



Republic of the Philippines
DEPARTMENT OF TRANSPORTATION

PRE-QUALIFICATIONS, BIDS AND AWARDS COMMITTEE

Project: **NINOY AQUINO INTERNATIONAL AIRPORT PUBLIC-PRIVATE PARTNERSHIP (NAIA-PPP) PROJECT**

Bid Bulletin No.: 2023-11

To All Interested Bidders:

Pursuant to **Section 1.6** and **1.9.f** of the **Instructions to Bidders (ITB)** of the Bidding Documents for the NAIA-PPP Project (“Project”) and as approved by the PBAC during its meeting on 17 October 2023, the PBAC is issuing this Bid Bulletin to: (1) respond to the queries sent by bidders from 14 September 2023 until 09 October 2023; and (2) amend, clarify, and modify certain provisions in the ITB, as stated in the Table or Revisions, attached herein.

For reference, attached to this Bid Bulletin are the following documents: (1) Responses to Queries from Prospective Bidders; (2) Table of Revisions; and (3) Restated ITB Version 3 dated 19 October 2023.

All supplemental notices and bid bulletins issued by the PBAC shall be deemed part of the ITB and incorporated in and made an integral part of the Bidding Documents.

Issued this 20th day of October 2023.

ORIGINAL SIGNED
TIMOTHY JOHN R. BATAN
Chairperson
Pre-qualifications, Bids and Awards Committee



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RESPONSES TO QUERIES FROM BIDDERS

NO.	REFERENCE	ITB	QUERY/COMMENT	RESPONSE TO BIDDER'S QUERIES
1	Indicative Bidding Schedule	1.4	<p>Will the PBAC issue a revised draft of the concession agreement after the first round of one-on-one meetings to confirm whether or not the Grantors have accepted or rejected the comments / proposals from the Bidders?</p> <p>We note that the indicative schedule only indicates that only a final version of the CA will be issued on December 3, 2023 after two one-on-one meetings with prospective bidders.</p>	A revised draft of the concession agreement will be released in a succeeding Bid Bulletin.
2	Restrictions on Airline-Related Entities	2.1.d 2.1.f	We request the cap on the equity interest of Airline-Related Entities in the Consortium to be increased to 50% - 1. We understand that the goal of the restriction is to prevent Airline-Related Entities from controlling the Concessionaire. A cap of 50% -1 achieves the same objective because Airline-Related Entities still cannot make decisions on their own. At the same time, raising the cap would make the bidding more competitive as it attracts more Bidders who are familiar with airport operations to participate in the bidding.	The requested increase in the equity limit for Airline-Related Entities of up to 50%-1 is not acceptable.
3	GCR Entity	2.1.f 16.25	We request that the Clark International Airport be removed from the definition of GCR Entity. The driver for the restriction is likely competition-related but Clark International Airport has a different catchment/market from NAIA/Bulacan/Sangley	<p>We do not agree with the proposal to exclude Clark International Airport in the definition of GCR Entity.</p> <p>After due deliberation, the participation restriction</p>



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			and does not compete with NAIA. Thus, we believe that Clark should not be included in the definition of GCR Entity.	of 20% for GCR Entity is increased to 33%. To implement this, the relevant provisions in the ITB shall be amended as follows:
4	GCR Entity	2.1.f	GCR Entity participation restriction is 20%, while Airline Related Entity is 33%. The Dev. Experience and Financial Exp. minimum participation requirement is 25%. It is obvious that the GCR's participation, including providing the required qualification, has been "singled out" despite the fact that what is being prevented as a "conflict of interest" is also present in Airline Related entities. Suggestion that GCR Entity restriction be raised to 33%.	"2.1.f (2) If the Bidder is a Consortium and any Consortium Member or such Consortium Members' Affiliates is a GCR Entity, then such Consortium Member cannot own or be proposed to own more than <u>thirty-three percent (33%)</u> interest in such Consortium. 2.1.f (3) If more than one (1) Consortium Member is a GCR Entity, then such Consortium Members cannot comprise or be proposed to own an aggregate of more than <u>thirty-three percent (33%)</u> interest in such Consortium."
5	GCR Entity	2.1.f, in relation to 2.2.f(5), 16.25, and Annexes QD-1, QD-2B and QD-4	Kindly provide us with copies of the Government's contracts with the concessionaires/operators of CRK, NMIA and Sangley Point International Airport. The definition of and restrictions on a "GCR Entity" appear discriminatory. They should apply to all non-government concessionaires or operators of international and domestic airports everywhere in the Philippines, such as Mactan Cebu Airport, and not just limited to CRK, NMIA and Sangley. Following the definition and guidelines on "Relevant Market" under Section 24 of the Philippine Competition Act, the "Relevant Market" for this purpose is the entire Philippines and not just Greater Central Luzon. The distance from north to south in	We cannot provide copies of the concession agreements in CRK, NMIA and Sangley airport. The request for the Grantors to include all airports in the Philippines in the restrictions for GCR Entity is denied.



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			<p>the Philippines is only about 1850 kilometers. At a cruising airspeed of 880 to 926 kilometers per hour, one can travel from any point of the Philippines to another in only about two hours. If airfare pricing is allowed to remain competitive, an international passenger may readily opt to fly from CEB instead of MNL even if he resides in GCR. All international airports in the Philippines are, therefore, in competition, not just those in GCR. No one entity should Control both CEB and MNL.</p> <p>It is also discriminatory to single out only CRK, NMIA and Sangley as subject to: (1) the restrictions on interest and the 20% cap on equity under 2.1.f, and (2) the disqualification from fulfilling the O&M 11 Experience requirement under 2.2.f(5). All privately-operated airports in the Philippines, like CEB, should be similarly regulated.</p> <p>Government should prohibit anti-competitive arrangements not just among GCR Entities but among all Philippine airports</p>	
6	Certification of Not Being a GCR Entity	Annex QD-2B	There seems to be a misplaced reference to "Airline" in paragraph 3 of Annex QD-2B.	<p>We confirm. Please see below the adjusted provision in the ITB:</p> <p>Par. 3 of Annex QD-2B</p> <p>"3. (Name of the Bidder / Consortium Member) does not have the power to direct or cause the direction of the management policies and actions of an entity that has Significant Interest (as defined in</p>



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				<p>Section 16.40 of the Instructions to Bidders) in a GCR concessionaire, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in an <u>entity that has Significant Interest in a GCR concessionaire</u>, or (ii) the ability to elect a majority of the members of the board of directors <u>of an entity that has Significant Interest in a GCR concessionaire</u>, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements.”</p>
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7	<p>Definition of Affiliate and Control</p> <p>Development Experience</p>	<p>16.1</p> <p>16.19</p> <p>2.2.e</p>	<p>In a scenario where:</p> <ul style="list-style-type: none"> ● A (constituted as a company), with at least 25% equity in a Consortium, is being proposed to meet the Development Experience Requirement; ● A is owned by B where B is a private equity fund; ● C, constituted as a limited liability company, is the investment manager of B pursuant to an investment management agreement; ● D is the sole member of C and therefore C is wholly owned by D; ● D, pursuant to an investment management agreement, is also an investment manager of E where E is another private equity fund; ● E owns at least 25% equity in F, a special purpose corporation that owns an airport. <p>The relationship between an investment manager and the private equity fund it manages is governed by a management agreement. Under the management agreement, the investment manager is engaged as manager of the private equity fund and has been delegated powers by the general partners of the private equity fund to analyze, structure and negotiate investment in portfolio companies as well as monitor and advise on the disposal of such</p>	<p>Sec. 16.19 of the ITB shall be revised as follows:</p> <p>"Control" means, for purposes of defining an Affiliate of a Bidder or a Consortium Member, the power to direct or cause the direction of the management policies and actions of a body corporate whether through:</p> <p>(a) ownership of at least fifty percent (50%) plus one share of the outstanding voting shares; or</p> <p>(b) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights: (i) is equivalent to at least fifty percent (50%) plus one (1) share, or (ii) grants it the ability to elect a majority of the members of the Affiliate's board of directors; or</p> <p>(c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above; or</p> <p><u>(d) a legal agreement which grants the power to govern or significantly influence the financial and operating policies of a body corporate.</u></p> <p><u>In relation to item (d), the Bidder or Consortium Member must submit, apart from Annex QD-8, a copy of the legal agreement together with a certification from an authorized representative of the grantor of such powers confirming the grant of</u></p>
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			<p>portfolio companies. Therefore, the investment manager has the ability to direct or cause the direction of the management policies and actions of the private equity funds that it manages. This evinces Control such that the investment manager and the private equity fund qualify as Affiliates.</p> <p>1. Please confirm that E will qualify as an Affiliate of A and therefore A can nominate itself to fulfill the Development Experience requirement.</p> <p>Below is a diagram illustrating the structure:</p> <pre>graph TD; D["D (Sole member of C, and investment manager of E)"] -- 100% --> C["C (Investment manager of B)"]; D -- Management Agreement --> E["E (Private equity fund)"]; C -- Management Agreement --> B["B (Private equity fund)"]; B -- 100% --> A["A (Consortium member)"]; A -- ≥ 25% --> Bidder["Bidder"]; E -- ≥ 25% --> F["F (Airport owner)"];</pre>	<p><u>powers as described in item (d).</u></p> <p>In determining ownership by a corporation of the shares of another corporation, shares held both directly and indirectly or owned legally or beneficially will be counted."</p> <p>As regards the query, the PBAC is not in a position to provide a final determination until copies of the investment management agreements mentioned are submitted as part of the Bidder's qualification documents.</p>
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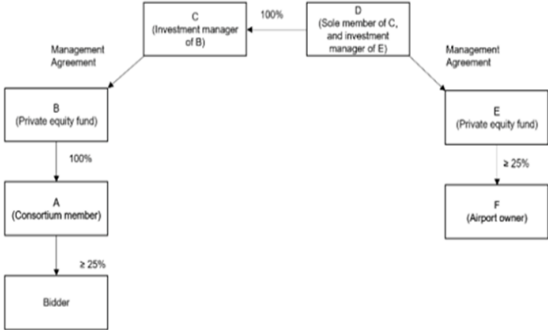


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8	Development Experience - Capital Costs	2.2.e(1) 2.2.e(2) 2.2.e(3)	<p>In a scenario where:</p> <ul style="list-style-type: none"> • A (constituted as a company), with at least 25% equity in a Consortium, is being proposed to meet the Development Experience Requirement; • A is owned by B where B is a private equity fund; • C, constituted as a limited liability company, is the investment manager of B pursuant to an investment management agreement; • D is the sole member of C and therefore C is wholly owned by D; • D, pursuant to an investment management agreement, is also an investment manager of E where E is another private equity fund; • E acquired at least 25% equity in F, a special purpose corporation that owns an airport, in year 10 of the Eligible Period; • F itself has incurred at least PhP 10 Billion (or foreign currency equivalent) capital cost within the Eligible Period but before Year 10 to build a new terminal for an international airport. <p>Please confirm that:</p> <ul style="list-style-type: none"> • A qualifies and fulfill the Development Experience requirements through its Affiliate E. • In the foregoing scenario, E will qualify as an 	<p>Please see the amendment to Sec. 16.19 of the ITB mentioned in the response to Query #7.</p> <p>The above notwithstanding, it should be noted that E cannot qualify to meet the Development Experience, since it did not own 25% equity interest in F at the time the costs were incurred, as required in Section 2.2.e (1).</p>
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			<p>“airport owner” or “airport concessionaire” under Section 2.2.e(2) because it owns at least 25% of F, an entity that undertook the overall responsibility for the development of the airport. Further, F will have met the Development Experience requirement to incur at least PhP 10 Billion (or foreign currency equivalent) capital cost during the Eligible Period.</p> <p>Below is a diagram illustrating the structure:</p>  <p>If A does not qualify, we request the amendment of Sections 2.2.e(1) and 2.2.e(2)</p>	
9			<p>In a scenario where:</p> <ul style="list-style-type: none"> • X has acquired an equity interest of at least 25% in W, an airport concessionaire, in Year 10 of the Eligible Period; 	<p>Neither X nor Z qualifies as an "airport owner" or "airport concessionaire", and none of them may be nominated to fulfill the Development Experience requirement, since X did not own 25% equity interest in W at the time the capital costs were</p>



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		<ul style="list-style-type: none">• W itself has incurred at least PhP 10 Billion capital cost within the Eligible Period but before Year 10 to build a new terminal for an international airport;• X incorporated Y, a holding company, in which X owns 50% + 1 share;• Y incorporated Z, a holding company, in which Y owns 50% + 1 share;• Z joins a Consortium Bidder as a Consortium Member with 25% equity interest in the Consortium; <p>Please confirm that:</p> <ol style="list-style-type: none">1. Z qualifies and fulfill the Development Experience requirements.2. In the foregoing scenario, X will qualify as an “airport owner” or “airport concessionaire” under Section 2.2.e(2) because it owns at least 25% of W, an entity that undertook the overall responsibility for the development of the airport. Further, W will have met the Development Experience requirement to incur at least PhP 10 Billion capital cost during the Eligible Period. <p>Below is a diagram illustrating the structure:</p>	<p>incurred, as required in Section 2.2.e (1) of the ITB.</p> <p>The requested revision of Sections 2.2.e (1) and 2.2.e(2) of the ITB is denied.</p>
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			<p>If Z does not qualify, we request the amendment of Sections 2.2.e(1) and 2.2.e(2) (see proposed revisions).</p>	
10	Development Experience - Capital Costs	2.2.e(1) 2.2.e(2) 2.2.e(3)	<p>In a scenario where:</p> <ul style="list-style-type: none"> • X has acquired an equity interest of at least 25% in W, an airport concessionaire, in Year 10 of the Eligible Period; • W itself has incurred at least PhP 10 Billion 	<p>Neither X nor Z qualifies as an "airport owner" or "airport concessionaire", and none of them may be nominated to fulfill the Development Experience requirement, since X did not own 25% equity interest in W at the time the capital costs were incurred, as required in Section 2.2.e (1) of the ITB.</p>



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			<p>capital cost within the Eligible Period but before Year 10 to build a new terminal for an international airport;</p> <ul style="list-style-type: none">• X incorporated Y, a holding company, in which X owns 50% + 1 share;• Y incorporated Z, a holding company, in which Y owns 50% + 1 share;• Z joins a Consortium Bidder as a Consortium Member with 25% equity interest in the Consortium; <p>Please confirm that:</p> <ol style="list-style-type: none">1. Z qualifies and fulfill the Development Experience requirements.2. In the foregoing scenario, X will qualify as an “airport owner” or “airport concessionaire” under Section 2.2.e(2) because it owns at least 25% of W, an entity that undertook the overall responsibility for the development of the airport. Further, W will have met the Development Experience requirement to incur at least PhP 10 Billion capital cost during the Eligible Period. <p>Below is a diagram illustrating the structure:</p>	
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			<p>If Z does not qualify, we request the amendment of Sections 2.2.e(1) and 2.2.e(2) (see proposed revisions).</p>	
11	Development Experience	2.2.e	<p>The entity which fulfills the Development Experience requirement should not be required to have at least 25% stake in the consortium. This may be satisfied by a nominated "contractor" that has experience in constructing airports or similar infrastructure. Additionally, Past PPP solicited projects of the Government considered various infrastructure (toll roads, rail, power plant, real estate, etc.) as qualified projects.</p> <p>Suggestion to allow Nominated/Designated Contractors to fulfill the Development Experience requirement and to include other types of infrastructure as evidence to prove Development</p>	<p>After due deliberation, the suggestion to allow Nominated Contractor to fulfill the required Development Experience is denied. However, Sec. 2.2.e(3)(ii) of the ITB shall be revised as follows:</p> <p>"2.2.e(3) The entity which fulfills the Development Experience requirement may be:</p> <p>(ii) If the Bidder is a Consortium, a Consortium Member having at least <u>ten percent (10%)</u> interest in the Consortium, or such Consortium Member's Affiliate."</p>



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			Experience.	
12		2.2.e (1)	Development Experience requirement is too restrictive in as much as it required an entity with 25% stake in the Consortium to have owned or been the Concessionaire for an airport which incurred capital cost of P 10 billion between 2013 and 2022. It is requested that this requirement be relaxed to include entities which incurred capital cost of P 10 billion during this period, not limiting it to airports.	
13	Development Experience - Capital Costs	2.2.e(1)	Please confirm that the Grantor meant “foreign currency equivalent” instead of “peso equivalent” in the following sentence: “The Bidder must have been an owner or concessionaire of an airport for which capital costs incurred was at least Ten Billion Pesos (PhP 10 Billion) or its peso equivalent, cumulative, in historical prices over the Eligible Period.”	We confirm. Please find below the adjusted provision in the ITB: "2.2.e(1) The Bidder must have been an owner or concessionaire of an airport for which capital costs incurred was at least Ten Billion Pesos (PhP 10 Billion) or its <u>foreign currency</u> equivalent, cumulative, in historical prices over the Eligible Period."
14	Development Experience and O&M Experience	2.2.e 2.2.f	Please confirm that a Bidder can propose more than one entity to fulfill the Development Experience and the O&M Experience.	We confirm.
15	Development Experience - Historical Prices	2.2.e Annex QD-7B	Please confirm our understanding that the historical prices to be stated in Annex QD-7B do not need to be indexed or adjusted for inflation.	We confirm.



