have an independent legal existence in the Philippines for a minimum of five (5) years;

(ii) Have a sound financial standing (i.e. positive net worth) and an annual minimum revenue of Two Million Pesos (PHP2,000,000) over the last three (3) years, from 2015 to 2017;

(iii) Have at least 3 similar completed projects to showcase the company’s expertise/capability in the management of gasoline station design and construction projects similar in size and scope to the ADB project;

(iv) Have not been sanctioned nor be ineligible to enter into transactions with ADB or any other multilateral development bank or institution; and
(v) If previously engaged as contractor by ADB, the bidder should have earned a minimum of satisfactory rating in completed project/s.

3. **Cost of Bid**

3.1 The Bidder will bear all the costs associated with the preparation and delivery of its Bid, and ADB will in no case be responsible for such costs.

4. **Contents of Bid Documents**

4.1 Work Performance Statement - Appendix 1
4.2 Technical Bid Form - Appendix 2
4.3 Technical Bid Proposal Form - Appendix 3
4.4 Financial Bid Form - Appendix 4
4.5 Financial Data Form - Appendix 4-1
4.6 Technical Evaluation Criteria - Appendix 5
4.7 Certificate of Site Inspection - Appendix 6
4.8 Form of Secretary’s Certificate - Appendix 7
4.9 Bid Securing Declaration - Appendix 8
4.10 Form of Performance Bond - Appendix 9
4.11 Letter of Acceptance of Bid - Appendix 10
4.12 Form of Contract Agreement - Appendix 11
4.13 Bidder’s Information Sheet - Appendix 12

5. **Composition of Bid**

The Bid will be composed of the following:

5.1 Completed Technical Bid Form - Appendix 2
5.2 Completed Technical Bid Proposal Form - Appendix 3
5.3 Completed Financial Bid Form - Appendix 4
5.4 Completed Financial Data Form - Appendix 4-1
5.5 Certificate of Site Inspection - Appendix 6
5.6 Secretary’s Certificate or Written Power of Attorney - Appendix 7
5.7 Bid Securing Declaration - Appendix 8
5.8 Bidder’s Information Sheet - Appendix 12

6. **Bid Currency**

The price submitted by the Bidders shall be in **Philippine Pesos**.

7. **Bid Price**

7.1 Unless otherwise specifically stated in the Contract documents, the Bid price will be deemed to include, inter alia, (i) labor costs; (ii) use of facilities, tools and equipment (iii) supplies and materials including wastage; (iv) transportation (v) administrative, supervision and overhead expenses; (vi) medical and insurance premiums; (vii) uniforms; (viii) training, as required; (ix) profit; and (x) incidental expenses for the provision of the required Services. Since ADB is exempted from paying taxes and duties under the Articles of Agreement Establishing the Asian...
Development Bank (Charter) and the Agreement between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (Headquarters Agreement), the Bidder will calculate its prices for the service items exclusive of all applicable taxes.

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

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

8. **Bid Validity**

The Bid will remain valid for a period of sixty (60) calendar days from the specified deadline for the submission of Bids.

9. **Bid Security**

ADB will waive the Bid security requirement, provided the Bidder signs the Bid Securing Declaration (Appendix 8) accepting that, if the Bidder withdraws or modifies its Bid during the period of validity, or the Bidder is awarded the Contract, and it fails to sign the Contract or submit a Performance Bond, then the Bidder will be disqualified from bidding in any or all future Contract with ADB.

10. **Clarifications**

For any clarifications, please email Ms. Jojie Alcantara at jsalcantara@adb.org and Ms. Geny Medina at gmedina@adb.org. Clarifications should be received not later than 5:00 p.m. on 24 May 2018.

11. **Pre-Bid Meeting and Site Inspection**

11.1 The Bidder’s designated representative is invited to attend a Pre-Bid meeting on 17 May 2018, 10:00 a.m. at ADB Headquarters. The purpose of this meeting is to:

(i) answer any queries from the Bidders;

(ii) furnish all information that may be necessary for preparing the Bid and entering into a Contract; and

(iii) provide a tour of ADB premises and facilities related to the procurement.
11.2 Bidders are advised to send appropriate representatives to attend the Pre-Bid meeting. Any claim by the Bidder to change the substance of the Bid due to his failure to understand the requirements will not be entertained. A site inspection will be held immediately after the Pre-Bid meeting. Taking of photos during the site inspection is not allowed. After completion of the site inspection, the Certificate of Site Inspection must be completed by the Bidder for countersignature and confirmation of an ADB designated representative.

12. Deadline for Bid Submission

The Bid in a sealed envelope should reach ADB (by courier mail or hand carry) not later than 2:00 p.m. on 31 May 2018. Late Bids shall be rejected and returned unopened to the Bidder. The envelope should be addressed and marked as follows:

ASIAN DEVELOPMENT BANK
6 ADB Avenue, Mandaluyong City 1550, Philippines

Attention: Unit Head, Asset Management and Commercial Services
Office of Administrative Services

SEALED BID for
PROJECT MANAGEMENT FIRM (PMF)
FOR THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION
AND UNDERGROUND STORAGE TANKS (USTs)

Bidder: ______________________________

(DO NOT OPEN BEFORE 2:00 p.m. on 31 May 2018)

13. Bid Evaluation

The Bids will be evaluated based on a Pass/Fail evaluation system framework established by ADB (*Appendix 5*).

14. Non-conformities, Errors and Omissions

14.1 Provided that a Bid is substantially responsive, ADB may waive any non-conformity or omission in the Bid that does not constitute a material deviation.

