

TERMS OF REFERENCE FOR CARGO FORWARDING SERVICES
(IN CONNECTION WITH THE DEPLOYMENT OF OFFICIAL BALLOTS FOR THE
MAY 10, 2010 AUTOMATED ELECTIONS)

Section 1. Roles or functions of the Forwarding Company. In order for the forwarding company to fully comply with the Door-to-Door mode of delivery and other service requirements of the Commission on Elections (COMELEC), it shall assume the roles and functions of the Master Consolidator, Break Bulk Agent, Delivery Agent and General Project Manager.

Sec. 2. Definition of Terms - For purposes of this bidding, the following terms are hereby defined and understood to mean as follows:

- 2.1. **Break Bulk Agent** refers to the one who receives cargoes at the gateways, processes and segregates according to destination/consignee.
- 2.2. **City limits or "on-line" areas** are those within a local government unit where the branch or field office of the forwarder is located and are within their service area.
- 2.3. **Committee** refers to the Packing and Shipping Committee or PSC of the Commission on Elections.
- 2.4. **Consignee** refers to the person to whom the cargo is to be delivered. They may either be any one of the following: The Regional Election Director (RED), the Provincial Election Supervisor (PES) Provincial Treasurer (PT), the City Election Officer (CEO), City Treasurer (CT) the Municipal Election Officer (EO), Municipal Treasurer (MT), District Supervisor of the Department of Education (DepEd), School Principal, and/or any person or organization indicated in the Bill of Lading upon supplemental verbal and/or written instructions by the PSC, subject to written confirmation by the Commission *En Banc*, as the case may be).
- 2.5. **Daily Transaction** involves issuance to, and acceptance by, the forwarder of a single or multiple Bills of Lading (BL) for shipment on a particular day.
- 2.6. **Delivery Agent** is the one who delivers cargoes from the gateways to the consignees.
- 2.7. **Diverted routes** shall pertain to the shipment of cargoes using alternate airport or seaport as point of entry or trans-shipment routes due to justifiable reasons such as frequency of flights/voyages, cargo traffic, cargo capacity of aircraft servicing the usual route.
- 2.8. **Forwarder** pertains to any person, natural or juridical, government or private, who has been authorized by the Commission on Elections to deliver Official Ballots to the intended consignee as indicated in the Bill of Lading.

- 2.9. **Gateways** are those areas with airports and/or seaports pre-identified by COMELEC per list supplied and the "online" areas as submitted by the forwarding company in the eligibility documents.
- 2.10. **General Project Manager** is the over-all coordinator or supervisor who sees to it that all roles, functions, duties and obligations and most especially operational details pertaining to the movement of cargoes intended for the areas awarded/assigned are faithfully performed and complied with.
- 2.11. **Master Consolidator** pertains to the one who consolidates, facilitates the processing and moves the cargoes as released by the Packing and Shipping Committee in whatever order or sequence that is practically available from identified pick-up point/s.
- 2.12. **Outside city limits or "off-line"** – those areas outside the geographical jurisdiction of identified gateways. **Add on**", **"offline"** and **out of town delivery charges** has the same meaning and can be used interchangeably.
- 2.13. **Routes-** refers to a single route or connection of route/s in the shipment or transshipment/s of cargoes. For purposes of this bidding, the usual or ordinary routes shall be the basis (*e.g.*, the usual airports or ports point of entry).
- 2.14. **Shipper** refers to the Commission on Elections.

Sec.3. Basis of Shipment – The Bill of Lading [General Form No. 9(A)] shall exclusively govern the terms and conditions of the shipment of Official Ballots.

Sec.4. Details of Shipment- All information and details of shipment are contained in the Bill of Lading such as name of consignee, destination, number of bundles or packages, weight and estimated value.

Sec.5. Documentation- Forwarders must strictly follow the documentation requirements indicated in the Bill of Lading. Failure to comply therewith may be a ground for the refusal or disallowance of claims for payment.

Sec.6. Valuation of Cargoes- For purposes of determining claims due to loss of cargo, the value indicated in the Bill of Lading shall be controlling.