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16	Development Experience	2.2.e 4.6	<p>In the event the Bidder is a Consortium and the Consortium proposes to fulfill the Development Experience by nominating a Consortium Member that is an Affiliate of an airport owner or airport concessionaire (as defined in the Section 2.2.e(2) of the ITB), please confirm that it is the Consortium Member that must submit the following Qualification Documents:</p> <ul style="list-style-type: none"> ● QD-4 (Basic Information Sheet); ● QD-5 (Notarized Certification of Absence of Unsatisfactory Performance Record); ● QD-6 (Development Experience); ● QD-7A (Certificate for Establishing Shareholding in an Airport Concessionaire); ● QD-7B (Certificate on the Details of Development Experience); and ● QD-8 (Proof of affiliation). <p>The airport owner or airport concessionaire who is an Affiliate of the Consortium Member is not required to submit any Qualification Documents.</p>	<p>In a scenario where the Affiliate of the Consortium Member will fulfill the Development Experience, the following documents shall be submitted:</p> <ul style="list-style-type: none"> ● QD-4 (Basic Information Sheet) - to be submitted by both the Consortium Member and its Affiliate ● QD-5 (Notarized Certification of Absence of Unsatisfactory Performance Record) - to be submitted by both the Consortium Member and its Affiliate ● QD-6 (Development Experience) - to be submitted by the Affiliate ● QD-7A (Certificate for Establishing Shareholding in an Airport Concessionaire) - issued by the Corporate Secretary of the Affiliate ● QD-7B (Certificate on the Details of Development Experience) - issued by the Auditor commissioned by the Affiliate ● QD-8 (Proof of affiliation) - to be submitted by both the Consortium Member and its Affiliate
17	O&M Experience	2.2.f 4.7	<p>In the event the Bidder is a Consortium and the Consortium proposes to fulfill the O&M Experience by nominating a Consortium Member that is an Affiliate of an airport operator, please confirm that it is the Consortium Member that must submit the following Qualification Documents:</p> <ul style="list-style-type: none"> ● QD-4 (Basic Information Sheet); ● QD-5 (Notarized Certification of Absence of 	<p>In a scenario where the Affiliate of the Consortium Member will fulfill the O&M Experience, the following documents shall be submitted:</p> <ul style="list-style-type: none"> ● QD-4 (Basic Information Sheet) - to be submitted by both the Consortium Member and its Affiliate ● QD-5 (Notarized Certification of Absence of Unsatisfactory Performance Record) - to be submitted by both the Consortium Member



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			<p>Unsatisfactory Performance Record);</p> <ul style="list-style-type: none"> • QD-9 (O&M Experience); • QD-11A (Certificate for Establishing Shareholding in an Entity that Operated and Maintained an Airport); • QD-11B (Certificate on the Details of Operation and Maintenance Experience); • QD-8 (Proof of affiliation). <p>The airport operator who is an Affiliate of the Consortium Member is not required to submit any Qualification Documents.</p>	<p>and its Affiliate</p> <ul style="list-style-type: none"> • QD-8 (Proof of affiliation) – to be submitted by both the Consortium Member and its Affiliate • QD-9 (O&M Experience) – to be submitted by the Affiliate • QD-11A (Certificate for Establishing Shareholding in an Entity that Operated and Maintained an Airport) – issued by the Corporate Secretary of the Affiliate • QD-11B (Certificate on the Details of Operation and Maintenance Experience) – issued by the Auditor commissioned by the Affiliate
18	O&M Experience	2.2.f (1)	<p>We recommend a revision in the Operations and Maintenance Experience requirement. Instead of requiring that the Bidder have operated an international airport with annual throughput of 25 million passengers, of which at least 10 million passengers for three consecutive calendar years between 2013 and 2022, we recommend that DOTR and MIAA remove the requirement that the three years be consecutive.</p>	<p>Section 2.2.f (1) of the ITB shall be revised as follows:</p> <p>“Bidder must have expertise and experience in having undertaken the operation and maintenance of an International Airport for a period of at least three (3) consecutive calendar years anytime within the Eligible Period, with such International Airport having handled an Annual Passenger Throughput of at least twenty-five (25) million passengers per annum of which at least 10 million passengers per annum were international passengers.”</p>
19	O&M Experience	2.2.f(1)	<p>Please confirm that an entity which is currently undertaking the O&M of an International Airport (and has been doing so) for at least three consecutive calendar years within the Eligible Period can be</p>	<p>We confirm.</p>



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			proposed to fulfill the O&M Experience.	
20	Key Personnel – Unsatisfactory Performance Record	2.2.g(5) Annex QD-13	<p>We suggest deleting the requirement for Key Personnel to certify that they have no Unsatisfactory Performance.</p> <p>This is <u>not</u> required in the BOT Law IRR and is not customary in the Philippines (see past PPP projects like Clark O&M and LRT-1). More importantly, the requirement is difficult to fulfill because the Key Personnel would likely not have knowledge of any disputes involving, or settlements that may have been made by, their employers in the projects they had worked on.</p>	<p>The relevant provisions in the ITB shall be revised as follows:</p> <p>"16.42 "Unsatisfactory Performance" means...</p> <p>For avoidance of doubt, the references to "judicial pronouncement" and "arbitration award" above are not limited to those promulgated in the Philippines or by Philippine courts or entities. <u>In the case of Qualified Key Personnel, this definition shall only apply insofar as such personnel have been found personally liable under (a) and (c) by a judicial pronouncement or arbitration award."</u></p>
21	Net Worth – Definition and Standards	2.3.a 16.32 4.9.b(1) Annex QDC	<p>The definition of Net Worth, which references the subscribed and paid-up equity, including additional paid-in capital, and unrestricted retained earnings of an entity, restricts the ability of entities, such as private equity funds, to meet the Financial Qualification requirements. In other words, the reference to the amount of an entity's subscribed and paid-up equity should not be the sole measure of net worth and ability to provide the equity needed for the project. For private equity funds, we believe that the amount of uncalled capital commitments (i.e., fund commitments by investors that are managed by the investment fund manager, but which funds have not yet been disbursed) is the more appropriate test to determine their ability to provide the equity needed for the project.</p>	<p>Sec. 16.33 of the ITB shall be revised as follows:</p> <p>"Net Worth" shall mean the sum of subscribed and paid-up equity, including additional paid-in capital, and unrestricted retained earnings. Unrestricted retained earnings means the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; (3) not required to be retained under special circumstances obtaining in the corporation such as</p>



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			<p>Please confirm that the PBAC will accept a notarized certification issued by the investment manager on the amount of its uncalled capital commitments as proof of its net worth.</p> <p>We note that Section 5.4.c.i of the BOT Law IRR does not define “net worth”. Thus, we believe that the PBAC may exercise its sound discretion to accept proof of net worth alternative to those already specified in the ITB.</p>	<p>when there is a need for a special reserve for probable contingencies (as defined in SEC Memorandum Circular No. 11-08, December 5, 2008); and (4) not otherwise covered by any other legal restriction on the ability of the company to distribute or otherwise apply its equity.</p> <p><u>If the Bidder or Consortium Member is an investment fund or an entity owned by an investment fund, the net worth of such Bidder or Consortium Member shall, in addition to the items enumerated in the preceding paragraph of this Section 16. 33, include the amount of the investment fund’s uncalled capital commitments, provided, that an authorized representative of the investment fund shall certify: (1) the amount of the uncalled capital commitments that may be called, (2) that all conditions for calling that amount of uncalled capital commitments, except the award of the NAIA PPP Project to the consortium of which the investment fund is a Consortium Member, are fulfilled as of the Bid Submission Date, and (3) that such uncalled capital commitments are callable at the sole discretion of the General Partner of the Consortium Member or of the Affiliate of the Consortium Member.</u></p>
22	Financial Qualification Requirements	2.3.a 2.3.b	Based on published reports [1], the estimated cost of the Project is over PHP 170 Billion. This is far greater than the PHP 17.5 Billion estimated project cost for the Mactan-Cebu International Airport Project [2]	Please find below the adjusted provisions in the ITB:



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		<p>where a minimum 25% equity stake was required for consortium members fulfilling the financial qualification requirements, and the PHP 5.61 Billion estimated project cost for the Clark International Airport Expansion Operation and Maintenance Project, where a minimum 35% equity stake was required.</p> <p>Thus, given the size of the NAIA Project, we would like to propose the relaxation of the minimum equity requirements for Consortium Members nominated to fulfill the Financial Qualification Requirements as follows:</p> <p>1. Group of CMs with At Least 25% Combined</p> <p>We suggest that PBAC consider allowing a Consortium to meet the Financial Qualification Requirement by nominating Consortium Members who collectively hold at least 25% equity in the Consortium, even if such members individually hold less than 25% of the interest in a Consortium. This is expressly allowed in the October 2022 Revised BOT Law IRR which allows the minimum net worth requirement to be met by “the combined net worth of members” (Section 5.4.c.i.1).</p> <p>2. Joint and Several Liability Undertaking</p> <p>Under Section 2.3.b(2), a Consortium Member nominated to fulfill the Financial Qualification</p>	<p>"2.3.a (1) A Bidder must have [i] a Net Worth of at least Twenty Billion Pesos (PhP 20.0 billion), or its foreign currency equivalent, as of the Bidder’s latest audited financial statements, which must be for a financial year ending not earlier than 31 December 2022, or [ii] a Set-Aside Deposit equivalent to the same amount. <u>To meet this requirement:</u></p> <p><u>(i) a Consortium is allowed to consolidate the Net Worth of Consortium Members with a percentage interest of at least twenty-five percent (25%) each in the Consortium; or</u></p> <p><u>(ii) Add the sum of, for each Consortium Member with a percentage interest of at least ten percent (10%) in the Consortium, the product of such Consortium Member’s Net Worth and its percentage interest in the Consortium. To illustrate: Consortium Member A who has a 10% interest in the Consortium and a net worth of PHP 100 billion, can be nominated to fulfill this Financial Qualification Requirement together with Consortium Member B who has a 10% interest in the Consortium and a net worth of PHP 110 billion, as follows:</u></p> <p><u>Consortium Member A:</u> <u>10% x PHP 100 billion = PHP 10 billion</u></p> <p><u>Consortium Member B:</u> <u>10% x PHP 110 billion = PHP 11 billion</u></p> <p><u>Sum:</u></p>
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		<p>requirement must have at least 25% equity interest in the Consortium.</p> <p>As an alternative to the minimum 25% equity interest of the Consortium Member, we request that the PBAC accept the combined or aggregate Net Worth of an amount of credit accommodations in the letter testimonials procured by the Consortium Members regardless of their equity interest in the Consortium, provided that, these Consortium Members are bound by a joint and several liability undertaking to perform the obligations of the Winning Bidder until such time that the special purpose corporation of the Winning Bidder is formed and signs the Concession Agreement with the Grantors. This is expressly allowed in the October 2022 Revised BOT Law IRR which allows the minimum net worth requirement to be met by “the combined net worth of members” (Section 5.4.c.i.1).</p> <p>We note that during the 2014 bidding for the Laguna-Lakeshore Expressway Dike Project, which had an estimated project cost of PhP 122.8 Billion, [3] the largest at that time, consortium members that were nominated to fulfill financial qualification requirements did not need to have a prescribed (minimum) amount of equity in the consortium as long as such consortium members, whether individually or collectively, meet the minimum financial qualification requirements. Thus, there is precedent for our request.</p>	<p><u>PHP 10 billion + PHP 11 billion = PHP 21 billion.</u></p> <p>"2.3.b (2) If the Bidder is a Consortium:</p> <p>(i) a Consortium Member or Members, each with at least twenty-five percent (25%) interest in the Consortium <u>if qualifying under Sec. 2.3.a (1)(i), or such Consortium Member’s or Members’ Parent Companies; or</u></p> <p>(ii) <u>a Consortium Member or Members, each with at least ten percent (10%) interest in the Consortium if qualifying under Sec. 2.3.a (1)(ii), or such Consortium Member’s or Members’ Parent Companies.”</u></p>
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23	Financial Qualification Requirement	2.3.a (1)	One of our shareholders with at least 25% interest in the consortium meets the Financial Qualification Requirement, but that another shareholder- which may be part of their consortium has negative net worth.	
24	Financial Qualification - Letter Testimonial	2.3.a(2) 4.9.b(2) Annex QD-15	Please confirm that: <ol style="list-style-type: none"> 1. a Consortium that nominates more than one Consortium Member to fulfill the Financial Qualification requirements can provide two or more letter testimonials; and 2. the amount of credit accommodations stated in two (or more) distinct letter testimonials can be aggregated for purposes of meeting the Financial Qualification requirements. 	We confirm.
25	Financial Qualification Requirements	Section 2.3.a(2) & Section 2.3.b(2)	To clarify, only the consortium member/s being used to fulfill the Financial Qualification Requirements are required to provide a bank testimonial?	We confirm.
26	Financial Qualification - Letter Testimonial	2.3.a(2) 4.9.b(2) Annex QD-15	Please confirm that a letter testimonial is acceptable as long as it substantially states that the Bidder/Consortium Member (a) is banking with them, (b) is in good financial standing, and (c) is qualified to obtain credit accommodations from such bank to finance the project (equivalent to the value of the debt requirement of the proposal), (d) subject to the customary conditions of the bank (e.g., satisfaction of internal approvals and regulatory requirements, no adverse change shall have occurred, etc.).	We confirm.



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27	Financial Qualification - Debt Requirement	2.3.a(2) 4.9.b(2) Annex QD-15	Please confirm that the amount required to be stated in the letter testimonial may be reduced by the excess of the nominated entity's (or entities') Net Worth over PhP 20 Billion.	The request is not acceptable. For clarity, the amount required to be stated in the letter testimonial shall not be reduced by the excess of the nominated entity's (or entities') Net Worth over Php 20 billion.
28	Financial Qualification requirements	2.3.c 4.9	<p>If a Consortium Member will submit the audited financial statements of its Parent Company and a letter testimonial issued in the name of its Parent Company to fulfill the Financial Qualification requirements, please confirm that:</p> <ol style="list-style-type: none"> 1. the Consortium Member is not required to attach or submit its own audited financial statements and letter testimonial; 2. the Consortium Member shall submit the following Qualification Documents: <ul style="list-style-type: none"> o QD-4 (Basic Information Sheet); o QD-5 (Notarized Certification of Absence of Unsatisfactory Performance Record); o QD-15 (Notarized Statement of Financial Capability); o QD-8 (Proof of affiliation); 3. the Parent Company is not required to submit any Qualification Documents. 	<p>In a scenario where the Parent Company of the Consortium Member will fulfill the Financial Qualification requirements, the following documents shall be submitted:</p> <ul style="list-style-type: none"> • QD-4 (Basic Information Sheet) – to be submitted by both the Consortium Member and its Parent Company • QD-5 (Notarized Certification of Absence of Unsatisfactory Performance Record) – to be submitted by both the Consortium Member and its Parent Company • QD-8 (Proof of affiliation) – to be submitted by both the Consortium Member and its Parent Company • QD-15 (Notarized Statement of Financial Capability) – issued by the Parent Company
29	Financial Qualification - Proof of Set-Aside Deposit	4.9.b(1) Annex QD-15	If the Bidder opts to submit proof of a Set-Aside Deposit, please confirm that the submission of the audited financial statements under Section 4.9.b(1) is no longer required.	The audited financial statements under Section 4.9.b(1) are still required to be submitted.



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30	Wrong section numbers	4.1 4.5	Please correct the numbering of Section 4 of the ITB. There are 2 sections identified as Section 4.1 and 2 sections identified as 4.5. The sub-paragraphs of Section 4.5 (Basic Information Sheet) are also incorrectly numbered.	This is duly noted. The identified sections and sub-paragraphs will be renumbered accordingly.
31	Definition of Transaction Documents	12.2.c	Please define Transaction Documents.	The term "Transaction Documents" is now deleted in Sec. 12.2.c. of the ITB, which now reads as follows: "Certified true copies issued by the authorized officer of the Concessionaire, duly notarized, of resolutions adopted by the board of directors of the Concessionaire attesting that the Concessionaire conducted an organizational meeting of its stockholders and elected its regular board of directors and corporate officers and authorizing the execution, delivery and performance of the Concession Agreement;"
32	Post-Award Requirements - Fees of Transaction Advisor	12.2.i	Can the Grantors provide an indicative range of how much the fees for Transaction Advisory Services are expected to be?	This shall be provided in a Bid Bulletin to be issued in due time.
33	Definition of Corrupt Practice	13.2.b(i)	Please confirm that the prohibited acts and omissions relate to the Bidding Process or the execution of the Concession Agreement.	As required by the relevant anti-graft and corrupt practices law Section 16.20, in relation to Section 13.2.b(1) of the ITB, applies to all prohibited acts and omissions and not only those committed or occurring in relation to the Bidding Process or the execution of the Concession Agreement. No



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				changes shall be made to Section 13.2.b (i) (in relation to Section 16.20).
34	Conflict of Interest	13.3.a(iv)	It is not clear what this item is saying. There seems to be a missing clause or phrase. Please clarify.	<p>This concern has already been addressed in the restated ITB (please see Bid Bulletin No. 2023-05, dated 16 September 2023) through the following revision:</p> <p>Sec. 13.3.a (iv) shall be read as: "a Bidder, any of its Consortium Members, or any Affiliate of any of these <u>entities, has participated as consultant to the DOTr or the PPP Center in the preparation of the Bidding Documents or the design, or technical specifications of the Project or in connection with the Bidding Process.</u>"</p>
35	Definition of Significant Interest	16.39	The reference to "Affiliates" in the sub-paragraph (b)(ii) of the definition of Significant Interest is not clear. Please confirm that this should instead refer to the concessionaire of the GCR airport. Please see the suggested revision.	<p>This proposed clarification is accepted, and the relevant section in the ITB (which has been renumbered as Section 16.41 in the restated ITB pursuant to Bid Bulletin No. 2023-05, dated 16 September 2023), is amended as follows:</p> <p>Section 16.41 "Significant Interest" means:</p> <p>(a) Ownership of at least thirty-three percent (33%) plus one share of outstanding voting shares, or (b) (i) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights is equivalent to at least thirty-three percent (33%) plus one share, or (ii) the ability to elect one-</p>



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				third (1/3) of the members of the Affiliate’s board of directors of the concessionaire of a GCR airport. (c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above.”
36	Entity Fulfilling O&M Experience	Annex QD-3B Annex QD-9	Paragraph 4 of Annex QD-3B suggests that it is an “Affiliate” that must fulfill the O&M Experience. Section 2.2.f(4) states, however, that it may be (i) If the Bidder is a partnership, corporation or any other juridical entity, the Bidder itself or its Affiliate; (ii) If the Bidder is a Consortium, a Consortium Member having at least ten percent (10%) interest in the Consortium, or such Consortium Member’s Affiliate; or (iii) A Designated Operator. Please see suggested revision.	Please find below the adjusted provision in Par. 4 of Annex QD-3B of the ITB: “ a. Name of Entity b. <u>Relationship to Bidder</u> c. Address d. Website e. Contact person i. Telephone ii. Fax iii. E-mail Note: a. If this requirement is fulfilled by an Affiliate of a Consortium Member, provide evidence of such affiliation using the form prescribed in Annex QD-8.”
37	Proof of Shareholding in an Airport Concessionaire / an Entity that Operated and Maintained an Airport	Annex QD-7A Annex QD-11A	Annexes QD-7A and QD-11A state: “The same shall be further substantiated through the submission of the legal agreement or documentation evidencing such equity interest / shareholding in [the airport owner or concessionaire / the entity that operated and maintained an airport].” We request that the PBAC relax this requirement by instead allowing the submission of documentation evidencing the shareholding instead of the	The proposed revision is already reflected in the restated ITB as of 16 September 2023.