14.2 Provided that a Bid is substantially responsive, ADB may request that the Bidder submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities or omissions in the Bid related to documentation requirements. Such omission will not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

14.3 In case of discrepancies between price given in words and that given in figure for the same item, the prices given in words will prevail. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price
and the total price per item that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price per item will be corrected. If there is a discrepancy between the Total Amount stated in the Bid Form and the sum of the total price per item, the sum of the total price per item shall prevail and the Total Amount will be corrected. If the bidder does not accept the corrected amount of Bid, its Bid will be considered as withdrawn, and the Bidder will be disqualified to Bid for any future projects of ADB.

15. **Award of Contract**

15.1 Following the Bid evaluation of each Bidder, the Contract will be awarded to the Bidder that submitted the lowest evaluated, substantially responsive and complying Bid.

15.2 Where, during the evaluation, the bid price offered by the Bidder are significantly higher than market references, ADB reserves the right to negotiate the prices with a view to obtain the best value for money for ADB.

16. **Execution of the Contract**

The Bidder to whom the Contract is awarded is required to enter into and execute a Contract Agreement (Appendix 11) in accordance with the form, conditions and requirements in the Bid Documents, and to furnish the required Performance Bond, Comprehensive General Liability Insurance and other stipulated documents.

17. **Performance Bond**

The successful Bidder will post a Performance Bond in the sum of 100% of total Contract price in favor of ADB to guarantee its faithful performance of the Contract. The Performance Bond will be in the proforma attached (Appendix 9).

18. **ADB’s Right to Accept or Reject Any Bid**

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

19. **Special Character of ADB**

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

20. **Confidentiality/Non-disclosure**

20.1 The information contained in this document, or accumulated through other written or verbal communications, is confidential. It is for information purposes only and is not to be disclosed or used for any other purpose. All information contained herein is private and is protected by law.
20.2 Information received in response to this bidding will be held in strict confidence and will not be disclosed to any party other than ADB without written consent. A non-disclosure agreement can be arranged, if requested.
Appendix 1

PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND STORAGE TANKS (USTs)

Work Performance Statement

A. Background

1. The Asian Development Bank (ADB) gasoline station and USTs have been in operation for about 25 years and need rehabilitation. It is important that such a facility is improved and updated upon reaching its lifespan to ensure better fuel pump performance, safer operation, and continuous environmental compliance for years to come.

2. The implementation of this project requires a PMF that will provide technical expertise in the design and construction of a gasoline station and installation of USTs that are compliant to national government and international building codes, and safety and environmental standards as applicable.

B. Work Arrangement

3. This work performance statement (WPS) gives an outline of the project and describes the work arrangement, scope of services, duration, and deliverables.

4. This will form the basis of negotiations in engaging the services of a PMF who will assist the Unit Head, Facilities Planning and Management Unit (OAFA-FM) and Unit Head, Asset Management and Commercial Services (OAFA-AC), or their duly authorized representative/s in overseeing the design and construction of the project by a third-party contractor.

5. The PMF is required to carefully review this document and comment on the adequacy of the requirements and proposed approach to meet ADB’s objectives. Any comment must be conveyed to ADB through the Asset Management and Commercial Services Unit (OAFA-AC) during negotiations to finalize the WPS prior to incorporation in the service contract.

6. The PMF must act to always protect the interest of ADB. The PMF’s team shall consist of, but not limited to, the following key personnel who have a minimum of seven-year experience in gasoline pump station design and construction:

   a. Project Manager (architect or engineer, part time)
   b. Project Coordinator 1 (architect, full time)
   c. Project Coordinator 2 (engineer, full time)

C. Scope of Services

7. The PMF shall be required to:
a. prepare the Terms of Reference (TOR) for the engagement of a firm that will design and build the new gas station and USTs adjacent to Segment D as outlined on the site development plan (Appendix 1 – 1) which houses the existing pump stations. The following design parameters must be considered:

i. Two 6-hose pump stations that will allow the refilling of fuel products in four positions at the same time;

ii. Three underground diesel split-type storage tanks (current is four units with 25,000-liter capacity; steel tank material) of better structure and with increased capacity; and

iii. Full operation of the current pump station while construction of the new facility is on-going.

b. assist OAFA-FM, OAFA-AC, and OAPC during bidding for the design and construction services, including technical evaluation of bids.

c. must oversee the conduct of preliminary tests (e.g. soil quality, topography), preparation of architectural and engineering design drawings and material specifications, and review of construction documents for compliance to applicable codes and standards during design conceptualization and development,

d. review proposed construction methodologies, monitor closely the construction progress, assist in mitigating delays (should they occur), and ensure that quality of works is up to ADB and international standards.

e. review and certify contractor’s contact variation.

f. review and certify contractor’s interim payment certificates.

g. determine the strategy by which the project can be most effectively and timely executed. They shall develop a tracking program to identify items that could potentially change the scope of the project.

h. assess the contractor’s project schedule and determine the critical path. Realistic schedules must be set, monitored, updated, and enforced whereby team commitment to the schedule is strictly imposed. The Unit Heads, OAFA-FM and OAFA-AC must be advised of any work variation, its anticipated effect on the budget and timeline, and compelling reasons that justify the variation.

i. monitor the condemning of the old USTs including compliance to ISO requirement.

j. track costs and procurement of goods to ensure project delivery within approved cost and deadline.

k. assist in the final inspection of completed works, equipment testing and commissioning, and turn-over of project upon completion.

l. identify and review project deficiencies (if any), and propose repair or modification procedures. The scope and schedule of corrective works must be strictly monitored until completion.

m. lead project meetings, submit monthly project reports, review shop drawings for compliance to codes and standards, monitor document submissions, and advise ADB on certain technical aspects of the project.
D. **Contract Duration:**

8. Bidding for the design-build contract could take five months, while actual design and construction could take about twelve months. Total of approximately one and half years from start of bidding. PMF will continue until end of construction.

E. **Working Days and Hours**

9. Monday to Friday: 8:00 AM to 5:00 PM except on ADB approved holidays. The basic work-week is forty hours for all full-time PMF.