Sec.7. Prioritization of destination- For purposes of prioritizing destination routes, cargo intended for island municipalities or those called "priority areas" and those "far-flung" municipalities known to be difficult to reach by reason of geographic location or inadequate access roads or public transportation shall be given priority in the shipment to ensure that they arrive on time.

Sec.8. Means of transportation- To save funds, the use of the cheapest and fastest means of transportation is hereby mandated. As a general rule, cargoes intended for Luzon shall be transported by land while those intended for Visayas and Mindanao shall be transported by sea.

However, in case of urgency, the forwarder may employ all the necessary means, including transport by air or diversion of routes, to ensure that cargo shall arrive at its

intended destination on time for the electoral exercises, subject to prior approval by the Chairman or Vice-Chairman of the PSC.

Forwarders who failed to employ the most economical means of transportation as warranted by circumstances, or have been proven to have misrepresented in its urgent or instant request to divert route/s detrimental to the interest of the COMELEC, shall reimburse to the COMELEC the difference in the rate/charge if the same were transported by the most economical mode of transport (land or sea). This is without prejudice to civil and/or criminal actions that maybe taken against them and *motu proprio* termination of any existing contract or agreement with the Commission.

Sec.9. Waiver to service area of assignment- All forwarders must deliver the cargoes intended for their awarded areas of assignment. However, a forwarder may refuse to deliver cargoes only for justifiable and meritorious reasons. In this eventuality, the forwarder must notify, in writing, the PSC at least seven (7) days before the actual dispatch. Failure to do so will result in the automatic annulment of its right to serve the awarded area and the contract. In which case, the next ranking forwarder in the bidding shall serve. This is without prejudice to any legal action that will be undertaken against the forwarder for its failure to comply with its obligation as stipulated in the contract.

Sec.10. Mandatory cargo monitoring system- It is mandatory for all the forwarders to have an accurate, regular and timely cargo monitoring system or **tracking device** to regularly and frequently up-date the Committee of all cargo movements from point-to-point. Forwarders proposing to participate in the movement of registration forms and supplies should have, among other efficient means of updating, valid and active e-mail accounts to enable them to update the Committee through e-mail.

Moreover, the forwarder should provide the PSC with the mobile phone numbers of all its personnel in-charge of actual delivery of the Official Ballots to all consignees nationwide.

Sec.11. Engaged services- The services of the forwarder is deemed engaged or contracted by the Commission the moment its vehicles, equipment, manpower and other resources have been commissioned or commandeered by the COMELEC through its authorized personnel, duly conformed to in writing by the Chairman or Vice-Chairman of the PSC, even if actual utility thereof occurred or was realized at a later time and date.

Sec.12. Obligation of Forwarders - Once the service of the forwarder is engaged or contracted by the Commission, it shall mean:

12.1 Acceptance by the forwarder to transport, ship and deliver COMELEC cargo to any designated destination, the classification and quantity of which is indicated in the Bill of Lading.

12.2 Preclusion of the forwarder from:

12.2.1 Bumping- off COMELEC cargo in favor of other clients;

12.2.2 Refusing to deliver cargo, subject to Section 9 of this Terms of Reference;

12.2.3 Exercising stoppage *in transitu* or other analogous circumstances, which would halt any COMELEC cargo in transit from its destination, except in cases of fortuitous events and force majeure, or when a co-loader or sub-contractor fails, for any justifiable reason, to fulfill the terms and conditions of co-loading and sub-contracting agreements with the forwarder; and

12.2.4 Ceasing transport, shipment and delivery operations involving COMELEC cargo intended for an electoral exercise.

Sec.13. Mistake in delivery - There shall be a mistake in delivery when the forwarder delivers to a person other than the intended Consignee or its duly authorized representative/s. In such case, the forwarder is obliged to re-deliver the cargo by taking the fastest means available without additional shipment or freight cost to the Commission.

Sec.14. Late delivery- The forwarder shall be liable for damages in case of late deliveries, without prejudice to any action that may be undertaken by the Commission under R.A. 9184. A delivery by forwarder shall be considered late when a failure, suspension or postponement of elections is declared by the Commission in the place where the delivery was intended and the same was the direct and primary cause for such declaration.