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			submission of the agreement or document.	
38	Evidence of Affiliation	Annex QD-8	We suggest deleting the requirement that an Auditor must certify the evidence of affiliation. While this was also required during the Mactan-Cebu bidding, compliance with this requirement was too onerous for the bidders, and the practice was discontinued in subsequent and more recent biddings. For example, in the bidding for the Clark O&M and LRT-1 projects, what was required as proof of affiliation is simply (1) a GIS (or its equivalent, in the case of foreign entities), or (2) alternatively, in lieu of a GIS, a notarized certification issued by the corporate secretary or equivalent officer of the entity claiming affiliation.	The proposed change is accepted. Please find below the adjusted provision in the Annex QD-8 of the ITB: "If the experience belongs to an Affiliate or Parent Company of the entity, a certificate from an Auditor or the Corporate Secretary of the Affiliate or Parent Company (as the case may be) providing evidence of such relationship shall be submitted, substantially covering the details prescribed in the format below: <u>This is to certify that...</u> "
39	O&M Experience - Satisfaction Scores	Annex QD-9	Paragraph (b) of Annex QD-9 states: "The entity or entities which will fulfill this Experience Requirement must demonstrate that the airport has achieved the satisfaction scores provided in Section 2.2.f(2)." Please delete inasmuch as Section 2.2.f(2) makes no reference to satisfaction scores.	The proposed deletion of Section 2.2.f (2) in Annex QD-9 is accepted.
40	List of Key Personnel	Annex QD-12 2.2.g, row 5	Annex QD-12 is missing a section for "individual responsible for project management (as a client, consultant, or contractor) for more than 3 air traffic management related projects within the Eligible Period". Please add this in QD-12.	We confirm. Annex QD-12 shall be revised to include the following: <u>"5. Individual responsible for project management (as a client, consultant, or contractor) for more than three air traffic management-related projects within the Eligible Period.</u>



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				<p><u>Name:</u> <u>Employer:</u> <u>Position:</u> <u>Nationality:</u> <u>Date of Birth:</u></p> <p><u>5.1 Key Experience (add columns as necessary)</u> <u>Employer:</u> <u>Position:</u> <u>Start Date:</u> <u>End Date:</u> <u>Description of Projects Undertaken:</u></p> <p><u>5.2 Educational Background</u> <u>College Degree:</u> _____ <u>School:</u> _____ <u>Year</u> <u>Graduated:</u> <u>Graduate Studies:</u> _____ <u>School:</u> _____ <u>Year</u> <u>Graduated:</u> <u>Professional License:</u> _____ <u>Year:"</u></p> <p>Succeeding sections in Annex QD-12 shall thereafter be renumbered accordingly.</p>
41	Notarized Undertaking of Key Personnel	Annex QD-14	Please delete Annex QD-14 as a requirement. This is not required under the Revised 2022 BOT Law IRR and was not required in past PPP projects. More importantly, we think it is onerous to require these individuals to execute a notarized undertaking (which poses a significant obstacle in getting qualified personnel for the Project). Recourse should be against the Winning Bidder/Concessionaire	<p>Annex QD-14 shall be retained as a requirement, but will be revised as follows:</p> <p>"I, (insert name of Qualified Key Personnel), (insert citizenship), of legal age, with office address at (insert address), hereby declare that:</p> <p>1. I am willing to participate as a Qualified Key</p>



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			<p>should it fail to engage any key personnel it names.</p> <p>At any rate, the undertaking is ineffectual. The Grantors cannot enforce it against the key personnel because it is an “obligation to do” for which specific performance is not an available remedy against individuals / natural persons (because persons cannot be compelled to do something against their will without violating the Constitution). Thus, we suggest deleting Annex QD-14.</p>	<p>Personnel, through (Name of Bidder) in the bid for the Ninoy Aquino International Airport PPP Project in accordance with the Instructions to Bidders.</p> <p>2. I have the required experience and capacity to undertake the required services for the Project in accordance with the Bidding Documents.</p> <p>3. Based on my personal knowledge or authentic documents, the information provided in Annex QD-12 is true and correct.”</p> <p>The following paragraph 8 of Annex QD-12 has been deleted:</p> <p>“8. If selected by (Name of Bidder), I shall formally enter into a contract with the Project Proponent to perform the obligations and assume the attendant liabilities as Qualified Key Personnel for the Ninoy Aquino International Airport PPP Project”</p>
42	Attachments for Financial Qualification Requirements	4.9.b(1) Annex QD-15	Attachment #1 of Annex QD-15 references the submission of the entity’s latest income and business tax returns and unaudited quarterly financial statements. This is not stated in Section 4.9.b(1) of the ITB. Please delete the references to these additional documents.	<p>The following provision in paragraph 1 of Annex QD-15 of the ITB shall be revised as follows:</p> <p>"1. Certified true copies of the latest audited financial statements and latest income and business tax returns, which must be for a fiscal period ending no earlier than December <u>2022</u>."</p>
43	Submission of Letter Testimonial	Annex QD-15	If the Bidder is a Consortium and the Consortium submits the financial qualifications of a Consortium Member’s Parent Company, please confirm that the	The letter testimonial in this case may be issued in the name of either the (i) Consortium Member, or (ii) the Consortium Member’s Parent Company.



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			letter testimonial may be issued in the name of (i) the Consortium Member, (ii) the Consortium Member's Parent Company, or (iii) the Consortium itself.	
44	Letter from Potential Lenders	2.3.a(2) Annex QD-15	Section 2.3.a(2) seems to require only one letter testimonial but Annex QD-15 states that the entity proposed to meet the Financial Qualification Requirement should provide the names of at least two financial institutions. Please clarify this to state that at least only one financial institution is required.	The following provision in the attachment to Annex QD-15 of the ITB shall be revised as follows: "3. (name of entity) is a client in good standing <u>in at least one of the following financial institutions, as follows:</u> "
45	VDR Access	Annex VDR	<p>The VDR is not user friendly and hampers, rather than facilitates, the efficient review of documents due to its very strict security features. The requirement to be logged on to Intralinks to open/view/access documents slows down the due diligence process and makes the conduct of necessary analysis cumbersome. Given the already tight deadline, and (1) the magnitude of documents that Bidders will have to pour over and (2) the size of teams (technical, financial, legal) that Bidders will need to organize to review said documents, we suggest the PBAC seriously consider loosening the security requirements in viewing/accessing VDR files.</p> <p>We understand the need for security, especially on sensitive information on the airports for example airport lay outs, but we wish to note that Interested Bidders have already executed a Non-Disclosure Undertaking and copies of all documents downloaded have water stamps showing the user that downloaded the document. These measures</p>	<p>Please find below our responses to the request:</p> <ol style="list-style-type: none"> 1. The necessity of using an Intralinks login every time a VDR-downloaded pdf document is opened is an essential security feature that cannot be dispensed with. 2. VDR-downloaded spreadsheets will be allowed to be opened, copied and pasted into a native Excel file, and thereafter edited in the latter.



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			<p>should be more than sufficient in ensuring confidentiality.</p> <p>We request that the PBAC allow a Prospective Bidder's representatives to (1) download and open pdf files and other VDR documents without the necessity of using an Intralinks login each time, and (2) open and edit downloaded spreadsheets using Microsoft Excel.</p>	
46	Qualification Requirements	2.1.e. in relation to Annex QD-2A	In Annex QD-2A: Certification of not being an Airline-Related Entity required pursuant to Section 2.1.c, what is the reference to "authenticated records"?	"Authenticated records" in Annex QD-2A refers to the records of the company such as but not limited to Articles of Incorporation, General Information Sheet, or their equivalent, that have been notarized, apostilled, or consularized, as the case may be.
47	Bidding Process	1.11.b	The SEC and other relevant government agencies may issue a "certified machine copy" in response to requests for certified true copies of documents on record with their office. Is a certified machine copy of a document acceptable as a "certified true copy" of such document?	We confirm that a certified machine copy may be acceptable, for so long as the certification indicates that such machine copy is a true/faithful copy of the original document.
48	Bidding Period Lock-up Rules	14.1.a	Section 14.1.a. refers to "equity or ownership structure... as provided in the Bidder's Business structure (Annex QD-3A)." The form of Annex QD-3A does not require any information on equity or ownership structure of the corporation. Should Bidder provide information on equity or ownership structure in addition to other information required under the current form of Annex QD-3A?	Annex QD-3A is required to be fulfilled only by a Bidder that is not a consortium. The information on the equity or ownership structure of the corporation will be reflected in Annex QD-4 and further supplemented by the Bidder's submission of its GIS or its equivalent.



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49	Notice of Award	12.2.b	There is no Section 12.2.f.	This Section 12.2 will be amended to make reference to Section 12.2.e.
50	Qualification Documents	9.11	<p>There appears to be a typographical error wherein the value of appeal fee written in numerals do not match with the value in words.</p> <p>Proposed revision is: Within fifteen (15) working days from receipt of the "Notice of Disqualification," a disqualified Bidder may Appeal its disqualification to the Secretary of the DOTr by filing of a non-refundable appeal fee of Php Eight hundred fifty three million pesos(Php853,000,000), which is one-half of one percent (0.5%) of the project cost as approved by the NEDA Board.</p>	<p>The proposed revision is accurate and will be reflected in Section 9.11 of the ITB as follows:</p> <p>"Within fifteen (15) working days from receipt of the "Notice of Disqualification," a disqualified Bidder may Appeal its disqualification to the Secretary of the DOTr by filing of a non-refundable appeal fee of Php Eight hundred fifty three million pesos (Php 853,000,000), which is one-half of one percent (0.5%) of the project cost as approved by the NEDA Board."</p>
51	Financing Plan	Annex FP-2	Kindly confirm that in the Financing Plan (FP-2), does Equity include internal accruals also?	In Annex FP-2, "equity" does not include internal accruals. However, such internal accruals shall be considered in determining/calculating the Net Cash Flow.
52	Post-Award Requirements	12.2(d)	Kindly confirm if the Undertaking to be Jointly and Severally Liabe is still required even if the Consortium has already established a special purpose company (SPC) prior to the signing of the Concession Agreement.	We confirm that the Undertaking under Section 12.2 (d) is no longer required if the Consortium has already established a Special Purpose Company prior to the signing of the Concession Agreement.
53	PCC Exemption from Compulsory Notification	13.1(d)	ITB indicates that the Philippine Competition Commission is currently reviewing the Project. What is the status of the application for a Certificate of Project Exemption with the PCC? Is the PCC requiring any undertakings from the prospective	The Grantors have applied for a Certificate of Project Exemption from the PCC, which is currently reviewing the submitted project documents. The Certificate of Exemption along with the required undertakings, if any, shall be uploaded in the VDR



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			<p>bidders?</p> <p>The consent/clearance/opinion of PCC should be a deliverable of the Grantor and be made available prior to bid submission date.</p>	<p>once it becomes available.</p>
54	Metro Manila Subway link to T3	Page 6 of ITB under "Construction"	<p>Kindly provide us with the area, and technical details and specifications of the connection between T3 and the Metro Manila Subway that the Winning Bidder is required to undertake.</p>	<p>This shall be addressed together with the responses to queries on the draft Concession Agreement.</p>
55	Operation of airside facilities	Page 6 of ITB under "Operation"	<p>Please provide a clear delineation between aspects considered the Winning Bidder's responsibility and those that are CAAP's.</p>	<p>In the broadest terms, and in line with the draft Concession Agreement, the delineation will be as today between CAAP and MIAA, with the Concessionaire taking on the roles undertaken by MIAA.</p>
56	Pre-qualification, Bids and Awards Committee (PBAC)	1.1	<p>Kindly provide us with a copy of Department Special Order No. 2023- 285.</p>	<p>The Department Special Order No. 2023-285 is an internal issuance by the Department. Rest assured, the PBAC has been granted sufficient power and authority to conduct and facilitate the bidding process for this Project.</p>
57	Site Visits	1.13	<p>Why are Prospective Bidders being limited to three (3) site visits only given this massive Project? Kindly give Prospective Bidders unlimited opportunities to inspect whatever aspects of the site need to be inspected, to enable them to prepare proper bids.</p>	<p>Prospective Bidders are now allowed to schedule up to five (5) site visits, pursuant to Bid Bulletin No. 2023-08. Section 1.13 of the ITB is amended accordingly.</p>
58	Airline-Related Entity	2.1.d	<p>Kindly provide us with a current list of Airlines falling under this definition.</p>	<p>The request is denied.</p>



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59	Upfront payment to MIAA of P30 Billion	5.2.a, in relation to 6.2.c	<p>Please require payment of this substantial upfront payment on the contract signing date, simultaneous with or soon after contract signing. Without a signed contract, there would be no legal basis for this payment. There is a Bid Security, in any case.</p> <p>Note that PBAC reserves the right to not proceed with contract signing without even having to give a valid reason.</p>	<p>The proposal to pay the Upfront Payment upon signing of the Concession Agreement is acceptable. Sec. 5.2.a of the ITB is amended as follows:</p> <p><u>“5.2.b Bidder’s Financial Proposal which should indicate its Bid Amount, which shall be Government’s percentage share of Gross Revenue, excluding Passenger Service Charge (PSC) Revenues, as defined in Annex FP-1, and on top of the following: [1] an upfront payment in the amount of Thirty Billion Pesos (Php 30,000,000,000) to be deposited to a blocked account (consistent with DOF-DBM-COA Permanent Committee Joint Circular No. 2023-01) in favor of MIAA upon contract signing xxx”</u></p> <p>The rest of the following sub-paragraphs under Sec. 5.2 shall be renumbered accordingly.</p> <p>Sec. 12.2.k of the ITB which included proof of payment the upfront fee as a post-award requirement is deleted.</p>
60	Incorrect reference	10.2.f	Reference to “Section 10.2.d” in the 5th line is misplaced.	Section 10.2.f of the ITB shall be amended to make reference to Section 10.2.e instead.
61	“Undesirable Practice”	Definition under 13.2.b(v), in relation to 2.3.c(2), 7.3.b, 12.8.a(ii),	Kindly clarify and limit the phrase “in any manner influencing or attempting to influence the Bidding Process”. Said phrase covers everything, including innocuous acts such as actually submitting a bid, meeting with other Prospective Bidders to discuss a joint venture, engaging the best consultants or hiring	These are not the acts being referred to here. Undesirable Practice makes reference to acts that would compromise the independent, fair and objective conduct of the Bidding Process.



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		13.1(b), 13.2.a, 13.4, 16.42 and the Annexes	an executive employed by another Prospective Bidder. To be sure, every Prospective Bidder wants to affect or impact the Bidding Process in the sense of wanting to win the Project. Those innocuous acts should not be considered "Undesirable Practices".	
62	"Restrictive Practice"	Definition under 13.2.b(vi), in relation to 2.3.c(2), 7.3.b, 12.8.a(ii), 13.1(b), 13.2.a, 13.4, 16.42, and the Annexes	Kindly confirm that negotiating a potential joint venture or other agreement with, or actually forming a joint venture with, other entities interested in participating in the Bidding Process is not a Restrictive Practice. Please clarify that you are only referring to schemes among entities who plan to separately submit coordinated bids	"Restrictive Practice" refers to any act, scheme, plan or agreement that is done with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.
63	Conflict of Interest being a consultant	13.3.a(iv), in relation to 2.3.c(2), 7.3.b, 12.8.a(ii), 13.4 16.12, 16.16, and Annexes QD-1 and QD-16	<p>Why is the language limited to participation as "consultant to the DOTr or the PPP Center"? Should it not encompass all of Government, to include all other government actors involved in the Project such as MIAA, NEDA, OGCC, DOF and CAAP?</p> <p>Moreover, is "consultant" equivalent to the term "advisor" used instead in 13.3.a(v)?</p> <p>Also, why is the language limited to participation "as consultant...in connection with the Bidding Process"? "Bidding Process" is defined in 16.12 as starting only from the publication of the Invitation to Pre-Qualify and Bid (that is, 23 August 2023), when the critical period certainly extends to what preceded</p>	<p>Section 13.3.a(iv) of the ITB shall be revised as follows:</p> <p>"a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, has participated as consultant to the DOTr, <u>MIAA</u>, or the PPP Center in <u>connection with the Project</u>; or"</p>



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			the publication date. Should not the language be “as a consultant...in connection with the Project” instead?	
64	Conflict of Interest by engaging advisors and employees	13.3.a(v)	<p>Should the definition not cover advisors and employees of all Government agencies directly involved in the Project and not just those of “DOTr, MIAA or the PPP Center”?</p> <p>It is suggested that a definition similar to 13.3.b be included for the term “directly involved” used in this sub-clause.</p>	<p>Section 13.3.a(v) of the ITB shall be revised as follows:</p> <p>“a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, engages any legal, financial, or technical advisor of DOTr, MIAA or the PPP Center at any time from 24 August 2023 until the Bid Submission Date and was directly involved <u>in any capacity</u> in the Project.”</p>
65	Consulting firms engaged by a Bidder	13.3.c, in relation to 16.5	<p>Please elaborate the scenario this sub-clause is referring to. Is it saying that a Prospective Bidder sharing the same consultant as another Prospective Bidder is committing a violation of the ITB? Why? Or is it saying that the consulting firm has a conflict of interest, in which case, what is the implication of a consultant’s conflict of interest on the Prospective Bidders?</p> <p>In particular, please note that, given the definition of “Auditor” in 16.5, it is highly likely that the Prospective Bidders for this Project, and their various Consortium Members and Affiliates are already using or will be using the same Auditors for this Project.</p>	<p>Section 13.3.c of the ITB shall be revised as follows:</p> <p>“The same conflict of interest arises in case of consulting firms engaged by any Bidder. <u>There shall be no Conflict of Interest if prior written disclosure is submitted by such consulting firm to its client Bidders and the PBAC, together with a conflict management plan which must be approved in writing by the PBAC.</u>”</p> <p>This restriction does not apply to auditors, as auditors are not in the position to influence or compromise bids of participating bidders.</p>
66	Ownership in a Corporation	16.19	To avoid confusion, please clarify the meaning of “shares held both directly and indirectly or owned	Indirect ownership of shares refers to ownership of shares through companies which such entity or



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			legally or beneficially". When is a share deemed held indirectly, or beneficially?	person controls. Beneficial ownership of shares may be done through voting trust agreements or other similar agreements that accede rights of a shareholder to another person. Please check relevant issuances by the Securities and Exchange Commission on beneficial and indirect ownership of shares.
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TABLE OF REVISIONS