10. The PMF should be present when important testing and commissioning activities are done during weekends or after ADB business hours.

11. ADB official holidays are as follows:

<table>
<thead>
<tr>
<th>Holiday</th>
<th>Date</th>
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<tbody>
<tr>
<td>New Year’s Day</td>
<td>1 January</td>
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<tr>
<td>Holy Thursday</td>
<td>According to calendar</td>
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<tr>
<td>Good Friday</td>
<td>According to calendar</td>
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<tr>
<td>Labor Day</td>
<td>1 May</td>
</tr>
<tr>
<td>Phil. Independence Day</td>
<td>12 June</td>
</tr>
<tr>
<td>All Saints Day</td>
<td>1 November</td>
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<tr>
<td>Bonifacio Day</td>
<td>30 November</td>
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<tr>
<td>Christmas Day</td>
<td>25 December</td>
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<tr>
<td>Rizal Day</td>
<td>30 December</td>
</tr>
<tr>
<td>New Year’s Eve</td>
<td>31 December</td>
</tr>
</tbody>
</table>

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

13. ADB does not observe special or other regular holidays declared by the Philippines government that are outside of the ten ADB official holidays. The PMF is required to provide the normal complement of personnel on the said days and it is the PMF’s obligation to compensate their personnel accordingly.

F. **Deliverables**

14. The PMF is responsible for the following main deliverables:

a. TOR including technical evaluation report, criteria and standards for the bidding of design-build services contract;
Appendix 1

b. Monthly report addressed to the Unit Heads, OAFA-FM and OAFA-AC on project progress with recommendations to overcome difficulties or delays encountered;
c. Recommendations regarding the substantial or full completeness of works with reference to the technical specifications, cost and schedule prior to handover; and
d. Final report on the condemned USTs with accomplished requirement of ISO.
To: Asian Development Bank (Date)
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines

Attention: Makoto Ojirō
Director
Facilities and Asset Management Division
Office of Administrative Services

I/We, the undersigned, declare that:

(a) I/We have examined and have no reservations to the Bid Documents;
(b) I/We offer to provide the Services in conformity with the Bid Documents;
(c) My/Our Bid shall be valid for a period of sixty calendar (60) days from the date fixed for
   the bid submission deadline in accordance with the Bid Documents, and it shall remain
   binding upon myself/us and may be accepted at any time before the expiration of that
   period;
(d) I/We confirm that I/We are financially qualified and compliant to bid for this project in
   accordance with the minimum requirements for qualification of bidders for this project;
(e) If your Bid is accepted, I/we commit to obtain a Performance Bond in the amount of one
   hundred percent (100%) of total Contract price for the due performance of the Contract;
(f) I/We are not participating, as Bidders, in more than one Bid in this bidding process in
   accordance with the Bid Documents;
(g) My/our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any
   part of the Contract, has not been declared ineligible by the ADB;
(h) I/We understand that this Bid, together with your written acceptance thereof included in
   your Letter of Acceptance of Bid, shall constitute a binding contract between myself/us,
   until a formal Contract is prepared and executed;
(i) I/We understand that you are not bound to accept the lowest bid or any other bid that you
   may receive.

Yours truly,

_______________________________________
(Name and Signature of Authorized Officer)

_______________________________________
(Designation of Authorized Officer)
(Name of Bidder /Company)

(Business Address)

(Telephone Number/Facsimile Number/Email)
# TECHNICAL BID PROPOSAL FORM

**PROJECT MANAGEMENT FIRM (PMF)**

**TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND STORAGE TANKS (USTs)**

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

Attention: Makoto Ojiro  
Director  
Facilities and Asset Management Division  
Office of Administrative Services

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

## 1. EXPERIENCE

1.1 Based on the scope of work discussed in the Work Performance Statement (WPS), discuss the following:

1.1.1. Confirm if your company has undertaken technical design and project management services for the design and construction of a gasoline station and installation of USTs as described in the WPS.

*BIDDER’S ANSWER:*

1.1.2. Describe at least three (3) projects (completed and/or on-going), similar in scope of work to ADB, and each project with a minimum total contract amount of PHP 1,000,000 awarded to your company. Indicate the type of involvement as the main contractor and client references. Describe in detail the scope of services rendered, project complexity, challenges hurdled, and similarity with ADB project.

*BIDDER’S ANSWER:*
1.1.3. Describe project experience in green building initiatives (energy and water efficiency, sustainable materials and waste management practices, among others). Indicate role performed.

BIDDER’S ANSWER:

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2. WORK APPROACH AND METHODOLOGY

2.1 Describe the following in conducting the design and supervision works as described in the WPS (from design conceptualization to project turnover):

2.1.1. Describe the operational procedures and methodologies you intend to apply in implementing and monitoring the UST replacement project. Discuss by indicating your strategy, systems, tools, and resources considering the following:

a. The timely and/or expeditious manner in preparing documents, such as design concepts, detailed drawings including its approval by the ADB prior to construction, technical specifications, bill of quantities, among others. Provide a master project schedule detailing all important activities and milestones with individual duration and due consideration of the design and construction of the proposed new GS and USTs must be completed within twelve (12) months.

b. Consider that all GS works to be managed should not interfere with the operations of adjacent buildings and of the Gas Station itself. There should be controlled access to the construction areas. Discuss the delineation of movement of workers, protection of adjacent facilities, and consideration of noise and dust pollution.

BIDDER’S ANSWER:

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2.1.2. Discuss the reporting format you will use from the formal reports to be submitted, number of coordination meetings to be conducted, approvals, among others.

BIDDER’S ANSWER:
2.2. Project Documentation:

2.2.1. Provide a list of technical design drawings and documents to be submitted during design and construction of this project.

