

**BAC-C Resolution No. BC-2018-024**

**NEGOTIATED PROCUREMENT THROUGH SMALL VALUE PROCUREMENT**

**Consulting Services for the Tax Compliance Advisory Retainer Services**

**WHEREAS**, the Head of the Accounting Department (AD), in its memo dated June 18, 2018, endorsed to the Bids and Awards Committee for Consulting Services (BAC-C), the procurement of consulting services for the tax compliance advisory retainer services and its request to delegate the authority to procure to the AD, in accordance with the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, otherwise known as the Government Procurement Reform Law (Annex A);

**WHEREAS**, the Consultant shall render consulting services to BCDA on the possible tax risk and exposure which may arise from the implementation of real estate and other development projects of BCDA;

**WHEREAS**, the Consultant shall undertake the following Scope of Services:

1. Provide oral and/or summary reply to queries;
2. Disseminate to BCDA the monthly Client Advisory Letter;
3. Attend quarterly meetings to discuss tax issues related to BCDA's business operation, asset disposition program and implementation of developmental projects (Annex B);

**WHEREAS**, Section 53.9 of the Revised IRR of RA 9184 allows the procuring entity to resort to Alternative Methods of Procurement, specifically Small Value Procurement where the procurement does not fall under Shopping of Section 52 of the Revised IRR and the amount involved does not exceed the thresholds prescribed in Annex "H" (Consolidated Guidelines for the Alternative Methods of Procurement) of the Revised IRR in the amount of One Million Pesos (Php1,000,000.00) for NGAs, GOCCs, GFIs, SUCs and Autonomous Regional Government;

**WHEREAS**, the approved budget for the abovementioned consulting services with a term of 12 months is **Pesos: Three Hundred Eighty-one Thousand (Php 381,000.00)**, inclusive of all applicable taxes and fees;

**WHEREAS**, BCDA shall pay the Consultant a monthly retainer fee of **Pesos: Twenty Eight Thousand (Php 28,000)**, inclusive of 12% VAT upon submission of monthly accomplishment report and shall be allowed a maximum monthly Out-of-Pocket Expenses of **Pesos: Three Thousand Seven Hundred Fifty Pesos (Php 3,750)**, inclusive of VAT, upon submission of required documents, effective from the date indicated in the Notice to Proceed and/or Contract;

**WHEREAS**, pursuant to Annex H, Section J, Delegation of Authority states that, "the conduct of Shopping and Negotiated Procurement under Emergency Cases, Small Value Procurement and Lease of Real Property and Venue may be delegated to the End-user unit or any other appropriate bureau, committee, or support unit duly authorized by the BAC through a Resolution approved by the HOPE."

**NOW, THEREFORE**, the BAC-C resolve, as it is hereby resolved:

1. To recommend the procurement of Consulting Services for the Tax Compliance Advisory Retainer Services using the Alternative Method of Procurement in accordance with Section 53.9 of the Revised IRR of RA 9184 under Small Value Procurement;
2. To delegate the procurement of said consulting services to the AD, pursuant to Annex H, Section J of the Revised IRR under Delegation of Authority;
3. To direct the end user to request for the issuance of the Certificate of Funds Availability (CFA) for the procurement prior to the award of the contract;
4. To direct the end-user to furnish the BAC-C Secretariat copies of the duly conformed Notice of Award and Notice to Proceed as well as the executed contract, and all supporting documents pursuant to the procurement; and
5. To direct the end-user to report to the BAC-C the result of the procurement process within 10 days in the event that the procurement of said consulting services fails.

Done in Taguig City, this 20th day of June 2018.

#### **BIDS AND AWARDS COMMITTEE FOR CONSULTING SERVICES**

**JOSHUA M. BINGCANG**  
Chairperson

*did not participate*  
**JOANNA EILEEN M. CAPONES**  
Vice-Chairperson

*[Signature]*  
**HEDDA LOURDES Y. RULONA**  
Member

*[Signature]*  
**VIRGIL M. ALVAREZ**  
Member

*[Signature]*  
**GUALBERTO J. OYZON, JR.**  
Member

Approved by:

*[Signature]*  
**AILEEN ANUNCIACION R. ZOSA**  
Executive Vice President

ANNEX A

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**INTERNAL MEMO**

**CHAIRMAN OF THE BIDS AND AWARDS COMMITTEE (BAC) FOR CONSULTANCY**

THRU : **NENA D. RADO**C, Chief Financial Officer-FSG  
FROM : **DEAN S. MONTALBAN**, Head-Accounting Department  
DATE : 18 June 2018  
SUBJECT : **REQUEST FOR AUTHORITY TO PROCURE TAX COMPLIANCE ADVISORY  
RETAINER SERVICES USING ALTERNATIVE MODE OF PROCUREMENT**

**BACKGROUND:**

1. The Bids and Awards Committee for Consultancy (BAC-C), through BAC-C Resolution No. 2017-008 dated 21 February 2017 (attached), delegated the authority to procure Tax Compliance Advisory Retainer Services to the Office of the Finance Services Group (end user) using the Alternative Mode of Procurement in accordance with Section 53.9 of the Revised IRR of RA 9184, under Small Value Procurement.
2. Upon the issuance of NOA (dated 24 May 2017), BCDA entered into a contract with Isla Lipana & Company (Tax Consultant) to render consulting services to BCDA with the purpose of avoiding or minimizing possible tax risks and exposures which may arise from the implementation of various development projects and/or dispositions involving Metro Manila camps and other BCDA properties.
3. The contract among BCDA and the Consultant (Isla Lipana & Co.) executed on 26 May 2017 covers twelve (12) months from 01 June 2017 to 01 June 2018, per Notice of Award.
4. Since there are on-going and upcoming infrastructure projects involving the "Build Build Build Infrastructure Program" of the current administration, we find the continuity of service of a Tax Consultant very crucial. In anticipation of the expiration of the original contract, the FSG sought for the approval of P/CEO Dizon for the procurement of the said services on 27 April 2018.
5. Therefore, FSG intends to procure the service of a Tax Consultant for a period of twelve (12) months with a monthly professional fee of PhP28,000.00, inclusive of 12% VAT. Same terms shall be adopted based on the previous contract with the former Tax Consultant.

**REQUESTED ACTION:**

6. In view of the foregoing, may we respectfully request for the authority, through a BAC-C Resolution, to procure Tax Compliance Advisory Retainer Services using the Alternative Mode of Procurement, in accordance with Section 53.9 of the Revised IRR of RA 9184 under the Small Value Procurement.
7. For the information and reference of the Committee, we have enclosed the following documents:

- Terms of Reference;
- Proposed Contract for Consultancy Services – Tax Compliance Advisory Retainer Services; and
- PCEO approval for the procurement of the Consultancy Services dated 27 April 2018.

**FOR THE COMMITTEE'S CONSIDERATION AND APPROVAL.**

Thank you.

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# **TERMS OF REFERENCE**

## Tax Consulting Services

### **1. BACKGROUND**

BCDA is mandated under Republic Act (RA) No. 7227, as amended by RA No. 7917, to accelerate the sound and balanced conversion into alternative productive uses of the military reservations and their extensions, including the former Clark Air Base in Angeles, Pampanga. Likewise, BCDA is tasked to dispose Metro Manila Camps to finance the development of former military camps and the construction of support infrastructure projects in partnership with the private sector.

In order to accomplish the tasks and contribute to the nation building, BCDA undertakes real estate development projects involving former Metro Manila camps, former U.S. military bases, New Clark City, identified DND/AFP military properties and other projects/activities that will be undertaken by BCDA and its Subsidiaries.

### **2. OBJECTIVES**

The CONSULTANT shall render consulting services to BCDA on the possible tax risk and exposure which may arise from the implementation of real estate and other development projects involving Metro Manila camps, former U.S. military bases, New Clark City and other identified DND/AFP military properties.

### **3. SCOPE OF SERVICES**

- Provide oral and/or summary reply to queries;

The queries shall be regarding BCDA's possible tax risk and exposure related to the implementation of its development projects, pending tax issues before the local government, administrative and judicial bodies, and BCDA's overall business.

The summary reply shall contain the supporting tax laws, rules/regulations and jurisprudence.

- Disseminate to BCDA the monthly Client Advisory Letter (CAL);

The CAL contains new regulations, rulings and jurisprudence relating to generic tax issues. In this regard, application to BCDA will generally require further consideration and advice.

- Attend quarterly meetings to discuss tax issues related to BCDA's business operation, asset disposition program and implementation of developmental projects.