REFERENCE	REMARKS	ITB VERSION NO. 2 DATED 23 AUGUST 2023	CHANGES APPROVED AS PER BID BULLETIN NO. 2023-11 DATED 20 OCTOBER 2023
Sec. 2.1.f(2)	Revised	If the Bidder is a Consortium and any Consortium Member or such Consortium Members' Affiliates is a GCR Entity, then such Consortium Member cannot own or be proposed to own more than twenty percent (20%) interest in such Consortium.	If the Bidder is a Consortium and any Consortium Member or such Consortium Members' Affiliates is a GCR Entity, then such Consortium Member cannot own or be proposed to own more than thirty-three (33%) interest in such Consortium.
Sec. 2.1.f(3)	Revised	If more than one (1) Consortium Member is a GCR Entity, then such Consortium Members cannot comprise or be proposed to own an aggregate of more than twenty percent (20%) interest in such Consortium.	If more than one (1) Consortium Member is a GCR Entity, then such Consortium Members cannot comprise or be proposed to own an aggregate of more than thirty-three (33%) interest in such Consortium.
Sec. 2.2.e(1)	Revised	The Bidder must have been an owner or concessionaire of an airport for which capital costs incurred was at least Ten Billion Pesos (PhP 10 Billion) or its peso equivalent, cumulative, in historical prices over the Eligible Period. The Bidder may have owned or been the concessionaire for the airport for less than ten (10) years within the Eligible Period, as long as at least Ten Billion Pesos (PhP 10 billion) in capital cost was incurred during the time the Bidder owned or was the concessionaire for the airport.	The Bidder must have been an owner or concessionaire of an airport for which capital costs incurred was at least Ten Billion Pesos (PhP 10 Billion) or its foreign currency equivalent, cumulative, in historical prices over the Eligible Period. The Bidder may have owned or been the concessionaire for the airport for less than ten (10) years within the Eligible Period, as long as at least Ten Billion Pesos (PhP 10 billion) in capital cost was incurred during the time the Bidder owned or was the concessionaire for the airport.
Sec. 2.2.e(3)(ii)	Revised	If the Bidder is a Consortium, a Consortium Member having at least twenty-five percent	If the Bidder is a Consortium, a Consortium Member having at least ten percent (10%)



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		(25%) interest in the Consortium, or such Consortium Member's Affiliate.	interest in the Consortium, or such Consortium Member's Affiliate.
Sec. 2.2.f (1)	Revised	Bidder must have expertise and experience in having undertaken the operation and maintenance of an International Airport for a period of at least three (3) consecutive calendar years anytime within the Eligible Period, with such International Airport having handled an Annual Passenger Throughput of at least twenty-five (25) million passengers per annum of which at least 10 million passengers per annum were international passengers.	Bidder must have expertise and experience in having undertaken the operation and maintenance of an International Airport for a period of at least three (3) calendar years anytime within the Eligible Period, with such International Airport having handled an Annual Passenger Throughput of at least twenty-five (25) million passengers per annum of which at least 10 million passengers per annum were international passengers."
Sec. 2.3.a(1)	Revised	A Bidder must have [i] a Net Worth of at least Twenty Billion Pesos (PhP 20.0 billion), or its foreign currency equivalent, as of the Bidder's latest audited financial statements, which must be for a financial year ending not earlier than 31 December 2022, or [ii] a Set-Aside Deposit equivalent to the same amount. In case of a Consortium, the Net Worth of Consortium Members who have an equity share of at least twenty-five percent (25%) each in the Consortium may be added together.	A Bidder must have [i] a Net Worth of at least Twenty Billion Pesos (PhP 20.0 billion), or its foreign currency equivalent, as of the Bidder's latest audited financial statements, which must be for a financial year ending not earlier than 31 December 2022, or [ii] a Set-Aside Deposit which can be in cash equivalent to the same amount. To meet this requirement: (i) a Consortium is allowed to Consolidate the Net Worth of Consortium Members with a percentage share of at least twenty-five percent (25%) each in the Consortium; or (ii) Add the sum of, for each Consortium Member with a percentage interest of at least ten percent (10%) in the Consortium, the product of such Consortium Member's Net



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			<p>Worth and its percentage interest in the Consortium. To illustrate: Consortium Member A who has a 10% interest in the Consortium and a net worth of PHP 100 billion, can be nominated to fulfill this Financial Qualification Requirement together with Consortium Member B who has a 10% interest in the Consortium and a net worth of PHP 110 billion, as follows:</p> <p>Consortium Member A: $10\% \times \text{PHP } 100 \text{ billion} = \text{PHP } 10 \text{ billion}$</p> <p>Consortium Member B: $10\% \times \text{PHP } 110 \text{ billion} = \text{PHP } 11 \text{ billion}$</p> <p>Sum: $\text{PHP } 10 \text{ billion} + \text{PHP } 11 \text{ billion} = \text{PHP } 21 \text{ billion.}$</p>
<p>Sec. 2.3.b(2)</p>	<p>Revised</p>	<p>If the Bidder is a Consortium: a Consortium Member or Members , each with at least twenty-five per cent (25%) equity interest in the Consortium, or such Consortium Member or Members' Parent Companies.</p>	<p>If the Bidder is a Consortium:</p> <p>(i) a Consortium Member or Members, each with at least twenty-five percent (25%) interest in the Consortium if qualifying under Sec. 2.3.a (1)(i), or such Consortium Member's or Members' Parent Companies; or</p> <p>(ii) a Consortium Member or Members, each with at least ten percent (10%) interest in the Consortium if qualifying under Sec. 2.3.a (1)(ii), or such Consortium Member's or Members' Parent Companies.</p>



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Sec. 12.2.b	Revised	...If the Winning Bidder is a consortium, the shareholders of the Concessionaire and the respective percentage shareholdings of its members should be the same as those shown in the Winning Bidder's Annex QD-3B. If the Winning Bidder is a corporation, the shareholding structure of the Concessionaire should comply with Section 12.2.f;	...If the Winning Bidder is a consortium, the shareholders of the Concessionaire and the respective percentage shareholdings of its members should be the same as those shown in the Winning Bidder's Annex QD-3B. If the Winning Bidder is a corporation, the shareholding structure of the Concessionaire should comply with Section 12.2.e;
Sec. 12.2.c	Revised	Certified true copies issued by the authorized officer of the Concessionaire, duly notarized, of resolutions adopted by the board of directors of the Concessionaire attesting that the Concessionaire conducted an organizational meeting of its stockholders and elected its regular board of directors and corporate officers and authorizing the execution, delivery and performance of the Concession Agreement and the Transaction Documents;	Certified true copies issued by the authorized officer of the Concessionaire, duly notarized, of resolutions adopted by the board of directors of the Concessionaire attesting that the Concessionaire conducted an organizational meeting of its stockholders and elected its regular board of directors and corporate officers and authorizing the execution, delivery and performance of the Concession Agreement.
Sec. 13.3.a(iv)	Revised	a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, has participated as consultant to the DOTr, or the PPP Center; or	a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, has participated as consultant to the DOTr, MIAA, or the PPP Center in connection with the Project; or
Sec. 4.5.b	Revised	For Consortia, the Business Structure must indicate the Lead Member and all Consortium Members, the proposed equity interest of each Consortium Member in the Consortium, and the total percentage interest of all Consortium Members in the Consortium which must sum up to one hundred percent (100%).	For Consortia, the Business Structure must indicate the Lead Member and all Consortium Members, the proposed percentage interest of each Consortium Member in the Consortium, and the total percentage interest of all Consortium Members in the Consortium which must sum up to one hundred percent (100%).



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Sec. 5.2.b	Revised	Bidder's Financial Proposal which should indicate its Bid Amount, which shall be Government's percentage share of Gross Revenue, excluding Passenger Service Charge (PSC) Revenues, as defined in Annex FP-1, and on top of the following: [1] an upfront payment to MIAA in the amount of Thirty Billion Pesos (Php 30,000,000,000) to be paid post-award but prior to contract signing...	Bidder's Financial Proposal which should indicate its Bid Amount, which shall be Government's percentage share of Gross Revenue, excluding Passenger Service Charge (PSC) Revenues, as defined in Annex FP-1, and on top of the following: [1] an upfront payment in the amount of Thirty Billion Pesos (Php 30,000,000,000) to be deposited to a blocked account (consistent with DOF-DBM-COA Permanent Committee Joint Circular No. 2023-01) in favor of MIAA upon contract signing...
Sec. 9.11	Revised	Within fifteen (15) working days from receipt of the "Notice of Disqualification," a disqualified Bidder may Appeal its disqualification to the Secretary of the DOTr by filing of a non-refundable appeal fee of Php Eight hundred fifty three million pesos (Php 850,000,000), which is one-half of one percent (0.5%) of the project cost as approved by the NEDA Board.	Within fifteen (15) working days from receipt of the "Notice of Disqualification," a disqualified Bidder may Appeal its disqualification to the Secretary of the DOTr by filing of a non-refundable appeal fee of Php Eight hundred fifty three million pesos (Php 853,000,000), which is one-half of one percent (0.5%) of the project cost as approved by the NEDA Board.
Sec. 10.2.f	Revised	...Immediately upon the resubmission of the Financial Proposals of the tied Bidders, the revised Financial Proposals shall be opened and ranked by the PBAC based on the Bid Amount alone, and the top-ranked Bidder based on the criteria in Section 10.2.d shall be considered the Best Bid.	...Immediately upon the resubmission of the Financial Proposals of the tied Bidders, the revised Financial Proposals shall be opened and ranked by the PBAC based on the Bid Amount alone, and the top-ranked Bidder based on the criteria in Section 10.2.e shall be considered the Best Bid.
Sec. 12.2.k	Deletion	Proof of payment of the upfront fee to MIAA;	
Sec. 13.3.a(v)	Revised	a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, engages any legal, financial, or technical advisor of DOTr, MIAA or	a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, engages any legal, financial, or technical advisor of DOTr, MIAA or



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		the PPP Center at any time from 24 August 2022 until the Bid Submission Date and was directly involved in the Project.	the PPP Center at any time from 24 August 2023 until the Bid Submission Date and was directly involved in any capacity in the Project.
Sec. 13.3.c	Revised	The same conflict of interest arises in case of consulting firms engaged by any Bidder.	The same conflict of interest arises in case of consulting firms engaged by any Bidder. There shall be no Conflict of Interest if prior written disclosure is submitted by such consulting firm to its client Bidders and the PBAC, together with a conflict management plan which must be approved in writing by the PBAC."
Sec. 14.1.a	Revised	For a Bidder that is a corporation, partnership or any other juridical entity, no changes shall be made in the equity or ownership structure of such Bidder, as provided in the Bidder's Business structure (Annex QD-3A). This rule shall not apply to publicly-listed companies, with respect to their public float.	For a Bidder that is a corporation, partnership or any other juridical entity, no changes shall be made in the ownership structure of such Bidder, as provided in the Bidder's Business structure (Annex QD-3A). This rule shall not apply to publicly-listed companies, with respect to their public float.
Sec. 14.1.b	Revised	For a Bidder that is a Consortium, no changes shall be made in the composition of the Consortium and in the committed percentage equity interest of each Consortium Member in the Concessionaire, as provided in the Bidder's Business Structure (Annex QD-3B).	For a Bidder that is a Consortium, no changes shall be made in the composition of the Consortium and in the committed percentage interest of each Consortium Member in the Concessionaire, as provided in the Bidder's Business Structure (Annex QD-3B).
Sec. 14.2.a	Revised	No changes shall be allowed in the shareholder or equity structure of the Winning Bidder from Bid Proposals Submission Date until the signing by the Project SPC/s of the accession agreements to the Concession Agreements. However, a Consortium	No changes shall be allowed in the shareholder or percentage structure of the Winning Bidder from Bid Proposals Submission Date until the signing by the Project SPC/s of the accession agreements to the Concession Agreements. However, a



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		<p>Member of the Winning Bidder may form a holding company or a subsidiary which would hold its entire interest in the Winning Bidder. All Consortium Members may form a holding company or subsidiary which would hold their collective interests in the Winning Bidder, provided, that the shareholding or equity structure of such holding company or subsidiary shall reflect the Consortium Members' interest in the Consortium on Bid Proposals Submission Date, and such shareholding or equity structure shall not change until the signing by the Project SPC/s of the accession agreements to the Concession Agreement.</p>	<p>Consortium Member of the Winning Bidder may form a holding company or a subsidiary which would hold its entire interest in the Winning Bidder. All Consortium Members may form a holding company or subsidiary which would hold their collective interests in the Winning Bidder, provided, that the shareholding or equity structure of such holding company or subsidiary shall reflect the Consortium Members' percentage interest in the Consortium on Bid Proposals Submission Date, and such shareholding or equity structure shall not change until the signing by the Project SPC/s of the accession agreements to the Concession Agreement.</p>
Sec. 16.19	Revised	<p>"Control" means, for purposes of defining an Affiliate of a Bidder or a Consortium Member, the power to direct or cause the direction of the management policies and actions of a body corporate whether through:</p> <ul style="list-style-type: none"> (a) ownership of at least fifty percent (50%) plus one share of the outstanding voting shares, or (b) (i) possession of voting rights through voting trusts or other voting agreements, such that the total number of shares owned or over which it has voting rights is equivalent to at least fifty percent (50%) plus one (1) share, or (ii) the ability to elect a majority of the members of the Affiliate's board of 	<p>"Control" means, for purposes of defining an Affiliate of a Bidder or a Consortium Member, the power to direct or cause the direction of the management policies and actions of a body corporate whether through:</p> <ul style="list-style-type: none"> (a) ownership of at least fifty percent (50%) plus one share of the outstanding voting shares; or (b) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights: (i) is equivalent to at least fifty percent (50%) plus one (1) share, or (ii) grants it the ability to elect a majority of the members of the Affiliate's board of directors; or



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		<p>directors, or</p> <p>(c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above.</p> <p>In determining ownership by a corporation of the shares of another corporation, shares held both directly and indirectly or owned legally or beneficially will be counted.</p>	<p>(c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above; or</p> <p>(d) a legal agreement which grants it the power to govern or significantly influence the financial and operating policies of a body corporate.</p> <p>In determining Control under (d), the Bidder or Consortium Member must submit, apart from Annex QD-8, a copy of the said legal agreement as well as a certification from an authorized representative of the grantor of such powers stating what powers are being granted, and to whom those powers are being granted as described in item (d).</p> <p>In determining ownership by a corporation of the shares of another corporation, shares held both directly and indirectly or owned legally or beneficially will be counted."</p>
Sec. 16.21	Revised	"Designated Operator" means an entity designated by the Bidder to undertake the Operation and Maintenance of the Project but does not have equity interest in the Consortium.	"Designated Operator" means an entity designated by the Bidder to undertake the Operation and Maintenance of the Project but does not have any percentage interest in the Consortium.
Sec. 16.31	Revised	"Lead Member" means, for a Bidder that bids as a Consortium, the Consortium Member having the	"Lead Member" means, for a Bidder that bids as a Consortium, the Consortium Member having the



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		largest equity interest in the Consortium, and which should be designated in writing as such by the other Consortium Members.	largest percentage interest in the Consortium, and which should be designated in writing as such by the other Consortium Member in case more than one Consortium Member equally possesses the largest percentage interest in the Consortium.
Sec. 16.33	Revised	<p>“Net Worth” shall mean the sum of subscribed and paid-up equity, including additional paid-in capital, and unrestricted retained earnings. Unrestricted retained earnings means the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; (3) not required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingencies (as defined in SEC Memorandum Circular No. 11-08, December 5, 2008); and (4) not otherwise covered by any other legal restriction on the ability of the company to distribute or otherwise apply its equity.</p>	<p>“Net Worth” shall mean the sum of subscribed and paid-up equity, including additional paid-in capital, and unrestricted retained earnings. Unrestricted retained earnings means the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; (3) not required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingencies (as defined in SEC Memorandum Circular No. 11-08, December 5, 2008); and (4) not otherwise covered by any other legal restriction on the ability of the company to distribute or otherwise apply its equity.</p> <p>If the Bidder or Consortium Member is an investment fund or an entity owned by an investment fund, the net worth of such Bidder or Consortium Member shall, in addition to the items</p>



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			enumerated in the preceding paragraph of this Section 16. 33, include the amount of the investment fund’s uncalled capital commitments, provided, that an authorized representative of the investment fund shall certify: (1) the amount of the uncalled capital commitments that may be called, (2) that all conditions for calling that amount of uncalled capital commitments, except the award of the NAIA PPP Project to the consortium of which the investment fund is a Consortium Member, are fulfilled as of the Bid Submission Date, and (3) that such uncalled capital commitments are callable at the sole discretion of the General Partner of the Consortium Member or of the Affiliate of the Consortium Member.
Sec. 16.42	Revised	"Unsatisfactory Performance" means... For avoidance of doubt, the references to 'judicial pronouncement' and "arbitration award" above are not limited to those promulgated in the Philippines or by Philippine courts or entities.	"Unsatisfactory Performance" means... For avoidance of doubt, the references to 'judicial pronouncement' and "arbitration award" above are not limited to those promulgated in the Philippines or by Philippine courts or entities. In the case of Qualified Key Personnel, this definition shall only apply insofar as such personnel have been found personally liable under (a) and (c) by a judicial pronouncement or arbitration award.
Sec. 16.41	Revised	"Significant Interest" means: (a) Ownership of at least thirty-three percent (33%) plus one share of outstanding voting shares, or	"Significant Interest" means: (a) Ownership of at least thirty-three percent (33%) plus one share of outstanding voting shares, or



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		(b) (i) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights is equivalent to at least thirty-three percent (33%) plus one share, or (ii) the ability to elect one-third (1/3) of the members of the Affiliate’s board of directors of the concessionaire of a GCR airport. (c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above.”	(b) (i) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights is equivalent to at least thirty-three percent (33%) plus one share, or (ii) the ability to elect one-third (1/3) of the members of the board of directors of the concessionaire of a GCR airport. (c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above.
Par. 3 of Annex QD-2B	Revised	3. (Name of the Bidder / Consortium Member) does not have the power to direct or cause the direction of the management policies and actions of an entity that has Significant Interest (as defined in Section 16.40 of the Instructions to Bidders) in a GCR concessionaire, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in an Airline, or (ii) the ability to elect a majority of the members of an Airline’s board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements;	3. (Name of the Bidder / Consortium Member) does not have the power to direct or cause the direction of the management policies and actions of an entity that has Significant Interest (as defined in Section 16.40 of the Instructions to Bidders) in a GCR concessionaire, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in an entity that has Significant Interest in a GCR concessionaire, or (ii) the ability to elect a majority of the members of an the board of directors of an entity that has Significant Interest in a GCR concessionaire, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements.
Par. 4 of Annex QD-3B	Revised	a. Name of Entity b. Entity with whom it is affiliated c. Address d. Website	a. Name of Entity b. Relationship to Bidder c. Address d. Website



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		<p>e. Contactperson i. Telephone ii. Fax iii. E-mail</p>	<p>e. Contact person i. Telephone ii. Fax iii. E-mail</p> <p>Note: a. If this requirement is fulfilled by an Affiliate of a Consortium Member, provide evidence of such affiliation using the form prescribed in Annex QD-8.</p>
Annex QD-8		<p>If the experience belongs to an affiliate or Parent Company of the entity, a certificate from an Auditor the Corporate Secretary of the Affiliate or Parent Company (as the case may be) providing evidence of such relationship shall be submitted, substantially covering the details prescribed in the format below:</p> <p>As per authenticated records, this is to certify that...</p>	<p>If the experience belongs to an affiliate or Parent Company of the entity, a certificate from an Auditor or the Corporate Secretary of the Affiliate or Parent Company (as the case may be) providing evidence of such relationship shall be submitted, substantially covering the details prescribed in the format below:</p> <p>This is to certify that...</p>
Paragraph "b." of Annex QD-9,	Deletion	"b. The entity or entities which fulfill this Experience Requirement must demonstrate that the airport has achieved the satisfaction scores provided in Section 2.2.f(2)."	
Annex QD-12	Added		5. Individual responsible for project management (as a client, consultant, or contractor) for more than three air traffic management-related projects within the Eligible Period.