*BIDDER’S ANSWER:*

2.2.2. In addition, submit a master project schedule showing the activities/milestones and duration for each.

*BIDDER’S ANSWER:*

3. ORGANIZATION

3.1. Provide an organizational chart to be implemented showing the deployment of at least the following: 1 Project Engineer or Project Manager (architect or engineer, part time) 1 Project Coordinator (architecture, full time) and 1 Project Coordinator (engineering, full time). Discuss briefly the staff positions and functions.

*BIDDER’S ANSWER:*

3.2. Provide a list of the personnel to be assigned in this project, consistent with the roles shown in the organizational chart. Attach the Curriculum Vitae (CV) of each personnel specifying the years of work experience, educational qualifications, professional affiliations, and licenses for each position. The CVs shall demonstrate the suitability of personnel assigned to the project in terms of qualification and experience.
BIDDERS ANSWER:

<table>
<thead>
<tr>
<th>BIDDER NAME:</th>
<th>Date:</th>
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</tbody>
</table>
FINANCIAL BID FORM

__________________________
(Date)

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

Attention: Makoto Ojiro  
Director  
Facilities and Asset Management Division  
Office of Administrative Services

Gentlemen and/or Ladies:

1. Having examined the Bid Documents for the above requirement, the receipt is hereby  
duly acknowledged. I/we, the undersigned, offer to provide the PROJECT MANAGEMENT  
FIRM (PMF) TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS  
STATION AND UNDERGROUND STORAGE TANKS (USTs) as described in the Bidding Documents at  
the Contract Price of:

Total Contract Price: ________________________________ (₱___________)

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

3. We agree to abide by this Bid for the period of sixty (60) calendar days from the final date  
fixed for receiving the same and shall remain binding upon us and may be accepted at any time  
before the expiration of that period.

4. If our Bid is accepted, we undertake within fifteen (15) calendar days from the date we  
received the Letter of Acceptance of Bid to submit a Performance Bond in the form attached to  
the Contract in the sum of (100% of total Contract Price), as security for the due and faithful  
performance or my/our obligations under the Contract. This guarantee will be valid for not less  
than thirty (30) days after the expiry of the Contract, or until you take it over in accordance with  
the Contract.

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

6. Unless and until a formal Contract is prepared and executed, and a satisfactory  
Performance Bond is executed and delivered, the Bid, together with your written acceptance  
thereof, shall constitute a binding Contract between us.
7. We understand that you are not bound to accept this Bid or any other Bid, which you may receive.

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

<table>
<thead>
<tr>
<th>Name and Address of Agent</th>
<th>Amount and Currency</th>
<th>Purpose of Commission or Gratuities</th>
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</thead>
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<tr>
<td>_________________</td>
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</tbody>
</table>

(if none, state “none”)

Yours truly,

(Name and Signature of Authorized Officer)

(Designation of Authorized Officer)

(Name of Vendor/Company)

(Business Address)

(Telephone Number/Facsimile Number/Email)
**FINANCIAL DATA**

Each Bidder or member of a JV must fill in this form. Only data of financial statements of Philippines company should be reflected and submitted.

<table>
<thead>
<tr>
<th>Financial Data for Previous 3 Years 2015-2017</th>
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<tbody>
<tr>
<td>2015:</td>
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<tr>
<td>2016:</td>
</tr>
<tr>
<td>2017:</td>
</tr>
<tr>
<td>Total Assets</td>
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<tr>
<td>Total Liabilities</td>
</tr>
<tr>
<td>Net Worth</td>
</tr>
<tr>
<td>Current Assets</td>
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<tr>
<td>Current Liabilities</td>
</tr>
<tr>
<td>Gross Revenue</td>
</tr>
<tr>
<td>Net Income</td>
</tr>
</tbody>
</table>

**Additional Information**

<table>
<thead>
<tr>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Value of all outstanding or ongoing Projects including contracts to be started</td>
</tr>
</tbody>
</table>

*Attach audited financial statements for the last three years (for the individual applicant or each partner of a joint venture).*

*Firms owned by individuals, and partnerships, may submit their balanced sheets certified by a registered accountant, and supported by copies of tax returns, if audits are not required by the laws of their countries of origin.*
<table>
<thead>
<tr>
<th>Source of Credit Line</th>
<th>Amount in Pesos (₱)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<tr>
<td>2.</td>
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<tr>
<td>3.</td>
<td></td>
</tr>
</tbody>
</table>

Attach supporting documents showing sources of credit line
<table>
<thead>
<tr>
<th>TECHNICAL EVALUATION CRITERIA</th>
<th>Minimum Requirements</th>
<th>Pass/Fail</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. EXPERIENCE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 The scope of services is described in the Work Performance Statement (WPS)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1.1 Have undertaken technical design and project management services for the design and construction of a gasoline station and installation of USTs as described in the WPS.</td>
<td>At least one (1) project experience which can be validated from presented completed project.</td>
<td></td>
</tr>
<tr>
<td>1.1.2 Described at least three (3) projects (completed and/or on going), similar in scope of work to ADB, and each project with a minimum total contract amount of PHP 1,000,000 awarded to your company. Indicate the type of involvement as the main contractor and client references. Describe in detail the scope of services rendered, product complexity, challenges hurdled, and similarity with ADB project.</td>
<td>At least two (2) projects with client references.</td>
<td></td>
</tr>
<tr>
<td>1.1.3 Describe project experience in green building initiatives (energy and water efficiency, sustainable materials and waste management practices, among others). Indicate role performed.</td>
<td>At least one (1) project with the following experience: It should include the following: a. Permits and licensing requirements for the construction of a gas station from DENR (EIA or IEE)/ DOE including: • Trainings/certifications required for petroleum equipment</td>
<td></td>
</tr>
</tbody>
</table>
2. WORK APPROACH AND METHODOLOGY

2.1 Describe the following in conducting the design and supervision works as described in the WPS (from design conceptualization to project turnover)

2.1.1 Describe the operational procedures and methodologies you intend to apply in implementing and monitoring the design and construction of the new GS and UST project. Discuss by indicating your strategy, systems, tools, and resources.