14.1. Exceptions - The forwarder shall not be responsible for any failure to comply with, or for any delay in the performance of its functions under the terms of its contract with the Commission where failure or delay was due to cause/causes beyond the forwarder's reasonable control, including but not limited to, acts of God or known public enemy, war, riot, embargo, fire, explosion, sabotage, flood, accident and any other similar or analogous causes.

Sec.15. Loss of cargo - Cargo lost or stolen when in the custody of the forwarder, without negligence on the part of the accompanying escort(s), if present, shall be compensated by the forwarder to the shipper in an amount equal to the value of the cargo lost, based on the declared value in the Bill of Lading.

Sec.16. Notice of loss- The liability of the forwarder for any loss, theft, damage or for any other similar cause shall be governed by existing, pertinent and relevant laws on the matter. However, in case of loss or theft of the cargo, the forwarder shall notify the COMELEC immediately from forwarder's discovery of such loss or theft.

Sec.17. Charging of rates- Rates shall be based on the amount of the award for cargo forwarding services, and no payment therefor shall be made except upon issuance by PSC of a certificate of completion of delivery to intended consignees.

Sec. 18. Reportorial Requirements. Within five (5) days after each delivery, the forwarder should submit a clear/ legible copy of duly accomplished Bills of Lading, with signature over legibly written printed name including the date and time the cargo was actually received by the consignee and official designation of the recipient, including its summary report to the Secretariat of the PSC at the Maxilite Building, 1130 Perez St., Paco, Manila. The summary report shall show the following data: the Bills of Lading Code or Number, date and time the cargo was picked up, weight, date and time received by the consignee and the name and position of the actual recipient of the shipment.

Said report is a prerequisite for Billing/claims/collection of the services rendered.

Sec. 19. The Requirements for the claim of payments for services rendered are the following.

Sec.19.1 For billing purposes, the supplied pro-forma billing form shall be utilized in the submission of billings for ease and expediency in the review and

for uniformity of billing presentations. The billing presentation shall primarily show, the Bills of Lading Code or Number, pick-up date, weight, the consolidation of the cargoes for out of town deliveries, date and time received by consignee, the rate of the winning bidder and the cost in the manner as stipulated in this Terms of Reference (TOR), Bidding Documents, Service Contract and other agreed additional basis by the shipper and the forwarder such as deviation of routes and other special cases, if applicable;

Sec. 19.2 Original (white) Bill of Lading – It must be duly accomplished, with signature over legibly written printed name including the date and time the cargo was actually received by the consignee and the official designation of the recipient. If the cargoes were received by the consignee's duly authorized representative, the latter should have a permanent status of appointment; otherwise, a written authority for the authorized representative of the consignee shall be included in the supporting documents to be submitted;

Sec. 19.3 Certification from the PSC on the issuance of Bills of Lading and cargoes for delivery subject of the billings of the claimant forwarder;

Sec.19.4 Service Contract, Comelec Resolution, Notice of Award, Authority to Ship and/or other similar documents;

Sec.19.5. Written Authority or confirmation to special transactions; such as deviation on the delivery other than the usual routes, if applicable; and

Sec. 19.6 Other documents as required in the usual auditing rules and procedures.

Sec. 20. Notices, correspondence, etc. - Because time is of the essence, any notice required under the contract or agreement shall be deemed given or served, if and when personally delivered in writing or faxed to the party or its designated agent/ representative. Notices shall be addressed as follows:

For the COMELEC:

Commission on Elections
Postigo Street
Intramuros, Manila
Telefax: (02) 5239798 and 5270721

Attention: Director Rey D. Doma
Chairman, Packing and Shipping Committee

20.1. All notices, requests, consents and other documents ("Notices") shall be deemed served or given if:

a) personally served by delivery and duly received at the address of the party to whom the Notice is given between the hours of 8:00 a.m. and 8:00 p.m. on any business day; and

b) successfully sent by facsimile during business hours of any business day;

A party may change its address for purposes of receiving Notices and other communications upon prior notice/advise to the other party.