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			<p>Name: Employer: Position: Nationality: Date of Birth:</p> <p>5.1 Key Experience (add columns as necessary) Employer: Position: Start Date: End Date: Description of Projects Undertaken:</p> <p>5.2 Educational Background College Degree: School: Year Graduated: Graduate Studies: School: Year Graduated: Professional License: Year:"</p> <p>Succeeding sections in Annex QD-12 shall thereafter be renumbered accordingly.</p>
Annex QD-14	Re-numbered with deletion	<p>I, <i>(insert name of Qualified Key Personnel)</i>,<i>(insert citizenship)</i>, of legal age, with office address at <i>(insert address)</i>, hereby declare that:</p> <p>5. I am willing to participate as a Qualified Key Personnel, through <i>(Name of Bidder)</i> in the bid for the Ninoy Aquino International Airport PPP Project in accordance with the Instructions to</p>	<p>I, <i>(insert name of Qualified Key Personnel)</i>, <i>(insert citizenship)</i>, of legal age, with office address at <i>(insert address)</i>, hereby declare that:</p> <p>1. I am willing to participate as a Qualified Key Personnel, through <i>(Name of Bidder)</i> in the bid for the Ninoy Aquino International Airport PPP Project in accordance with the Instructions to</p>



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		<p>Bidders.</p> <p>6. I have the required experience and capacity to undertake the required services for the Project in accordance with the Bidding Documents.</p> <p>7. Based on my personal knowledge or authentic documents, the information provided in Annex QD-12 is true and correct.</p> <p>8. If selected by <i>(Name of Bidder)</i>, I shall formally enter into a contract with the Project Proponent to perform the obligations and assume the attendant liabilities as Qualified Key Personnel for the Ninoy Aquino International Airport PPP Project</p>	<p>Bidders.</p> <p>2. I have the required experience and capacity to undertake the required services for the Project in accordance with the Bidding Documents.</p> <p>3. Based on my personal knowledge or authentic documents, the information provided in Annex QD-12 is true and correct.</p>
Paragraph 1 of Annex QD-15	Revised	1. Certified true copies of the latest audited financial statements and latest income and business tax returns, which must be for a fiscal period ending in any month in [●]...	1. Certified true copies of the latest audited financial statements and latest income and business tax returns, which must be for a fiscal period ending no earlier than December 2022...
Paragraph 3 of Annex QD-15	Revised	3. <i>(name of entity)</i> is a client in good standing in the following financial institutions (provide the names of at least two financial institutions):	3. <i>(name of entity)</i> is a client in good standing in at least one the following financial institution, as follows

Amendments/inclusions/clarification made herein shall be considered an integral part of the Bidding Documents.



MANILA
INTERNATIONAL
AIRPORT
AUTHORITY



BAGONG PILIPINAS

NAIA PPP Project

Instructions to Bidders

August 2023



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DISCLAIMER

The information contained in the Bidding Documents, Information Documents, and any other information subsequently provided to Interested Bidders, whether verbal or written, by or on behalf of the Department of Transportation (DOTr), the Manila International Airport Authority (MIAA), or any of its employees or advisors, is provided to Interested Bidders on the terms and conditions set out in the Bidding Documents and such other terms and conditions subject to which such information is provided.

While the drafters of this Instructions to Bidders (ITB) exerted their best effort to provide a fair and comprehensive description of the Project based on the Project Business Case and other available information, this document does not purport to be all-inclusive or to contain all the information that a participant may consider material or desirable in making its decision to participate in the tender.

The Bidding Documents and Information Documents are not agreements and are neither offers nor invitations by the DOTr or MIAA to the Interested Bidders or any other person. The DOTr, MIAA, its employees, and its advisors, are not bound by any of the contents of these documents. The purpose of these documents is to provide interested parties with information that may be useful to them in preparing their Bids. The Bidding Documents and Information Documents include statements that reflect various assumptions and assessments arrived at by the DOTr and MIAA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Interested Bidder may require. The Bidding Documents and Information Documents may not be appropriate for all persons, and it is not possible for the DOTr, MIAA, its employees, or its advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses the Bidding Documents and Information Documents. The assumptions, assessments, statements and information contained in the Bidding Documents, Information Documents, and associated documents may not be complete, adequate, accurate or correct. Each Interested Bidder should therefore conduct its own investigations and analyses, and should check the completeness, adequacy, accuracy, correctness, and reliability of the assumptions, assessments, statements and information contained in the Bidding Documents and Information Documents and obtain independent advice from appropriate sources.

Information provided in the Bidding Documents and the Information Documents is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The DOTr and MIAA accept no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The DOTr, MIAA, its employees, and its advisors, make no undertaking, assurance, representation or warranty and shall have no liability to any person, including any Interested Bidder, Prospective Bidder, or Bidder under any law, statute, rules or regulations, principles of restitution for unjust enrichment or otherwise, for any loss, damages, cost or expense, that may arise from or be incurred or suffered on account of anything contained in the Bidding Documents, Information Documents, or other information provided to Interested Bidders, Prospective Bidders, and Bidders, including the completeness, adequacy accuracy, correctness, or reliability of such documents and any assessment, assumption, statement or information contained therein or deemed to form part of the Bidding Documents, Information Documents or arising in any way from participation in the Bidding Process.

Furthermore, the DOTr and MIAA do not accept any liability of any nature, whether resulting from negligence or howsoever caused, arising from reliance of any Prospective Bidder or Bidder upon the statements contained in the Bidding Documents or Information Documents.

The DOTr or MIAA may, in its absolute discretion, but without being under any obligation to do so, amend, update, or supplement the information, assessments or assumptions contained in the Bidding Documents or Information Documents. However, the DOTr, MIAA, its employees, and its advisors, shall not be liable to any Interested Bidder, Prospective Bidder, or Bidder (including the Winning Bidder) in

respect of any failure to (i) disclose or make available any information, documents or data; (ii) amend, update, or supplement the Bidding Documents or Information Documents; or (iii) provide any information regarding any inaccuracy, error, omission, defect or inadequacy in the Bidding Documents or Information Documents.

The issuance of the Bidding Documents or Information Documents does not imply that the DOTr or MIAA is bound to select a Bidder or to appoint the selected Bidder, as the case may be, for the Project, and the DOTr and MIAA reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

Each Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid, including but not limited to preparation, copying, postage, delivery fees, and expenses associated with any demonstrations or presentations, which may be required by DOTr or MIAA, or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and DOTr and MIAA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in the preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

Republic of the Philippines
DEPARTMENT OF TRANSPORTATION
MANILA INTERNATIONAL AIRPORT AUTHORITY

NINOY AQUINO INTERNATIONAL AIRPORT (NAIA) PPP PROJECT

INSTRUCTIONS TO BIDDERS **23 August 2023**

The Department of Transportation (DOTr) and the Manila International Airport Authority (MIAA) invites Interested Bidders to submit Bids to rehabilitate, operate optimize, and maintain the Ninoy Aquino International Airport (NAIA) PPP Project (“**Project**”) to be implemented through a Rehabilitate-Operate-Expand-Transfer contractual arrangement. The Project is proposed and shall be implemented in accordance with Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law (“**BOT Law**”) and its October 2022 Revised Implementing Rules and Regulations (IRR). The project is composed of the following components, among others:

Construction

1. Incorporation of climate adaptation measure for airfield resilience;
2. Rehabilitation of passenger terminals and associated facilities;
3. Rehabilitation of airside facilities (including runways, rapid exit taxiways/RETs, maneuvering areas, aprons, aircraft parking area, airfield lighting, etc);
4. Development of adequate vehicular parking lots to cater to the public;
5. Development of commercial assets (assets built by the Concessionaire);
6. Development of all utility systems necessary for undertaking the works;
7. Provision of surface access facilities that enables intermodal transfer at the airport;
8. Provision of inter-terminal passenger transfer facilities and services;
9. Connection from the Metro Manila Subway station to NAIA Terminal 3; and
10. Overall uplift and beautification of the airport exterior and interior.

Supply

1. Supply and installation of all required information technology and other equipment for the proper operation and maintenance of airside and landside activities, as well as utility systems;
2. Supply of communications, navigation, and surveillance (CNS) systems, remote digital tower system, air traffic control (ATC) system upgrade, and airfield network and fiber upgrades;
3. Supply of emergency equipment; and
4. Supply of buses for boarding transfers.

Operation

1. Operation of passenger terminals and related facilities;
2. Operation of airside facilities (including runways, RETs, maneuvering areas, aprons, aircraft parking area, airfield lighting, etc); and
3. Operation of Concessionaire O&M facilities and commercial assets.

Maintenance

1. Maintenance of passenger terminal buildings and associated facilities;
2. Maintenance of airside facilities (including runways, RETs, maneuvering areas, aprons, aircraft parking area, airfield lighting, etc); and
3. Maintenance of communications, navigation and surveillance / air traffic management (CNS/ATM) equipment.

Capacity Augmentation

This will involve maximizing the utilization of the current airport. It may entail enhancement of operational efficiencies; use of technology; service level uplift; and expansion of facilities.

These Instructions to Bidders (ITB) provide the procedures and requirements for the preparation and submission of Qualification Documents and Bid Proposals by Bidders and the evaluation criteria and rules to be followed by the DOTr and the MIAA in the selection of a Winning Bidder to undertake the Project. The selection of a Winning Bidder shall be done pursuant to a single-stage public bidding in accordance with Section 5.7¹ of the October 2022 Revised IRR of the BOT Law, the applicable provisions of which are deemed incorporated by reference into these Instructions to Bidders.

SECTION 1: BIDDING PROCESS

1.1 PRE-QUALIFICATIONS, BIDS AND AWARDS COMMITTEE

The Pre-Qualifications, Bids and Awards Committee (**PBAC**) for the Department of Transportation and its Attached Agencies' Co-Granted Public-Private Partnership (PPP) Projects created pursuant to Department Special Order No. 2023-285 shall administer the Bidding Process for the Project.

1.2 BIDDING DOCUMENTS

1.2.a The Bidding Documents issued by the PBAC shall set out the rules and procedures applicable to the Bidding Process. They consist of the following documents:

1.2.a(1) these Instructions to Bidders, including its Annexes; and

1.2.a(2) the draft Concession Agreement, including its Schedules.

1.2.b The Concession Agreement and its Schedules will be the principal document/s governing the relationship between the DOTr, MIAA, and the Concessionaire.

1.2.c In case of conflict among any of the Bidding Documents, the provisions of the Concession Agreement shall prevail.

1.2.d General Rules of Interpretation

1.2.d(1) In case of ambiguities or discrepancies within these Instructions to Bidders, the following rules of interpretation shall apply:

(i) between two or more Sections of this ITB, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;

(ii) between the Sections of this ITB and the Annexes, the Sections shall prevail;

¹ **Section 5.7 - Simultaneous or Single-stage Qualification and Bidding**

In the exigency of service, the Agency/LGU Head may opt to do a simultaneous qualification instead of a pre-qualification of proponents. In case of simultaneous qualification, the publication of the invitation, following the requirements in Section 5.2, shall be for the submission of qualification requirements and bid proposals. The bidders shall be asked to submit their proposal in three envelopes; the first envelope - the qualification documents corresponding to the requirements so stated in Section 5.4 herein; the second envelope - the technical proposal; and the third envelope - the financial proposal. The requirements for bid submission are covered under Rule 7 of this Revised IRR. The period for the preparation of the qualification documents shall be subsumed under the time allotted for bid preparation.

- (iii) between any two Annexes, the Annex relevant to the issue shall prevail;
- (iv) between any value written in numerals and that in words, the latter shall prevail; and
- (v) between the Concession Agreement and any documents in the Virtual Data Room, the Concession Agreement shall prevail.

1.2.d(2) Unless the context otherwise requires:

- (i) “Include”, “includes”, and “including” are deemed to be followed by “without limitation” or “but not limited to”, whether or not actually followed by such words or words of like import.
- (ii) References to any Annex or Schedule shall be deemed to include references to such document or agreement as amended, supplemented, novated, varied or replaced from time to time.
- (iii) References to a person include his successors and permitted assigns.
- (iv) References to any gender include all genders, and references to the singular include the plural, and vice versa.
- (v) References to Sections or Annexes which do not specify what document they are referenced to are Sections or Annexes to this ITB.
- (vi) Headings are for convenience only and shall not affect the interpretation or construction of any provision of this Agreement.
- (vii) A “day” refers to a calendar day, a “month” refers to a calendar month, and a “year” refers to a period of time commencing on a particular date and ending on the day before the anniversary of such date.

1.2.d(3) The rule of construction, if any, that a contract should be interpreted against the party responsible for the drafting and preparation thereof, shall not apply.

1.3 PARTICIPATION FEE AND ACCESS TO DATA ROOMS

The Concession Agreement and certain other documents to provide background information on the Project (“**Information Documents**”), will be made available to Prospective Bidders through a Virtual Data Room upon payment of a Participation Fee of Two Million Seven Hundred Fifty Thousand Philippine Pesos (Php 2,750,000.00) or Fifty Thousand United States Dollars (USD 50,000.00). Information and procedures to pay the Participation Fee and access the Virtual Data Room can be found in Annex VDR-A.

The PBAC may, in its discretion, create a physical data room. Prospective Bidders' access to the VDR will be subject to such protocols and procedures as the PBAC may notify the Prospective Bidders. Prospective Bidders may access a physical data room (if any) by providing no less than five (5) calendar days prior written notice to the PBAC.

The term “Prospective Bidder” in these Instructions to Bidders shall mean a party which has paid the Participation Fee and complied with other requirements to gain access to the Virtual and Physical Data Rooms.

1.4 INDICATIVE BIDDING SCHEDULE

Table 1 below provides an indicative schedule for the Bidding Process, as follows:

Table 1. Indicative Schedule

Milestone	Target date
Release of the Instructions to Bidders (ITB) and opening of the Virtual Data Room (VDR)	23 August 2023
Request and Conduct of Site Visits	28 August 2023 – 14 November 2023
Issuance of the Draft Concession Agreement (CA)	8 September 2023
Conduct of Pre-Bid Conference	22 September 2023
First Round of One-on-One Meetings with Prospective Bidders	9-13 October 2023
Final Round of One-on-One Meetings with Prospective Bidders	6-10 November 2023
Deadline for sending queries	20 November 2023
Deadline for PBAC to issue final Bid Bulletin and final version of Concession Agreement	4 December 2023
Bid Submission Date	27 December 2023

The PBAC may change the actual schedule at any time, without incurring any liability to the Bidders. PBAC shall notify Prospective Bidders about the changes in the indicative milestone dates through Bid Bulletins. All references to dates and times shall refer to Philippine Standard Time (PST).

In the event that the date of the scheduled milestone is a non-working day or work on that day is suspended by a competent government authority, the deadline for the milestone shall automatically be rescheduled to the next Business Day, without need for any further notice.

1.5 SUMMARY OF BIDDING PROCESS

The general procedure for the Bidding will be as follows:

- 1.5.a After the issuance of the ITB and granting of access to the VDR, Prospective Bidders may submit their queries, comments and clarifications on the Bidding Documents. DOTr and MIAA may consider these comments in further refining the bidding parameters and the draft Concession Agreement, including its Schedules.
- 1.5.b The PBAC shall conduct a Pre-Bid Conference in accordance with Section 1.14 (*Pre-Bid Conference*).
- 1.5.c On the Bid Submission Date, the Bidders shall submit to the PBAC their Qualification Documents and Bid Proposals in three (3) separate sealed envelopes. The First Envelope shall contain the Qualification Documents, the Second Envelope shall contain the Technical Proposal, and the

Third Envelope shall contain the Financial Proposal.

- 1.5.d On the Bid Submission Date, the PBAC shall open the First Envelope and ascertain whether the same is complete. After the Bid Submission Date, the PBAC shall then evaluate the Qualification Documents of each Bidder in accordance with Sections 2 (*Qualification Requirements*) and 4 (*Qualification Documents*). The PBAC shall determine the qualified and disqualified Bidders and notify them of the results in accordance with Sections 9.2 and 9.3. Disqualified Bidders shall be informed of the reasons for their disqualification and their Bid Proposals will be returned unopened together with their Bid Securities. The Qualified Bidders shall be informed of the date, time and venue for the opening of the Second Envelope.
- 1.5.e On the Second Envelope Opening Date, the PBAC shall open the Second Envelope of each Qualified Bidder and ascertain whether the same is complete and accompanied by the required Bid Security. After the Second Envelope Opening Date, the PBAC shall then evaluate the Technical Proposal of each Qualified Bidder in accordance with Section 5.1 (*Technical Proposal*). The PBAC shall determine which of the Technical Proposals comply with the evaluation criteria and notify the Qualified Bidders of the results of the evaluation. Qualified Bidders with “Non-Complying” Technical Proposals shall be informed of the reasons why their Technical Proposals were found to be “Non-Complying” and their Financial Proposals will be returned unopened together with their Bid Securities. The Qualified Bidders whose Technical Proposals meet the evaluation criteria and are rated as “Complying” shall be informed of the date, time and venue for the opening of the Third Envelope in accordance with Section 10.1.
- 1.5.f On the Third Envelope Opening Date, the PBAC shall compare the Bid Amounts submitted by the Qualified Bidders with “Complying” Technical Proposals. The PBAC shall rank the Bid Amounts in accordance with Section 10.2.d and determine the Bidder who submitted the Best Bid. The PBAC shall recommend to the DOTr Secretary the award of the Project to such Bidder.
- 1.5.g The DOTr Secretary shall issue the Notice of Award to the Qualified Bidder with a Complying Technical Proposal who submitted the Best Bid.
- 1.5.h The Winning Bidder must indicate its written conformity to the Notice of Award as well as its commitment to comply with the Post-Award Requirements and enter into a Concession Agreement with DOTr and MIAA.

1.6 REVISIONS AND CLARIFICATIONS TO THE BIDDING DOCUMENTS

The PBAC reserves the right to amend, revise, modify, or clarify any section of the Bidding Documents at any stage of the Bidding Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated through the issuance of bid bulletins by the PBAC which will be made available through the VDR. Upon the issuance of a bid bulletin, the same shall automatically be incorporated into and made an integral part of the relevant Bidding Document. It shall be the responsibility of the Bidder to be informed about the issuance of such bid bulletins; failure of which shall constitute a waiver of its right to be informed thereof.