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<td>• Tank qualifications, safety inspection</td>
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<td>b. Environment, health and safety requirements (e.g. construction safety, waste management, pollution prevention, etc) of design and construction firm and its personnel. Indicate role performed.</td>
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<td>a. The timely and/or expeditious manner in preparing documents, such as design concepts, detailed drawings including its approval by the ADB prior to construction, technical specifications, bill of quantities, among others. Provide a master project schedule detailing all important activities and milestones with individual duration and due consideration of the design and construction of the proposed new GS and USTs must be completed within twelve (12) months.</td>
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<td>b. Consider that all GS works to be managed should not interfere with the operations of adjacent buildings and of the Gas Station itself. There should be controlled access to the construction areas. Discuss the delineation of movement of workers, protection of adjacent facilities, and consideration of noise and dust pollution.</td>
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<td>2.1.2 Discuss the reporting format to be used from formal reports to be submitted, number of coordination meetings to be conducted, approvals, among others.</td>
<td>Discussed reports written in English language weekly technical coordination and work progress meetings, monthly accomplishment reports, project turn over report with list of punch list items, among others.</td>
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<td>2.2 Project Documentation:</td>
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<td>2.2.1. Provide a list of technical design drawings and documents to be submitted during design and construction of this project.</td>
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<td>2.2.2 Submit a master project schedule showing the activities/milestones and duration of each.</td>
<td>The master project schedule meets the TOR requirements and implementation duration.</td>
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<td>3. ORGANIZATION</td>
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<td>3.1 Provide an organizational chart to be implemented showing the deployment of at least the following: 1 Project Engineer or Project Manager (architect or engineer, part time) 1 Project Coordinator 1 (architect, full time) and 1 Project Coordinator 2 (engineer, full time)</td>
<td>Organizational chart is provided showing the deployment of at least the following: 1 Project Manager (architect or engineer, part time) 1 Project Coordinator 1 (architect full time) 1 Project Coordinator 2 (engineer full time)</td>
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<tr>
<td>3.2 Provide a list of the personnel to be assigned in this project, consistent with the roles shown in the organizational chart. Attach the Curriculum Vitae (CV) of all personnel specifying the nationality, years of work experience, educational qualifications, professional affiliations, and licenses for each position. The CVs shall demonstrate the suitability of personnel assigned to the project in terms of qualification and experience.</td>
<td>The key personnel identified are consistent with the organizational chart. 5 years’ minimum work experience in design and/or project management, and with licenses issued by government accrediting agency</td>
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DATE : ____________________
PROJECT : PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE THE DESIGN
AND CONSTRUCTION OF NEW ADB GAS STATION AND
UNDERGROUND STORAGE TANKS (USTs)

LOCATION : 6 ADB AVENUE, MANDALUYONG CITY, PHILIPPINES
OWNER : ASIAN DEVELOPMENT BANK

CERTIFICATE OF SITE INSPECTION

BIDDER

This is to certify that I/We have sufficiently and fully familiarized ourselves with the Scope
of Work and attendant problems related to the proposed PROJECT MANAGEMENT FIRM (PMF)
FOR THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND
UNDERGROUND STORAGE TANKS (USTs) and that these attendant problems and difficulties
will be considered when we prepare our bids for the same.

_________________________________
Name of Firm

_________________________________
Name of Representative

OWNER

This is to certify that:

_________________________________
Name of Firm/Representative

has conducted a thorough inspection and evaluation of the site related to the proposed PROJECT
MANAGEMENT FIRM (PMF) FOR THE DESIGN AND CONSTRUCTION OF NEW ADB GAS
STATION AND UNDERGROUND STORAGE TANKS (USTs).

ASIAN DEVELOPMENT BANK

By:

_________________________________
Authorized ADB Representative
FORM OF SECRETARY’S CERTIFICATE

SECRETARY’S CERTIFICATE

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

Board Resolution No._____ Series of _____

RESOLVED, the (name of company) be, as it hereby is hereby, authorized to participate in the bidding for PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND STORAGE TANKS (USTs), and in connection therewith the Corporation hereby appoints (name and designation of authorized person – same person who will sign the conforme below) as the duly authorized and designated representative of (name of company), who is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Corporation in the bidding.

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

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

Signature

(Name of corporate secretary)

CONFORME:

Signature

(Name of authorized person)

Designation:

Company:

SUBSCRIBED AND SWORN to before me this ________, affiant exhibiting to be her/his Community Tax Certificate Number ___________issued on _____ at ________.

Doc. No. ______;
Page No. ______;
Book No. ______;
Series of ______;

SEAL AND SIGNATURE

NOTARY PUBLIC
BID SECURING DECLARATION

PROJECT MANAGEMENT FIRM (PMF)
TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION
AND UNDERGROUND STORAGE TANKS (USTs)

Date: ________________________________

To:

We, the undersigned, declare that:

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

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

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

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

Signed: ________________________________

In the capacity of ________________________________

Name: ________________________________

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

Dated on __________ day of __________________, _________

Corporate Seal [where appropriate]

--Note--

In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint venture that submits the bid.
FORM OF PERFORMANCE BOND
(from Contractor’s Surety Company)

To: ASIAN DEVELOPMENT BANK
6 ADB Avenue
Mandaluyong City
Philippines

Dear Sir:

WHEREAS, _______________ (hereinafter called the “Contractor”) and the Asian Development bank have entered, or will enter into a contract (Contract No. ADB/OAS/OAFA-2018-XXXX) for the PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND STORAGE TANKS (USTs) at ADB Headquarters Building, Mandaluyong City, Philippines (hereinafter called the “Contract”);

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

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

NOW THEREFORE we, {surety company’s name}, hereby irrevocably and absolutely affirm that we are the guarantor and responsible to you, on behalf of the Contractor, up to a total amount of _________: (100% of Total Contract Price) (______), which we undertake to pay to you, upon your first written demand, without your having to assign any reason for such demand, and irrespective of whether or not there is any dispute between the Contractor and you in respect of any other matter and irrespective of whether or not such dispute, if any, has been settled, resolved, litigated or adjudicated.