Upon execution of this Contract, the PARTIES shall meet for a walk-through of the various activities involved in the development projects and have a preliminary discussion of identified issues, if any. During the said meeting, the PARTIES shall

agree on the items/areas where BCDA needs advice, as well as the timeline within which the same shall be provided. Depending on the number and complexity of the issues involved, the CONSULTANT shall endeavor to provide a reply within five (5) working days from the meeting and submission of the necessary documents which may be requested.

Thereafter, the PARTIES shall meet quarterly to consider a pre-set agenda of matters of known or potential interest to BCDA. Such quarterly meetings shall likewise serve as brainstorming sessions on planned or ongoing transactions which may have critical tax implications and other potential tax planning opportunities.

At any time during the term and effectivity of this Contract, BCDA may contact the CONSULTANT via phone or email to raise additional issues on which the former needs advice or raise follow-up questions/clarifications on advice previously given. In case of follow-up questions/clarifications, BCDA shall do its best to bring it to the attention of the CONSULTANT within five (5) working days from the time the advice was provided.

In any case and taking into consideration the circumstances, BCDA agrees to give the CONSULTANT a reasonable period (i.e., within 24 to 48 hours, excluding weekends and holidays) to respond.

#### **4. LIMITATIONS ON THE SERVICES**

The CONSULTANT shall be limited to an advisory role in the engagements. BCDA shall be responsible for any decision made in connection with or arising from said engagements.

The CONSULTANT shall not render an assurance report under this Contract, nor will the services constitute an audit, review, or other form of assurance on accounting matters, financial statements, or other financial information or internal controls as part of the services.

The CONSULTANT may only present pertinent issues on circumstances where certain provisions in the tax laws are subject to varying or conflicting interpretations and no official guidelines or clarifications were issued by the tax authorities.

The CONSULTANT shall not disclose any confidential information provided by BCDA under this Contract.

#### **5. BCDA OBLIGATIONS**

BCDA shall:

1. Provide the CONSULTANT information, resources and assistance including access to records, systems, premises and people required in the performance of the services
2. Communicate on a timely basis any changes in its circumstances that could affect



the performance of this Contract.

3. Assign a BCDA personnel to oversee the following:

- 3.1 Management decisions relating to the services
- 3.2 Use or implementation of the output of the services
- 3.3 Determine whether the services are appropriate for BCDA purposes.

## 6. PROCUREMENT SELECTION

The CONSULTANT shall be procured through Negotiated Procurement Under Section 53.4 of RA 9184.

## 7. CONTRACT PRICE AND MANNER OF PAYMENT

For services rendered under the agreement, BCDA shall pay the CONSULTANT a monthly retainer fee in the amount of **Twenty-Eight Thousand Pesos (Php28,000.00)**, inclusive of 12% Value Added Tax (VAT). Payment shall be made within 15 days from submission of an invoice.

Subject to prior written notice, the CONSULTANT is allowed to reimburse a monthly Out-of-Pocket Expenses (OPEs) in the maximum amount of Three Thousand Seven Hundred Fifty Pesos (Php3,750.00), inclusive of 12% VAT. Payment shall be made upon submission of receipts/ details of the OPE.

## 8. DURATION OF THE SERVICES

This Contract shall be effective for twelve (12) months commencing on \_\_\_\_\_ **2018** and subject to renewal upon mutual agreement of the Parties.

## 9. TERMINATION

Each PARTY reserves the right to cancel the Contract without necessity of judicial proceedings if, in its discretion, the other PARTY has:

- 1.1 Violated any of the provisions, terms and conditions of this Contract;
- 1.2 Been found liable for committing acts constituting just or authorized causes for termination under the law; or
- 1.3 Been found liable for committing acts detrimental to BCDA and/ or its Project.

Any PARTY shall notify the other, in writing, of the latter's failure to comply with the terms of the Contract. If the defaulting party should fail to remedy the situation within five (5) calendar days from receipt of said notice, the notifying PARTY shall terminate the Contract through a written Notice of Termination.

Within the thirty (30) days from the expiration of the term or from receipt of the Notice of Termination under the immediately preceding provision, the CONSULTANT shall, without need of demand, turn over to BCDA all original copies of documents and records provided to the former by the latter in the course of the rendition of the consulting services.

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