1.7 RESPONSIBILITIES OF BIDDERS

- 1.7.a Notwithstanding any information given in the Bidding Documents, Information Documents and any additional communications from the DOTr, the MIAA, or the PBAC, including any notices and bid bulletins, it is the sole responsibility of each Bidder to:
 - 1.7.a(1) be fully acquainted with the requirements, terms, and conditions of the Bidding Process;
 - 1.7.a(2) examine all of the Bidding Documents and Information Documents and verify the correctness, accuracy, completeness, and reliability of the information contained in

these documents;

- 1.7.a(3) familiarize itself with all the applicable laws and administrative issuances and regulations of the Philippines, whether national or local, that may affect the Bidding Process and the Project; and
 - 1.7.a(4) determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic and ridership projections; the financial viability of the Project; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.
- 1.7.b The Bidders (including any Consortium Members or Affiliates), the Winning Bidder and the Concessionaire shall not be entitled to and shall not make any claim against the DOTr, MIAA, or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the grounds:
- 1.7.b(1) of any misunderstanding or misapprehension in respect of the Bidding Documents or Information Documents; or
 - 1.7.b(2) that incorrect or insufficient information relating to the Bidding Documents and/or Information Documents was given to them by the DOTr, MIAA, or any other associated party.
- 1.7.c By submitting its Bid, a Bidder shall be presumed to have fully examined and accepted all of the terms and conditions provided in all of the Bidding Documents.

1.8 COSTS AND EXPENSES OF PARTICIPATION

Interested parties and Bidders shall bear all costs, liabilities, losses and damages associated with or resulting from their participation in the Bidding Process. The DOTr and MIAA shall not be held responsible or liable in any way for any such costs, losses or damages incurred by any Bidder (whether incurred by it directly or indirectly, or by its advisors, Affiliates or other persons), regardless of the results of the Bidding Process.

1.9 QUERIES AND COMMENTS ON BIDDING DOCUMENTS

- 1.9.a A Prospective Bidder may submit queries and/or comments on the Bidding Documents and Information Documents. All queries and/or comments should be sent via the VDR.
- 1.9.b Prospective Bidders must submit their queries and/or comments in sets on or before the dates indicated in Table 1.
- 1.9.c Prospective Bidders must use the template below (as applicable) for all its queries and comments. Electronic copies of questions uploaded in the VDR must be sent in both Microsoft Excel and PDF format.

Date:	[Insert date of submission of queries and comments]
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Bidder Name:	[Insert name of Prospective Bidder]
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For queries and comments on the draft Concession Agreement and its Annexes:

Topic	Draft CA / Annex	Query / Comment	Proposed Revision (if any)
1.	[Indicate Section No. / Annex No.]		
2.	[Indicate Section No. / Annex No.]		

For queries and comments on this ITB and its Annexes:

Topic	Instructions to Bidders / Annex	Query / Comment	Proposed Revision (if any)
1.	[Indicate Section No. / Annex No.]		
2.	[Indicate Section No. / Annex No.]		

For queries and comments on the Information Documents:

Topic	Data Room Document Reference No.	Name of Doc. & Section Ref.	Query / Comment
1.	[Indicate Data Room Doc. Reference No.]		
2.	[Indicate Data Room Doc. Reference No.]		

1.9.d Queries on the Bidding Documents must be concrete or clarificatory, and not purely hypothetical in nature.

1.9.e The PBAC shall decide which queries it received on the dates specified above should be responded to and is under no obligation to respond to any of the queries received. Responses to queries and any modifications to the Bidding Documents will not identify which bidder or party made the query or request and shall be in writing, through duly issued supplemental notices or bid bulletins, and shall be sent to all Prospective Bidders. All supplemental notices and bid bulletins issued by the PBAC shall be deemed part of this ITB and incorporated in and made an integral part of the relevant Bidding Document.

1.10 OWNERSHIP OF DOCUMENTS

All documents submitted by a Prospective Bidder to the PBAC pursuant to this ITB shall become the property of the DOTr and MIAA and any information obtained by the DOTr and MIAA from such documents may be reasonably used by them subject to the confidentiality clause in Section 11 (*Confidentiality*).

1.11 LANGUAGE AND FOREIGN DOCUMENTS

1.11.a The Bid Proposals and all correspondence and documents relating to the Bidding Documents and the Bidding Process shall be prepared and written in English. The Bidder's submitted printed literature or document in a foreign language shall be accompanied by an English translation duly certified by a translator stating that the English translation is a complete and accurate translation of the original document. The Philippine Consular office having jurisdiction over the place where the translator's certification is issued shall authenticate or apostille such certification. Supporting

materials, which are not translated into English, may not be considered. In case of conflict, the English translation shall prevail.

- 1.11.b If a foreign authority issued the document, the Bidder should also submit a certified true copy of such document, in addition to the authentication/apostille certificate by the relevant Philippine consular official referred to in Section 1.11.a.
- 1.11.c If the document is a foreign law or regulation, the Bidder need only submit a copy of the applicable excerpt of such law or its translation with a citation of its source, without need of submitting a copy of the entire law, unless subsequently required by the PBAC. For this purpose, the Bidder should submit (a) a certified true copy of such excerpt issued by the competent government authority, or (b) a certification from the embassy or the consular office of the relevant foreign country in the Philippines that such excerpt is an accurate copy of the foreign law.
- 1.11.d All certified statements, regardless of the place of execution, must be notarized. For documents issued or executed outside of the Philippines, notarization made separately before a notary public, civil officer, or other person authorized under foreign law to administer oaths or to authenticate/apostille signatures shall be allowed, provided that the notarized documents must be authenticated before a Philippine consular official at the relevant Philippine consulate or apostilled at the relevant Apostille Office.
- 1.11.e For each instance in this ITB where authentication by a Philippine consular official is required, the form, including language, of the authentication shall be subject to the forms and rules applicable in the relevant Philippine office.
- 1.11.f For purposes of exigency, the Bidder may submit a photocopy of the unauthenticated foreign document accompanied by a copy of the official receipt for payment of fees for the consularization / apostille of the foreign document, provided that the Bidder shall comply with Section 12.2.m should it be selected as the Winning Bidder.

1.12 WAIVER OF RIGHTS

By participating in the Bidding Process, Bidders thereby waive any right they may have:

- 1.12.a to pursue previously submitted unsolicited proposals on the same Project or covering components of this Project, without prejudice to the right of such bidder to later submit an unsolicited proposal if the Project is not awarded as a result of this Bidding Process; and
- 1.12.b to seek and obtain a writ of injunction or prohibition or restraining order against the DOTr, MIAA, or the PBAC to prevent or restrain the holding of a bidding or any proceedings related thereto, the negotiation, award and execution of the contract to the Winning Bidder, and the carrying out of the awarded Concession Agreement. Such waiver shall, however, be without prejudice to the right of a disqualified or losing Bidder to question the lawfulness of its disqualification or the rejection of its Bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

1.13 SITE VISITS

- 1.13.a Prospective Bidders may request up to five (5) Project site visits beginning 28 August 2023 until 17 November 2023. Requests for site visit must be made by the Prospective Bidder through the VDR and at least three (3) days prior to its proposed date for the site visit.
- 1.13.b The proposed schedule for the site visit shall be confirmed by the PBAC through the VDR. Further details and protocols shall be provided by the PBAC via a bid bulletin to be issued to all Bidders.

1.14 PRE-BID CONFERENCE

1.14.a The PBAC shall conduct a Pre-Bid Conference on the date indicated in Table 1. The purpose of the Pre-Bid Conference is to clarify any part of the Bidding Documents and/or the Bidding Process and to answer any relevant questions from Interested Bidders and Prospective Bidders regarding the Bidding Documents, or such other relevant issues that Interested Bidders and Prospective Bidders may raise. The details of the Pre-Bid Conference are as follows:

Date: 22 September 2023

Time: 3:00 pm Manila time

Venue: Hybrid² with physical location to be announced at a later time through a bid bulletin and the websites of the Department of Transportation and the Manila International Airport Authority.

1.14.b No provisions, terms, or conditions in the Bidding Documents shall be modified by statements made at the Pre-Bid Conference unless these are made in writing and contained in a bid bulletin issued by the PBAC. A summary of the pre-bid conference proceedings shall be issued to all Prospective Bidders. Attendance at the pre-bid conference is not mandatory.

1.14.c The PBAC shall arrange for one-on-one meetings with Bidders during the periods indicated in Table 1, with the specific procedures dates to be announced through a bid bulletin. A Bidder scheduled for a one-on-one meeting is requested to submit its questions and/or comments at least three (3) days prior to such meeting, following the same procedures indicated in Section 1.9. No provision, term, or condition in the Bidding Documents shall be modified by statements made during these meetings unless these are made in writing and contained in a bid bulletin issued by the PBAC.

SECTION 2: QUALIFICATION REQUIREMENTS

To qualify to bid for the Project, Bidders must comply with all the Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability Qualification Requirements provided in this Section.

2.1 LEGAL QUALIFICATION REQUIREMENTS

2.1.a If the Bidder is a partnership, corporation or any other juridical entity - in case of Philippine partnerships, or corporations created pursuant to the Corporation Code of the Philippines, such partnerships or corporations must be registered in the Philippines with the Philippine Securities and Exchange Commission (SEC), or in case of foreign partnerships, corporations, or other juridical entities, the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.

2.1.b If the Bidder is a Consortium whose members are partnership(s), corporation(s) or any other juridical entity(ies) - in case of Philippine partnerships, or corporations created pursuant to the Corporation Code of the Philippines, such partnerships or corporations must be registered in the Philippines with the SEC or in case of foreign partnerships, corporations, or other juridical entities, the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity (each person or entity forming part of the consortium, a "Consortium Member").

2.1.c The Bidder in the case of Section 2.1.a, and each Consortium Member in the case of Section 2.1.b, must certify that it and its Affiliates whose projects and experience are being submitted as

² Face-to-face with simultaneous videoconferencing.

evidence of fulfillment of the requirements in this Section have no Unsatisfactory Performance Record, as per the format provided in Annex QD-5.

2.1.d An Airline-Related Entity can participate in the Bid subject to the following:

2.1.d(1) If the Bidder is a partnership, corporation or any other juridical entity, the Bidder itself or its Affiliate cannot be an Airline-Related Entity.

2.1.d(2) If the Bidder is a Consortium and any Consortium Member or such Consortium Members' Affiliates is an Airline-Related Entity, then such Consortium Member cannot own or be proposed to own more than thirty-three percent (33%) interest in such Consortium.

2.1.d(3) If more than one (1) Consortium Member is an Airline-Related Entity, then such Consortium Members cannot comprise or be proposed to own an aggregate of more than thirty-three percent (33%) interest in such Consortium.

2.1.e The Bidder, in case of a partnership, corporation or any other juridical entity, or each Consortium Member, in case of a Consortium, which is not an Airline-Related Entity, must certify that it is not an Airline-Related Entity, as per the format provided in Annex QD-2A.

2.1.f A GCR entity can participate in the Bid subject to the following:

2.1.f(1) If the Bidder is a partnership, corporation or any other juridical entity, the Bidder itself or its Affiliate cannot be a GCR Entity.

2.1.f(2) If the Bidder is a Consortium and any Consortium Member or such Consortium Members' Affiliates is a GCR Entity, then such Consortium Member cannot own or be proposed to own more than thirty-three percent (33%) interest in such Consortium.

2.1.f(3) If more than one (1) Consortium Member is a GCR Entity, then such Consortium Members cannot comprise or be proposed to own an aggregate of more than thirty-three percent (33%) interest in such Consortium.

2.1.g The Bidder, in case of a partnership, corporation or any other juridical entity, or each Consortium Member, in case of a Consortium, which is not a GCR Entity, must certify that it is not a GCR Entity, as per the format provided in Annex QD-2B.

2.2 TECHNICAL QUALIFICATION REQUIREMENTS

2.2.a To qualify to bid for the Project, the Bidder must meet the following technical requirements:

- Development Experience
- Operations and Maintenance Experience.

2.2.b Bidders must provide supporting documents, whenever applicable, as per the formats provided in Annexes QD-6 to QD-12, as evidence for meeting the technical requirements.

2.2.c The Bidder is allowed, but not required, to nominate the same entity to fulfill the Development Experience and Operation & Maintenance Experience, subject to the qualifications under Section 2.2.e and Section 2.2.f, respectively. If the Bidder nominates the same entity to fulfill the Development Experience and Operation & Maintenance Experience, such entity may cite the same project to fulfill the qualification requirements for both the Development Experience and Operation & Maintenance Experience.

2.2.d Nothing in this ITB shall preclude different Bidders from citing the same project as reference to fulfill the qualification requirements for Development Experience and Operation & Maintenance

Experience, so long as it is able to comply with the documentation requirements under Section 4 (*Qualification Documents*).

2.2.e Development Experience

- 2.2.e(1) The Bidder must have been an owner or concessionaire of an airport for which capital costs incurred was at least **Ten Billion Pesos (PhP 10 Billion) or its foreign currency equivalent, cumulative, in historical prices over the Eligible Period**. The Bidder may have owned or been the concessionaire for the airport for less than ten (10) years within the Eligible Period, as long as at least Ten Billion Pesos (PhP 10 billion) in capital cost was incurred during the time the Bidder owned or was the concessionaire for the airport.
- 2.2.e(2) For purposes of this Section 2.2.e, an “airport owner” or “airport concessionaire” shall refer to the entity that undertook the overall responsibility for the development of the airport, or a company having equity interest of at least twenty-five (25%) in that entity.
- 2.2.e(3) The entity which fulfills the Development Experience requirement may be:
- (i) If the Bidder is a partnership, corporation or any other juridical entity, the Bidder itself or its Affiliate; or
 - (ii) If the Bidder is a Consortium, a Consortium Member having at least ten percent (10%) interest in the Consortium, or such Consortium Member’s Affiliate.
- 2.2.e(4) To satisfactorily establish its claim, the entity whose Development Experience is being submitted to fulfill this requirement – whether the Bidder or a Consortium Member or any of their Affiliates – should submit:
- (i) Details of the project being submitted as reference to fulfill the entity’s Development Experience, following the format in Annex QD-6;
 - (ii) A certificate from the corporate secretary of the entity nominated to fulfill the Development Experience requirement, following the format provided in Annex QD-7A; and
 - (iii) A certificate on the Detail of Development Experience following the format provided in Annex QD-7B.
- 2.2.e(5) The entity whose experience is being submitted in fulfillment of this requirement must certify that it has no Unsatisfactory Performance Record as per the format provided in Annex QD-5.

2.2.f Operations & Maintenance (O&M) Experience

- 2.2.f(1) The Bidder must have expertise and experience in having undertaken the operation and maintenance of an International Airport for a period of at least three (3) calendar years anytime within the Eligible Period, with such International Airport having handled an Annual Passenger Throughput of at least **twenty-five (25) million passengers per annum of which at least 10 million passengers per annum** were international passengers.
- 2.2.f(2) For purposes of this Section 2.2.f, operating and maintaining an airport means managing the day-to-day operations of the airport (landside and airside), dealing with relevant government authorities, investing and maintaining the related infrastructure (landside and airside), A ground handling operator is not considered as an entity that

“operates and maintains” an airport, since it only provides services to airlines.

- 2.2.f(3) The entity whose experience is being submitted to fulfill the O&M Experience requirement may either be:
- (i) A third party designated to operate and maintain the airport; or
 - (ii) An entity with an equity interest of at least 10% in the entity that operated and maintained the airport.
- 2.2.f(4) The entity which fulfills the O&M Experience requirement may be:
- (i) If the Bidder is a partnership, corporation or any other juridical entity, the Bidder itself or its Affiliate;
 - (ii) If the Bidder is a Consortium, a Consortium Member having at least ten percent (10%) interest in the Consortium, or such Consortium Member's Affiliate; or
 - (iii) A Designated Operator. A Designated Operator whose O&M Experience is being submitted to fulfill this requirement cannot be nominated by more than one Bidder.
- 2.2.f(5) The entity whose O&M Experience is being submitted to fulfill this requirement cannot be an operator of any of the Greater Capital Region (GCR) airports, namely: (i) Clark International Airport, (ii) New Manila International Airport, and (iii) Sangley Point International Airport.
- 2.2.f(6) To satisfactorily establish its claim, the entity whose O&M Experience is being submitted to fulfill this requirement – whether the Bidder or a Consortium Member or any of their Affiliates or the Designated Operator – should submit:
- (i) Details of the project being submitted as reference to fulfill the entity's O&M Experience, following the format in Annex QD-9;
 - (ii) If the entity fulfilling the O&M requirement is not itself a third party previously designated to operate and maintain an airport, a certificate from its corporate secretary, following the format provided in Annex QD-11A; and
 - (iii) A certificate on the Details of Operation and Maintenance Experience, following the format provided in Annex QD-11B.
- 2.2.f(7) The entity whose O&M Experience is being submitted to fulfill this requirement must certify that it has no Unsatisfactory Performance Record as per the format provided in Annex QD-5.

2.2.g Qualified Key Personnel

The Bidder and/or the Consortium Members must have, among them and their Affiliates' collective personnel, the required qualifications and experience described below.

Sr. No.	Experience Required	Minimum Years of Experience
1	At least (1) person previously in a senior management level role responsible for the management of the operation of an airport for	15 years of airport / aviation industry

	a period of at least three (3) calendar years. The passenger throughput of the airport shall be at least ten (10) million passengers per annum during the Eligible Period.	experience
2	At least one (1) person previously in a senior management level role responsible for the management of repairs and maintenance of an airport for a period of at least three (3) calendar years. The passenger throughput of the airport shall be at least ten (10) million passengers per annum during the Eligible Period.	15 years of airport / aviation industry experience
3	At least one (1) person responsible for client-side delivery of a complex multi-year portfolio or program of projects that included the airport, design and construction projects at an airport with a throughput of at least ten (10) million passengers per annum during the Eligible Period.	15 years of construction and/or airport / aviation industry experience
4	At least one (1) person who will be responsible for the commercial development and marketing of the Airport, who has experience in commercial leasing and management.	15 years of industry experience
5	At least one (1) person responsible for project management (as a client, consultant, or contractor) for more than three air traffic management related projects within the Eligible Period.	15 years of air traffic management or complex information technology industry experience
6	At least one (1) person responsible for the preparation of an airport master plan (as a client or consultant) for more than 2 airports each with a throughput of at least 10 million passengers within the Eligible Period. This person shall also have experience of complex terminal airport planning including the management of terminal stimulation.	15 years of airport planning or airport / aviation industry experience
7	At least one (1) person responsible (as a client, consultant, or contractor) for delivery of a complex multi-year portfolio or program of information technology system projects at an airport with a throughput of at least 10 million passengers per annum during the Eligible Period.	15 years of information technology or airport / aviation industry experience

2.2.g(1) In order to meet the qualifications and experience required in Section 2.2.e, a Bidder may propose persons who are or will be employed or engaged, including external personnel, by the Bidder itself, a Consortium Member, or any of their Affiliates. The Bidder must propose at least one (1) person, and a maximum of **three (3)** persons, for each of the above key personnel. Each of the above key personnel qualifications must be met by different individuals.