This Security is effective from _______________ to 30 days after the expiration date of the Contract. This Security cannot be canceled without your express written approval.

The giving of time to the Contractor, or the neglect or forbearance by you in requiring or enforcing payment of the sum of _________: (100% of Total Contract Price) (______ ) or other indulgence whether in relation to the Contract or otherwise, shall not, in any way, prejudice, affect, derogate, release or absolve us from our liability under this Security/Guarantee;

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

Dated this _____ day of ________________ 2018.

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

_______________________
_______________________
_______________________
_______________________

Attention: ________________________

Sirs:

Subject: Letter of Acceptance of Bid
PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE THE DESIGN AND
CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND
STORAGE TANKS (USTs)
- Contract No. ADB/OAS/OAFA-2018-XXXX

With reference to the execution of the above Services, this is to inform you that the Asian
Development Bank (hereinafter referred to as ADB) hereby accepts your bid as contained in your
Bid Form dated ______________ in accordance with the terms, provisions, and stipulations
contained in the documents collectively referred to as the “Bid Documents”.

The commencement date of this Contract shall be on ______________. A Performance bond
in the amount of (100% of the Total Contract Price) ______________ issued by a recognized
surety company shall be deposited with ADB in the form as attached.

Two sets of Contract Documents are attached for your signature.

Sincerely,

Makoto Ojiro
Director
Facilities and Asset Management Division
Office of Administrative Services

Attachment: Form of Performance Bond
ASIAN DEVELOPMENT BANK
6 ADB Avenue, Mandaluyong, Metro Manila, Philippines

CONTRACT NO. ADB/OAS/OAFA-2018-XXXX

Date:

Issued to:

Address:

Reference:

Date of Commencement of Services:

Date of Completion of Services:

Budget:

Specifications (Services):

PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND STORAGE TANKS (USTs)

Price and Payment:

(a) Total Contract Price: words (figures)

(b) The Contract Price shall be fixed and shall constitute the full compensation to the Contractor for the Services as specified above and shall include, unless otherwise specified, all costs, labor, transportation, supervision, tools, and other charges of any kind incurred by the Contractor. Payment of the Contract Price shall be as follows: Fifteen (15) days upon submission of required report and receipt of original invoice.

(c) Conditions for payment:

(i) 10% upon acceptance of the terms of reference for engaging the design and build firm
(ii) 10% upon design and build contract award
(iii) 20% upon acceptance of gasoline station design, construction schedule, specifications, and cost
(iv) 25% upon 50% completion of construction works
(v) 25% upon 90% completion of construction works
(vi) 10% upon issuance of the performance certificate to the general contractor following full completion of contracted works and defects
(d) ADB is exempt from all taxes including Value Added tax. The above contract price is net of all taxes.

Terms and Conditions:

(a) The Contractor is hereby requested to execute the Services under the terms and conditions set out above and in the attached pages.

(b) The Contractor to post: (i) Performance bond (Appendix 10) amounting to 100% of total bid price in favor of ADB to guarantee its faithful performance of the Contract.; and (ii) Comprehensive General Liability Insurance amounting to Php2,500,000 for each occurrence.

(c) Penalty: Should the Contractor fail to deliver advice, drawings, technical bidding documents, progress reports, among others stipulated as deliverables in the WPS, causing the project to be delayed and/or incur additional cost, the Contractor shall be liable for one or more of the following at the discretion of ADB: (i) cost of delay to ADB; and/or (ii) additional costs to the project.

Should the role of the Contractor be terminated due to such a failure, Contractor shall also be liable for one or more of the following at the discretion of ADB: (i) all fees paid to the Contractor up to that point; (ii) administrative cost of re- engaging another Contractor; and/or (iii) difference in fees between new Contractor and departing Contractor, where the former is more than the latter.

____________________________________________________________________________

CONFORME:

NAME OF CONTRACTOR          ASIAN DEVELOPMENT BANK

Name of Representative       Makoto Ojiro
Position                      Director
Facilities and Asset Management Division
Office of Administrative Services
TERMS AND CONDITIONS

1. General

1.1 This Contract, including these general terms and conditions, and any special conditions, specifications, and other documents attached hereto, constitute the entire agreement between the parties.

The following documents shall be deemed to form and be read and construed as part of this Contract, viz:

a. Supplier’s Proposals
b. Terms of Reference/Work Performance Statement

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

2. Definitions

2.1 “ADB” means Asian Development Bank

2.2 “The Technical Service Provider/Contractor” means the bidder who has been accepted by ADB, and includes the Contractor’s legal personnel representatives, successors and assignees.

2.3 “The Contract Price” means the unit prices or lump sums named in the Contract subject to such addition thereto or deduction therefrom as may be made under the provisions contained in the Contract.

2.4 “Work/Service” means the provision of equipment, supplies, labor, supervision, transportation installation operation, maintenance, and dismantling of the facilities necessary and/or convenient to the successful completion of the Work/Service described in the applicable provisions of the Contract and covering offer of the Contractor as accepted by ADB.

2.5 “Contract” means those several documents listed in the Contract and constituting the minimum requirements for the execution of the Services by the Contractor.