2.2.g(2) Any person nominated by a Bidder to fulfill any of the required qualifications as a Key Personnel may be nominated by another Bidder for the same or a different Qualified Key Personnel position.

2.2.g(3) In the event that it is selected as the Winning Bidder, a Bidder must undertake to assign these key personnel to implement the Project.

2.2.g(4) In case any of these key personnel is no longer available or no longer connected with the Bidder at the time of implementation by the Winning Bidder of the Project, they may be replaced as provided in the Concession Agreement.

- 2.2.g(5) The person whose experience is being submitted in fulfillment of this requirement must certify that s/he has no Unsatisfactory Performance Record, as per the format provided in Annex QD-13.

2.3 FINANCIAL QUALIFICATION REQUIREMENTS

2.3.a To be financially qualified to bid for the Project, a Bidder must meet the following Financial Qualification Requirements:

2.3.a(1) A Bidder must have [i] a Net Worth of at least **Twenty Billion Pesos (PhP 20.0 billion)**, or its foreign currency equivalent,³ as of the Bidder's latest audited financial statements, which must be for a financial year ending not earlier than 31 December 2022, or [ii] a Set-Aside Deposit equivalent to the same amount. To meet this requirement:

(i) a Consortium is allowed to consolidate the Net Worth of Consortium Members with a percentage share of at least twenty-five percent (25%) each in the Consortium; or

ten (ii) Add the sum of, for each Consortium Member with a percentage interest of at least ten percent (10%) in the Consortium, the product of such Consortium Member's Net Worth and its percentage interest in the Consortium. To illustrate: Consortium Member A who has a 10% interest in the Consortium and a net worth of PHP 100 billion, can be nominated to fulfill this Financial Qualification Requirement together with Consortium Member B who has a 10% interest in the Consortium and a net worth of PHP 110 billion, as follows:

Consortium Member A:

10% x PHP 100 billion = PHP 10 billion

Consortium Member B:

10% x PHP 110 billion = PHP 11 billion

Sum:

PHP 10 billion + PHP 11 billion = PHP 21 billion.

2.3.a(2) It is anticipated that the Bidder will need to arrange for funding the estimated cost of the Project using a combination of debt and equity. The Bidder shall provide a letter testimonial from a domestic universal/commercial bank or an international bank authorized by the Bangko Sentral ng Pilipinas (BSP) to transact in the Philippines attesting that the Bidder and/or members of the Consortium are banking with them, and that they are in good financial standing and are qualified to obtain credit accommodations from such banks to finance the Project. For guidance, Bidders may make reference to the BSP's list of universal and commercial banks at: <https://www.bsp.gov.ph/SitePages/FinancialStability/DirBanksFIList.aspx>

2.3.b The entity or entities which fulfill the Financial Qualification requirements may be:

2.3.b(1) If the Bidder is a partnership, corporation or any other juridical entity, the Bidder itself, or its Parent Company; and

2.3.b(2) If the Bidder is a Consortium:

³ Exchange rate for the purpose of converting values in other currencies to Philippine Pesos will be the exchange rate specified by the Bangko Sentral ng Pilipinas on the date of the balance sheet submitted in the audited financial statements.

- (i) a Consortium Member or Members, each with at least twenty-five percent (25%) interest in the Consortium if qualifying under Sec. 2.3.a (1)(i), or such Consortium Member's or Members' Parent Companies; or
- (ii) a Consortium Member or Members, each with at least ten percent (10%) interest in the Consortium if qualifying under Sec. 2.3.a (1)(ii), or such Consortium Member's or Members' Parent Companies.

2.3.c Each entity which is proposed to meet the Financial Qualification Requirement must also submit a Certification of Absence of Unsatisfactory Performance Record, as per the format provided in Annex QD-5, but only in relation to the last two paragraphs of the definition of "Unsatisfactory Performance" which deal with:

2.3.c(1) inclusion in a blacklist, current as of the Bid Submission Date, issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list of major international financial institutions such as, but not limited to, the World Bank, European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank, African Development Bank Group, and the Asian Infrastructure Investment Bank, whether as an individual contractor, partnership, corporation, or any other juridical entity, or as a member of a joint venture or consortium; and

2.3.c(2) involvement in any Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practice or having Conflicts of Interest.

SECTION 3: BID PROPOSAL REQUIREMENTS

3.1 TECHNICAL PROPOSAL REQUIREMENTS

The Technical Proposal of the Qualified Bidder must comply with all of the requirements provided in Section 5.1 (*Technical Proposal*). The Technical Proposal of the Qualified Bidder shall be rated as "Complying" if all the requirements under Section 5.1 (*Technical Proposal*) have been complied with; otherwise, the Technical Proposal shall be rated as "Non-Complying". All Bidders whose Technical Proposals have been rated as "Complying" shall be considered on equal footing insofar as their Technical Proposals are concerned.

3.2 FINANCIAL PROPOSAL REQUIREMENTS

The Financial Proposal of the Qualified Bidder with a Complying Technical Proposal must comply with all of the requirements provided in Section 5.2 (*Financial Proposal*). In addition, it must be consistent with the Bidder's Technical Proposal.

SECTION 4: QUALIFICATION DOCUMENTS (FIRST ENVELOPE)

On the Bid Submission Date, the Bidder must submit the First Envelope consisting of the following Qualification Documents, using the relevant forms indicated in this Section:

- 4.1 Checklist of Qualification Documents, using the form in Annex QDC.
- 4.2 Bid Letter, using the form in Annex QD-1.

- 4.3 Notarized Certification of Not Being an Airline-Related Entity, using the form in Annex QD-2A.
- 4.4 Notarized Certification of Not Being a GCR Entity, using the form in Annex QD-2B.
- 4.5 Business Structure, using the form in Annex QD-3A for partnerships or corporations, or Annex QD-3B for Consortia.
 - 4.5.a The Business Structure must indicate the entities that fulfill the Technical Qualification Requirements and the Financial Capability Qualification Requirements, and any Affiliates of these entities whose projects, experience, or financial capabilities are being submitted to comply with such Qualification Requirements.
 - 4.5.b For Consortia, the Business Structure must indicate the Lead Member and all Consortium Members, the proposed percentage interest of each Consortium Member in the Consortium, and the total percentage interest of all Consortium Members in the Consortium which must sum up to one hundred percent (100%).
 - 4.5.c If an Affiliate will be used to comply with any of the Technical Qualification Requirements or the Financial Qualification Requirements, evidence of affiliation must be submitted.
- 4.6 Basic Information Sheet, using the form in Annex QD-4.
 - 4.6.a The Basic Information Sheet must be submitted for all entities identified in the Business Structure.
 - 4.6.b For each entity in the Business Structure, the following attachments must also be submitted:
 - 4.6.b(1) Certified true copy of its latest General Information Sheet (GIS), stamped “received” by the SEC or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copies may be issued by either the SEC or its equivalent in a foreign country, or the entity’s corporate secretary. If it is issued by the entity’s corporate secretary, the certification must be under oath and notarized.
 - 4.6.b(2) Certified true copy of its SEC Certificate of Incorporation or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copy of the SEC Certificate of Incorporation, or the equivalent document for a foreign entity, must be issued by the SEC or its equivalent in a foreign country.
 - 4.6.b(3) Certified true copy of its Articles of Incorporation and By-Laws or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copy of the Articles of Incorporation and By-Laws may be issued either by the SEC or its equivalent in a foreign country, or by the entity’s corporate secretary. If the certified true copies are issued by the entity’s corporate secretary, the certification must be under oath and notarized.
- 4.7 Notarized Certification of Absence of Unsatisfactory Performance Record, using the form in Annex QD-5. The Notarized Certification of Absence of Unsatisfactory Performance Record must be submitted for all entities identified in the Business Structure.
- 4.8 Development Experience, using the form prescribed in Annex QD-6.

- 4.8.a This document must be submitted by the entity which fulfills the Development Experience, as identified in the Business Structure.
- 4.8.b The following attachments must also be submitted for each project cited as reference:
 - 4.8.b(1) Certificate for Establishing Shareholding in an Airport Concessionaire using the form prescribed in Annex QD-7A.
 - 4.8.b(2) Certificate on the Details of Development Experience using the form prescribed in Annex QD-7B.
 - 4.8.b(3) If the project was completed by an Affiliate of the entity which fulfills the Development Experience Requirement, evidence of such affiliation using the form prescribed in Annex QD-8.
- 4.9 Operations & Maintenance Experience using the form prescribed in Annex QD-9.
 - 4.9.a To be submitted by the entity which fulfills the Operations & Maintenance Experience Requirement, as identified in the Business Structure.
 - 4.9.b The following attachments must also be submitted for each project cited as reference:
 - 4.9.b(1) Certificate for Establishing Shareholding in an Entity that Operated & Maintained an Airport using the form prescribed in Annex QD-11A.
 - 4.9.b(2) Certificate on the Details of Operations & Maintenance Experience from an Authorized Issuer using the form prescribed in Annex QD-11B.
 - 4.9.b(3) If the project was completed by an Affiliate of the entity which fulfills the Operations & Maintenance Experience Requirement, evidence of such affiliation using the form prescribed in Annex QD-8.
 - 4.9.c Notarized Statement of Capacity to Undertake the Operation & Maintenance Requirements of the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Operation & Maintenance Requirements of the Project, using the form in Annex QD-10. This must be submitted by the entity nominated by the Bidder as the Designated Operator, as identified in the Business Structure.
- 4.10 List of Qualified Key Personnel using the form prescribed in Annex QD-12.
 - 4.10.a Notarized Certification of Absence of Unsatisfactory Performance Record for all Qualified Personnel, using the form prescribed in Annex QD-13.
 - 4.10.b Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Project, using the form prescribed in Annex QD-14.
- 4.11 Notarized Statement of Financial Qualification using the form prescribed in Annex QD-15.
 - 4.11.a To be submitted by the entity or entities which fulfill the Financial Qualification Requirements, as identified in the Business Structure.
 - 4.11.b Required attachments:
 - 4.11.b(1) Certified True Copy of the latest audited financial statements, which must be dated not earlier than 31 December 2022, stamped "received" by the Bureau of Internal Revenue, or for foreign entities, the appropriate government agency equivalent to the Bureau of Internal Revenue in the foreign country where the foreign

entity was registered for recognition or creation of its juridical personality or capacity.

4.11.b(2) A letter testimonial from a domestic universal/commercial bank or an international bank authorized by the BSP to transact in the Philippines or any international bank recognized by the BSP attesting that the Bidder or Consortium Members, or their Affiliates, as the case may be, are banking with them, and that they are in good financial standing and are qualified to obtain credit accommodations from such banks to finance the project.

4.11.b(3) If the financial qualification of the Parent Company is used to fulfill this requirement, evidence of such affiliation using the form prescribed in Annex QD-8.

4.12 Notarized Application to Participate in the Bidding to be submitted by the Bidder using the form prescribed in Annex QD-16.

4.13 Notarized Corporate Authorizations and Designation of Authorized Representative:

4.13.a If the Bidder is a partnership or corporation, it must submit a Notarized Authority to Participate in the Bidding and Designation of Authorized Representative, using the form in Annex QD-17A.

4.13.b If the Bidder is a Consortium, each Consortium Member must submit a Notarized Authority to Participate in the Consortium and in the Bidding, and Designation of Lead Member and Authorized Representative of the Consortium, using the form in Annex QD-17B.

SECTION 5: BID PROPOSALS

5.1 TECHNICAL PROPOSAL (SECOND ENVELOPE)

On the Bid Submission Date, the Bidder must submit its Technical Proposal in the Second Envelope consisting of the following Documents, using the relevant forms indicated in this Section:

5.1.a Checklist of Technical Proposal Documents, using the form in Annex TPC.

5.1.b Bid Security, as described in Section 7.1 (*Form of Bid Security*), using the form in Annex TP-1 without modification;

5.1.c Technical Proposal comprising of:

5.1.c(1) Notarized statement from the Authorized Representative of the Bidder, using the form in Annex TP-2, confirming submission of all required Annexes under the Technical Proposal; and

5.1.c(2) Annexes TP-3 to TP-4 including all the sub-annexes.

5.2 FINANCIAL PROPOSAL (THIRD ENVELOPE)

On the Bid Submission Date, the Bidder must submit its Financial Proposal in the Third Envelope consisting of the following Documents, using the relevant forms indicated in this Section:

5.2.a Checklist of Financial Proposal Documents, using the form in Annex FPC.

5.2.b Bidder's Financial Proposal which should indicate its Bid Amount, which shall be Government's percentage share of Gross Revenue, excluding Passenger Service Charge (PSC) Revenues,

as defined in Annex FP-1, and on top of the following: [1] an upfront payment to MIAA in the amount of **Thirty Billion Pesos (PhP 30,000,000,000)** to be deposited to a blocked account (consistent with DOF-DBM-COA Permanent Committee Joint Circular No. 2023-01) in favor of MIAA upon contract signing, and [2] a fixed annuity payment to MIAA in the amount of **Two Billion Pesos (PhP 2,000,000,000)** to be paid annually.

- 5.2.c The Bid Amount must be expressed in percent, stated in both words and figures, which shall be indicated up to two (2) decimal points using the form in Annex FP-1, and if there is a discrepancy between the words and figures, the amount in words shall prevail.
- 5.2.d An electronic working copy of its fifteen (15) plus ten (10) -year financial model on a Universal Serial Bus (USB), in editable Microsoft Excel format, with all relevant linkages to projected passenger traffic, estimated project cost, sources of financing, sources of revenue, operating costs, project returns, etc. and attendant detailed assumptions and base data thereto. The financial model should also clearly identify the Financial Bid finally quoted in the Financial Proposal. For avoidance of doubt, it is clarified that no information contained in the financial model will be binding on the Grantors at any stage whatsoever. Non-submission of a working copy of the financial model will lead to Financial Proposal being rated as “Fail.”

At the minimum, the following information are required to be in the financial model:

1. Project Capital Costs
Mandatory Works <ul style="list-style-type: none"> • CAAP/ ATC tower improvement • Terminal general upgrade and refurbish • Airfield improvement • Landside commercial development • Flood alleviation • Runway resurfacing
Initial Works <ul style="list-style-type: none"> • Airside road improvement • Car parking expansion • Terminal improvement • Roads resurfacing
Replacement Capex <ul style="list-style-type: none"> • Maintenance investment
Future Improvement <ul style="list-style-type: none"> • Service improvement
2. Annual Traffic Forecast Inputs <i>(values must align with traffic forecast submitted in TP-4B)</i>
Air traffic movements split by domestic and international
Passenger numbers split by domestic and international
Cargo tonnage split by domestic and international
3. Projected Income and Expenses
Revenues
Aeronautical revenue
Passenger Service Charges (PSC)
Landing and Take-off
Aircraft Parking
Aerobridge / Tacking fees
Check-in counter
Other Aeronautical revenues
Non-aeronautical revenue
Duty-free
Commercial Space Rental
Car Parking
Other Non-aeronautical revenues
Expenses

Transition costs (initialization, transaction advisory, independent consultant services)
Operating expenses
Personnel
Maintenance
Utilities
Others
Local business taxes
Real property taxes
Government share in other gross income (exclude PSC revenue)
Other annuity or compensation payments to government (if any)
Debt-related fees (ex. Documentary stamp tax, commitment fees, arrangement fee)
Earnings before Interest Taxes Depreciation and Amortization (EBITDA)
Depreciation and amortization
Earnings before Interest and Taxes (EBIT)
Interest expenses
Earnings before Taxes (EBT)
Income taxes
Net income
3. Projected Balance Sheet
Assets
Current Assets
Cash
Accounts receivable
Other current assets
Noncurrent Assets
Property, plant, and equipment
Intangible assets
Input VAT asset
Other noncurrent assets
Liabilities
Current liabilities
Trade and other payables
Borrowings (current portion)
Other current liabilities
Noncurrent liabilities
Borrowings
Other noncurrent liabilities
Equity
Share capital
Retained Earnings
Total (Short-term and Long-term) Debt / Total Capital Ratio
4. Projected Cash flow Statement
Cash flows from operations
EBITDA
Changes in Working Capital
Taxes
Cash flows from investing
Upfront payment
Investment in Property, Plant, and Equipment (PPE)
Cash flow from financing
Interest expense
Debt drawdown
Debt repayments
Equity contributions
Dividend payment
Net cash flow
Beginning cash balance
Ending cash balance
5. Rates of Return and Cost of Capital

Project IRR and Weighted Average Cost of Capital <i>(please show calculations to derive the project IRR and breakdown of WACC)</i>
Equity IRR <i>(please show calculations to derive the equity IRR and compare with cost of equity)</i>

- 5.2.e Project Financing Plan, using the form in Annex FP-2, which must show that the proposed financing plan can adequately fund the Works required for the Project and still enable the Concessionaire to service its debt obligations, fulfill its covenants with its lenders, and realize a reasonable return on equity, with amounts stated in Philippines Pesos and expressed in 2023 prices.

SECTION 6: VALIDITY OF BIDS

- 6.1 A Bid shall be valid for a period of not less than one hundred and eighty (180) days from the Bid Submission Date.
- 6.2 Right to reject of bids, waive minor defects and terminate the bidding process:
- 6.2.a The PBAC reserves the right to accept or reject any or all Bids.
- 6.2.b Provided that a Bid is substantially responsive, the PBAC reserves the right to waive any nonconformities in the Qualification Documents and Bid Proposals that do not constitute a material deviation, reservation, or omission, and accept the offer it deems most advantageous to the Government.
- 6.2.c At any time prior to the execution of the Concession Agreement by the Concessionaire, the PBAC or DOTr and MIAA jointly reserve the right not to proceed with the Bidding Process and the execution of the Concession Agreement, without prior notice or incurring liability, and without any obligation to give any reason not to proceed.
- 6.2.d When an extension of validity of Bids is considered necessary, Bidders shall be requested in writing to extend the validity of their Bids before the expiration date. However, Bidders shall not be allowed to modify or revise the price or other substance of their Bids. Bidders shall have the right to refuse to grant such an extension without forfeiting their Bid Security, but those who are willing to extend the validity of their Bids shall also be required to extend the validity of their bid securities by twenty-eight (28) days beyond the deadline of the extended bid validity period.