3. Acknowledgement and Acceptance of Contract

The Contractor by signing the Contract and returning it to ADB, signifies acceptance of the Contract and of the terms and conditions governing the Contract.

4. Changes

ADB may make any change in the specifications including additions to or detentions from the quantities of the Work/Service originally contracted. If any such change affects the Contract Price or time of performance hereunder, an equitable adjustment shall be made by ADB to the amount or the time of performance by written variation order.

5. Terminations
5.1 ADB may at any time, at its option, terminate this Contract, in whole or in part, by giving written notice thereof to, the Contractor on the address stated on the face hereof. In the event of such termination, the amount due under the Contract shall be subject to equitable adjustment.

5.2 If the Contractor becomes insolvent, bankrupt or gives ADB reasonable evidence of its inability to complete the Services as specified, or fails to correct any non-conformity in the Services or performs in bad faith by willfully not observing the terms and conditions of this Contract, ADB may terminate the Contract in whole or in part.

6. Assignment

Any assignment of this Contract or any rights hereunder, in whole or in part without the prior written consent of ADB shall be void.

7. Language

All communications and documents real thing to the Contract shall be in English.

8. Legal Status of ADB

ADB is a public international financing institution, established by an agreement known as “Agreement Establishing the Asian Development Bank” (hereinafter the “Charter”) and has its Headquarters in Metro Manila Philippines. “The Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the headquarters of the Asian Development Bank” (hereinafter the “Headquarters Agreement”). Under the Charter and the Headquarters Agreement, ADB and its assets, property, income, operation and transactions are exempted from any obligation to pay, withhold or collect any tax or duty.

9. Liability and Indemnification

9.1 The Contractor shall be liable for and shall hold ADB harmless and indemnify it against all claims upon ADB, and the costs thereof, arising out of (i) any injury to or death of third parties or (ii) any damage to property of ADB which have resulted directly or indirectly from negligence or any willful act or omission of the Contractor or any person under the employment, supervision or control of the Contractor, or otherwise engaged by the Contractor to perform the Services.

9.2 The Contractor shall be liable for, and shall hold ADB harmless and indemnify it against all claims upon ADB, and the costs thereof, arising out of (i) any injury to or death of the Contractor’s personnel or (ii) any damage to the property, equipment or materials of the Contractor.

10. Independent Contractor

Nothing contained in this Contract shall be construed as establishing or creating the relationship of master and servant, employer and employee or principal and agent between ADB and the Contractor or his employees or agents or other persons engaged by the Contractor to perform any of the services.
11. Standards and Rules

11.1 The Contractor agrees to perform the Services in accordance with the safety standards of ADB and to comply strictly with all the work and safety rules and regulations of ADB.

11.2 Contractor shall not pay any commissions, fees, or grant any rebates to any ADB staff or their dependents, nor favor ADB staff or their dependents with gifts or favours or enter into any business arrangements with employees of ADB (other than as representatives of ADB) except with the prior written approval of ADB.

12. Settlement of Disputes

12.1 ADB and the Contractor shall exert effort to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of this Contract. The User Unit, in consultation with OAFA- AC and OAFA-FM, and the Contractor’s personnel directly involved should first attempt in good faith to settle the dispute among themselves before escalation to the Principal Director, OAS and their respective counterpart/s.

12.2 Should effort to resolve disputes under the preceding paragraph fail, either party shall commence arbitration by sending notice to the other party stating in detail the issue to be resolved and that the dispute shall be referred to arbitration. The International Chamber of Commerce’s [ICC] Rules of Arbitration in force upon commencement of arbitration shall apply. The arbitration shall be in English; it shall take place in Manila and be governed by Philippine law. Each party shall pay its own costs.

12.3 Notwithstanding unresolved disputes, the Parties shall continue to perform their respective obligations under the Contract or otherwise adopt provisional measures to ensure uninterrupted delivery of the Services.

13. Force Majeure

The Contractor shall not be liable to ADB for delays due to acts of war, civil commotions, fire and operation of the forces of nature, provided such damage or delay is not due to the Contractor’s failure to take adequate precautions.

14. Confidentiality Undertaking

14.1 Each party shall treat the Agreement and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Agreement or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other.

14.2 The obligations expressed in sub-Clause 14.1 above shall not apply to any information which:

(i) Is or subsequently comes into the public domain otherwise than by breach of this Clause;
(ii) is already in possession of the receiving party without an accompanying obligation of confidentiality;
(iii) Is obtained from a third party who is free to divulge the same; and
(iv) Is independently and lawfully developed by the recipient or its sub-Contractor outside the scope of the Contract.

14.3 So far as it may be necessary for the performance of the Agreement or for the conduct of the Works subject of the Agreement, each party may divulge any information to be kept confidential under sub-Clause 1 of this Clause to their employees, agents and approved sub-Contractors, if any on a “need to know” basis but undertake that they will ensure compliance by such employees, agents, and sub-Contractors with the obligations as to confidentiality expressed in this Clause and will be responsible to the other party for any failure by any employee, agent or sub-Contractor to comply with such obligations whether such employee, gents or sub-Contractor was aware of them or not.

14.4 The provisions of this Clause shall continue in perpetuity.

14.5 Contractor shall execute the attached Confidentiality Undertaking.

15. Corrupt, Fraudulent, Coercive and Collusive Practices

15.1 For the purposes of this section, the terms above shall have the following meaning:

(a) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

(b) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(c) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

(d) “collusive practice” is an arrangement between two or more parties designed to achieve an improperly the actions of another party.

15.2 ADB, bidders, manufacturers, or distributors, and the Contractor shall observe the highest standards of ethics during the institutional procurement exercises of ADB and implementation of the contract.

15.3 ADB’s Anticorruption policy requires Contractors under ADB-financed contracts, as well as their staff to observe the highest ethical standards. Firms entities and individuals bidding for or participating in ADB’s institutional procurement of Services and related goods, including but not limited to, Contractors and concessionaires, and their respective officers, employees and agents should report to the Office of Anticorruption and Integrity (OAI) suspected acts of fraud or corruption that they come to know during the bidding process and throughout negotiation or execution of a contract.

15.4 Pursuant to its Anticorruption policy, ADB:
(a) Will not award a procurement contract to a winning bidder that has directly engaged in any corrupt, fraudulent, collusive or coercive practice in competing for the contract in question;

(b) May suspend the procurement process at any stage when there is sufficient evidence to support a finding that an employee, agent or representative of the bidders, Contractors and concessionaires has engaged in any corrupt, fraudulent, collusive or coercive practice in competing for, or in executing an ADB-financed contract;

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

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

15.5 The Contractor agrees to be bound by ADB’s Anticorruption Policy as outlined above.

15.6 The Contractor shall permit ADB to inspect the Contractor’s accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by ADB, if so required by ADB.

16. Intellectual Property

The Parties hereto acknowledge, recognize, and agree that ADB shall own all right, title and interest in all Intellectual Property that:

(i) Originated from the conduct of the feasibility study subject of this Agreement, or through work in any manner done in connection with this Agreement;

(ii) Was obtained by, or exclusively or primarily for the conduct of the work/feasibility study subject of this Agreement; and

(iii) Was written or developed exclusively and primarily for the conduct of work subject of this Agreement including all previous drafts.

The Contractor warrants that all Work is originally produced and shall at the request of ADB execute such assignments and assurance as may be necessary to perfect the title of ADB thereto.
17. Indemnification for infringement of Third Party Rights

Contractor agrees. If asked by ADB, to defend ADB against all claims, suits, actions, or proceedings involving intellectual property infringement in which ADB is named a defendant or co-defendant, including but not limited to, actual or alleged infringement of any patent, trademark, copyright, or trade secret, resulting from ADB’s use of the Services or Related Goods acquired hereunder. Contractor also agrees to pay for any costs of such defense, including legal fees; and further agrees to pay and discharge any judgements, awards or decrees which may be rendered in any suit, action, or proceeding against AB for alleged infringement.
CONFIDENTIALITY UNDERTAKING

[DATE]

Asian Development Bank ("ADB"), a multilateral finance institution established under the Agreement Establishing the Asian Development Bank (the "Charter") with its office at 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines, is willing to make available to [______________________________], with its principal office at [________________________], (the "Company") subject to the terms of this Confidentiality undertaking (the "Undertaking") certain Confidential Information for the purpose, which purpose itself confidential of PROJECT MANAGEMENT FIRM (PMF) TO OVERSEE THE DESIGN AND CONSTRUCTION OF NEW ADB GAS STATION AND UNDERGROUND STORAGE TANKS (USTs) (HEREINAFTER REFERRED TO AS THE "SERVICES") and whether the potential for agreement exists between the Company and ADB for outsourcing other appraisal work to the Company. The term "Confidential Information" means information, data, materials, tapes, documents whether soft or hardcopies, software, computer files (including audio files) or programs disclosed, provided, communicated or submitted, orally, in writing, or by any other media, by ADB to the Company for the purpose of the Transaction.

1. Confidentiality

(a) The Company acknowledges that the Confidential information is secret and confidential to ADB.

(b) The Company may only provide or communicate Confidential Information to officers or employees of the Company who:

(1) are made aware of the terms upon which the Confidential information has been disclosed to the Company; and

(2) agree in writing to treat the Confidential information as secret and confidential to ADB.

(c) This Undertaking will not apply to any information or material:

(1) which is received by the Company from a third party who is under no obligation of confidentiality to ADB and who did not receive such information or material from a person who is under an obligation of confidentiality to ADB; or

(2) which is in the public domain without any breach of this Undertaking.

2. Permitted Use of Confidential Information

(a) The Company will not use the Confidential Information other than in accordance with the terms of this Undertaking.

(b) the Company may use the Confidential information only for the purpose of the Transaction.
3. Return and destruction of material

(a) Upon termination of the Transaction, the Company will immediately return to ADB all the Confidential Information previously furnished and will destroy all copies of the Confidential information, or extracts of the Confidential Information, in the possession of the Company or its employees.

(b) Upon receipt of a written request from the ADB, the Company will immediately return to ADB all the Confidential Information previously furnished and will destroy all copies of the Confidential information or extracts of the Confidential Information, in the possession of the Company or its employees.

4. Other Undertakings of the Company

The Company will:

(a) keep the Confidential Information secure and protect the Confidential Information from unauthorized use, disclosure and access and from damage or destruction;

(b) clearly marked all Confidential Information as being such and not to be disclosed;

(c) not apply for, nor directly or indirectly assist any other person to apply for, any patent, design or other industrial or intellectual property or proprietary right in respect of any invention, process or design that is based on or utilizes the Confidential information;

(d) not contest of oppose, attempt to invalidate, any application for or any industrial or intellectual property or propriety right for the ADB that is based on or utilizes the Confidential information; and

(e) not, without the prior written consent of the ADB, reproduce or permit the reproduction in any form of any material which contains, is based on or utilizes the Confidential information other than for the purpose of the Transaction.

5. Governing Law

This undertaking is governed by and is to be construed according to the laws of the Philippines.

6. Immunities and Privileges of ADB

Nothing in this Undertaking shall operate as or be construed to constitute a diminution or any other modification of any privilege or immunity of the ADB under Chapter VIII of the Charter or under applicable law. In particular, the Company acknowledges that in accordance with the Charter, ADB enjoys immunity from every form of legal process.

This undertaking shall terminate one year after the return to ADB of all Confidential Information.
For and on behalf of
[
]

Name:
Title:
**BIDDER’S INFORMATION SHEET**

**General information**

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

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