SECTION 7: BID SECURITY

7.1 FORM OF BID SECURITY

The Bid Security required to be submitted as part of the Bid Proposal must be an irrevocable standby letter of credit in the amount of **One Billion Seven Hundred Six Million Pesos (PhP 1,706,000,000.00)** and in the form specified in Annex TP-1 without modification. The letter of credit must be issued by a domestic universal/commercial bank or an international bank authorized by the BSP to transact in the Philippines.

7.2 VALIDITY AND PURPOSE

The Bid Security shall remain valid for one hundred eighty (180) days from the Bid Submission Date. The Bid Security shall guarantee that a Bidder shall comply with all of the terms of this ITB, and if declared the Winning Bidder, that it shall comply with all of the Post-Award Requirements, execute the Concession Agreement and that the Project SPC shall thereafter assume and accede to the Concession Agreement.

7.3 FORFEITURE OF BID SECURITY

The Bid Security shall be forfeited in its entirety in favor of the DOTr and MIAA upon the occurrence of any of the following events:

- 7.3.a the Bidder withdraws its Bid Proposal at any time prior to one hundred eighty (180) calendar days after the Bid Proposal Submission Date;
- 7.3.b the Bidder, any Consortium Member, or Affiliate of the Bidder, the Winning Bidder (or the Project SPC it shall form), or any of the officers, employees, agents, or advisers of any of these entities (i) commits any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice, (ii) has a Conflict of Interest, or (iii) violates the Lock-Up Rules as provided in Section 14, regardless of the stage of the Bidding Process when the violation existed, was committed, or discovered;
- 7.3.c the Bidder is disqualified or fails to post-qualify due to a material misrepresentation in any statement made or document submitted as part of its Qualification Documents or Bid Proposal;
- 7.3.d the Winning Bidder fails to comply with the Post-Award Requirements within forty-five (45) days from official receipt by the Winning Bidder of the Notice of Award;
- 7.3.e the Winning Bidder fails to sign the Concession Agreement within five (5) days from its receipt of the notice from the DOTr and MIAA that all of the Post-Award Requirements have been complied with;
- 7.3.f the Winning Bidder or Concessionaire fails to post the Construction Performance Security on or before the Signing Date; or
- 7.3.g other events as described in this Instructions to Bidders and the BOT Law as grounds for forfeiture of the Bid Security.

7.4 RETURN OF BID SECURITY

- 7.4.a Bidders who (a) are disqualified, or (b) fail to submit a compliant Technical Proposal or Financial Proposal for reasons other than those provided in Section 7.3 (*Forfeiture of Bid Security*) of these Instructions to Bidders, will have their Bid Security returned to them without interest within ten (10) days from receipt of written notice of their disqualification.
- 7.4.b Within ten (10) days after the signing of the Concession Agreement by the Concessionaire, or one hundred eighty (180) days after the Bid Submission Date, whichever comes earlier, the Bid Securities of all Bidders whose Bid Securities have not been forfeited or previously returned, except for that of the Winning Bidder, will be returned without any interest.
- 7.4.c In cases where extension of validity of Bids becomes necessary, the validity of the Bid Security shall also be extended twenty-eight (28) days beyond the deadline of the extended Bid validity period, as indicated in Section 6.2.d.

SECTION 8: PREPARATION AND SUBMISSION OF QUALIFICATION DOCUMENTS AND BID PROPOSALS

8.1 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS

8.1.a A Bidder must submit its Qualification Documents in the following form:

- (i) one (1) complete original set, clearly marked on each page as “QUALIFICATION DOCUMENTS-ORIGINAL,” numbered continuously, with cascading tabs;
- (ii) one (1) set of photocopies, clearly marked on each page as “QUALIFICATION DOCUMENTS-COPY NO. 1”, with cascading tabs; and
- (iii) five (5) readable Universal Serial Bus (USB), each containing electronic files of all of the Qualification Documents in Portable Document Format (.pdf) and Microsoft Word (.doc) formats, with the pages arranged in exactly the same sequence as the sequence in the original set of the Qualification Documents; provided that in the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail.

8.1.b Whenever possible, the Qualification Documents must be printed either in standard A4 paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.

8.1.c Each set of the Qualification Documents must be placed in an envelope. The five (5) USBs should also be placed in an envelope. Each of the two (2) envelopes containing the Qualification Documents and the envelope containing the five (5) USBs must be sealed and appropriately addressed and marked as follows:

<p style="text-align: center;">DEPARTMENT OF TRANSPORTATION AND MANILA INTERNATIONAL AIRPORT AUTHORITY</p> <p style="text-align: center;">PRE-QUALIFICATIONS, BIDS, AND AWARDS COMMITTEE OF THE NINYO AQUINO INTERNATIONAL AIRPORT PUBLIC PRIVATE PARTNERSHIP PROJECT</p> <p style="text-align: center;">QUALIFICATION DOCUMENTS – [ORIGINAL / COPY]</p> <p style="text-align: center;">[STATE NAME AND ADDRESS OF BIDDER]</p> <p style="text-align: center;">DO NOT OPEN UNTIL [●], 2023, at [TIME]</p>

8.1.d If any of the envelopes are not properly sealed and/or marked as instructed above, the PBAC shall not assume any responsibility for the loss of the Qualification Documents.

8.2 FORMAT OF SUBMISSION OF TECHNICAL PROPOSAL

8.2.a A Bidder shall submit its Technical Proposal (Envelope 2) in the following form:

- (i) One (1) complete original set, clearly marked on each page as “TECHNICAL PROPOSAL-ORIGINAL,” numbered continuously, with cascading tabs;

- (ii) One (1) set of photocopies, clearly marked on each page as “TECHNICAL PROPOSAL-COPY NO. 1”, with cascading tabs; and
- (iii) Five (5) Universal Serial Bus’ (USB) each containing electronic files of all the documents comprising the Technical Proposal in Portable Document Format (.pdf) and Microsoft Word (.doc) format, except for the Gantt charts required, which shall be in Portable Document Format (.pdf) and the project planning software that will be used as indicated in Annex TP-4G, with the pages arranged in exactly the same sequence as the sequence in the original set of the Technical Proposal; provided that in the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail.

8.2.b Whenever possible, the Technical Proposal must be printed either in standard A4 paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.

8.2.c Each set of the Technical Proposal must be placed in an envelope. The five (5) USBs should also be placed in an envelope. Each of the two (2) envelopes containing the Technical Proposal and the envelope containing the five (5) USBs must be sealed and appropriately addressed and marked as follows:

**DEPARTMENT OF TRANSPORTATION
AND
MANILA INTERNATIONAL AIRPORT AUTHORITY**

**PRE-QUALIFICATIONS, BIDS, AND AWARDS COMMITTEE OF THE
NINOY AQUINO INTERNATIONAL AIRPORT PUBLIC PRIVATE PARTNERSHIPS
PROJECT**

TECHNICAL PROPOSAL – ORIGINAL

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL [●], 2023, at [TIME]

8.2.d If any of the envelopes are not properly sealed and/or marked as instructed above, the PBAC shall not assume any responsibility for the loss of the Technical Proposal.

8.3 FORMAT OF SUBMISSION OF FINANCIAL PROPOSAL

8.3.a A Bidder shall submit its Financial Proposal (Envelope 3) in the following form:

- (i) One (1) complete original copy of the Bid Amount, clearly marked on each page as “BID AMOUNT-ORIGINAL”;
- (ii) One (1) complete original set of the Financial Model and Project Financing Plan, clearly marked on each page as “FINANCIAL MODEL & PROJECT FINANCING PLAN-ORIGINAL,” numbered continuously, with cascading tabs;
- (iii) One (1) set of photocopies of the Financial Model and Project Financing Plan, clearly marked on each page as “FINANCIAL MODEL & PROJECT FINANCING PLAN-COPY NO. 1”; and
- (iv) Five (5) readable USBs, each containing electronic files of all the documents comprising the Financial Model and Project Financing Plan, with the Financial Model in Microsoft Excel format with traceable formulas and the Project Financing Plan in Portable Document Format

(.pdf), with the pages arranged in exactly the same sequence as the sequence in the original set of the Financial Model and Project Financing Plan; provided that in the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail.

- 8.3.b Each page of the original set of the Financial Proposal, including any required attachments, shall be initialed using blue ink on the right margin by the Bidder's authorized representative as identified in the form in Annex QD-17A or QD-17B. In case of conflict between the original set and the photocopies, the original set shall prevail.
- 8.3.c Whenever possible, the Financial Proposal must be printed either in standard A4 paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.
- 8.3.d The original copy of the Bid Amount must be placed in a sealed envelope and appropriately addressed and marked as follows:

**DEPARTMENT OF TRANSPORTATION
AND
MANILA INTERNATIONAL AIRPORT AUTHORITY**

**PRE-QUALIFICATIONS, BIDS, AND AWARDS COMMITTEE OF THE
NINOY AQUINO INTERNATIONAL AIRPORT PUBLIC PRIVATE PARTNERSHIPS
PROJECT**

BID AMOUNT – ORIGINAL

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL [●], 2023, at [TIME].

- 8.3.e Each set of the Financial Model and Project Financing Plan must be placed in an envelope. The five (5) USBs should also be placed in an envelope. Each of the two (2) envelopes containing the Financial Model and Project Financing Plan and the envelope containing the five (5) USBs must be sealed and appropriately addressed and marked as follows:

**DEPARTMENT OF TRANSPORTATION
AND
MANILA INTERNATIONAL AIRPORT AUTHORITY**

**PRE-QUALIFICATIONS, BIDS AND AWARDS COMMITTEE OF THE
NINOY AQUINO INTERNATIONAL AIRPORT PUBLIC PRIVATE PARTNERSHIPS
PROJECT**

FINANCIAL MODEL & PROJECT FINANCING PLAN-ORIGINAL

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL[●], 2023, at [TIME].

- 8.3.f If any of the envelopes are not properly sealed and/or marked as instructed above, the PBAC shall not assume any responsibility for the loss of the Financial Proposal.

8.4 FORMAT OF SUBMISSION OF BID

8.4.a The Bidder shall place the original sets of the Qualification Documents (Envelope 1), Technical Proposal (Envelope 2) and Financial Proposal (Envelope 3), and the USBs containing the electronic copies, in one outer sealed box marked as follows:

<p style="text-align: center;">[DEPARTMENT OF TRANSPORTATION AND MANILA INTERNATIONAL AIRPORT AUTHORITY</p> <p style="text-align: center;">PRE-QUALIFICATIONS, BIDS AND AWARDS COMMITTEE OF THE NINYO AQUINO INTERNATIONAL AIRPORT PUBLIC PRIVATE PARTNERSHIPS PROJECT</p> <p style="text-align: center;"><u>BID – ORIGINAL</u> [STATE NAME AND ADDRESS OF BIDDER]</p> <p style="text-align: center;">DO NOT OPEN UNTIL [●], 2023], at [TIME]</p>
--

8.4.b The Bidder shall place each of the sets of photocopies of the Qualification Documents (Envelope 1), the Technical Proposal (Envelope 2) and the Financial Model and Project Financing Plan (Envelope 3) in one outer sealed boxes, which should be marked as follows:

<p style="text-align: center;">[DEPARTMENT OF TRANSPORTATION AND MANILA INTERNATIONAL AIRPORT AUTHORITY</p> <p style="text-align: center;">PRE-QUALIFICATIONS, BIDS AND AWARDS COMMITTEE OF THE NINYO AQUINO INTERNATIONAL AIRPORT PUBLIC PRIVATE PARTNERSHIPS PROJECT</p> <p style="text-align: center;">BID – COPY [STATE NAME AND ADDRESS OF BIDDER]</p> <p style="text-align: center;">DO NOT OPEN UNTIL [●], 2023], at [TIME]</p>

8.4.c If Bids are not sealed and marked as required, the PBAC shall assume no responsibility for the misplacement or premature opening of the Bids.

8.5 DEADLINE AND PLACE OF SUBMISSION OF BIDS

8.5.a Bidders shall submit their Bids to:

Pre-Qualifications, Bids, and Awards Committee of Department of Transportation
And
Manila International Airport Authority
For
Ninoy Aquino International Airport PPP Project
Unit 62, 6th Floor, Columbia Tower
Ortigas Avenue, Mandaluyong City

8.5.b The Bids must be submitted on or before 10:00 am of the Bid Submission Date. The time of submission of Bids shall be determined by reference to Philippine Standard Time as determined

by the Philippine Atmospheric, Geophysical and Astronomical Services Administration and displayed at the following website: <http://www.dost.gov.ph>. A Bid submitted outside of the prescribed time shall not be accepted by the PBAC and such Bidder shall be automatically disqualified from the Bidding.

- 8.5.c Each Bid submitted shall be numbered in the order received and stamped with the time of receipt. In addition, the receipt of Bids shall be recorded in a register in the order of receipt specifying the date, time and name of the Bidder submitting the same.

SECTION 9: OPENING AND EVALUATION OF QUALIFICATION DOCUMENTS

- 9.1 Immediately after 10:00 am on the Bid Submission Date, the PBAC will begin the opening proceedings by announcing the names of the Bidders who have submitted Bids and such other details as the PBAC may consider appropriate. The PBAC shall then open the First Envelope of each Bidder one at a time, in the order in which the Bids were received.
- 9.2 The PBAC shall examine the contents of the First Envelope to determine whether it contains all of the Qualification Documents required in Section 4 (*Qualification Documents First Envelope*). If the contents of the First Envelope are found to be incomplete or non-responsive, the PBAC shall automatically disqualify the entire Bid, and immediately return the unopened Second Envelope and unopened Third Envelope to the Bidder concerned.
- 9.3 Each Bidder may send a representative to witness the opening of the First Envelope. Such representative shall sign the register confirming his attendance. A Bidder who does not send a representative to witness the opening of the First Envelope shall be deemed to have waived the opportunity to witness the opening.
- 9.4 The PBAC shall evaluate the Qualification Documents over a period of no longer than ten (10) days from the Bid Submission Date. The detailed evaluation of the compliance by the Bidder with the Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability Qualification Requirements for the Project shall be based solely upon the Qualification Documents submitted.
- 9.5 The PBAC reserves the right to seek clarification from any Bidder on the form and contents of its Qualification Documents. The PBAC also reserves the right to make inquiries with any person, government authority, client organization, Consortium Member, officer, director, employee or other agent of any Bidder, Consortium Member, or Affiliate of any of these entities for the purpose of clarifying any matter included in its Qualification Documents. The PBAC shall make all requests for clarification in writing.
- 9.6 All submitted information and any clarifications requested by the PBAC shall be assessed against the criteria for qualification provided in Section 2 (*Qualification Requirements*) and the documents required under Section 4 (*Qualification Documents*) and rated on a “pass-or-fail” basis. The Bidder will be considered as “qualified” if all Qualification Requirements are rated “passed” and all required Qualification Documents and attachments are completely submitted in the proper form. The Bidder will be considered as “disqualified” if any Qualification Requirement is rated “failed” or if any required Qualification Document or attachment is missing.
- 9.7 Within five (5) days from the completion of the evaluation of the Qualification Documents, the PBAC shall notify all Bidders as to whether or not they passed the qualification stage (“**Notice of Qualification**”). All Bidders that pass the qualification stage shall be known as “**Qualified Bidders.**”
- 9.8 Qualified Bidders shall be informed of the date, time and venue of the Second Envelope Opening Date and invited to witness the same. Such Bidders may send a representative to observe the opening of

the Second Envelope. Qualified Bidders who do not send a representative are deemed to have waived the opportunity to witness the opening of the Second Envelope.

- 9.9 Disqualified Bidders shall be informed of the reason/s for their disqualification.
- 9.10 The PBAC shall return to the disqualified Bidders their unopened Bid Proposals, unless the ground for their disqualification was any of the events listed in Section 7.3 (*Forfeiture of Bid Security*), in which case the Bid Security shall be forfeited.
- 9.11 Within fifteen (15) working days from receipt of the “Notice of Disqualification,” a disqualified Bidder may Appeal its disqualification to the Secretary of the DOTr by filing of a non-refundable appeal fee of Php Eight hundred fifty three million pesos (Php 853,000,000), which is one-half of one percent (0.5%) of the project cost as approved by the NEDA Board. The appeal will be resolved following the procedure laid down in the BOT Law.

SECTION 10: OPENING AND EVALUATION OF BID PROPOSALS

10.1 OPENING OF SECOND ENVELOPE AND EVALUATION OF TECHNICAL PROPOSAL

- 10.1.a On the Second Envelope Opening Date, the PBAC will begin the opening proceedings by announcing the names of the Qualified Bidders and such other details as the PBAC may consider appropriate. The PBAC shall then open the Second Envelope of each Qualified Bidder one at a time, in the order in which the Bids were received.
- 10.1.b The PBAC shall examine the contents of the Second Envelope to determine whether it contains all of the documents required in Section 5.1 (*Technical Proposal*). If the contents of the Second Envelope are found to be incomplete or non-responsive, the PBAC shall automatically disqualify the entire Bid, and immediately return the Bid Security and unopened Third Envelope to the Bidder concerned.
- 10.1.c Each Qualified Bidder may send a representative to witness the opening of the Second Envelope. Such representatives shall sign the register confirming their attendance. Qualified Bidders who do not send a representative to witness the opening of the Second Envelope shall be deemed to have waived the opportunity to witness the opening.
- 10.1.d Over a period of no longer than twenty (20) days from the Second Envelope Opening Date, the PBAC shall conduct a detailed evaluation of the Technical Proposal of each Bidder based on the completeness and responsiveness of the following documents to the requirements of Section 5.1 (*Technical Proposal*) –
- (i) Form of Bid Security (Annex TP-1);
 - (ii) Notarized Statement for Submission of Technical Proposal (Annex TP-2);
 - (iii) An Executive Summary of the Bidder’s Technical Proposal (Annex TP-3); and
 - (iv) Project Execution Analysis (Annex TP-4).
- 10.1.e To assist in the examination and evaluation of the contents of a Qualified Bidder’s Technical Proposal, the PBAC may, at its discretion, request such Qualified Bidder to clarify certain portions of its Technical Proposal. The PBAC shall make all requests for clarification in writing. Clarifications shall be limited to providing explanations and/or supporting documentation for information included as part of the Qualified Bidder’s Technical Proposal and shall not include the submission of additional elements to the Technical Proposal, nor its modification in any way. Any clarification by the Bidder that is not in response to the request by the PBAC shall not be considered.

- 10.1.f If the PBAC determines after its detailed evaluation of the Technical Proposal that the Bidder has complied with all the requirements for the Technical Proposal in Section 5.1 (*Technical Proposal*), the Bidder shall be rated “**Complying**”, otherwise, it shall rate the Qualified Bidder as “**Non-Complying**.”
- 10.1.g Within five (5) days from the completion of the evaluation of the Technical Proposals, the PBAC shall notify in writing all the Qualified Bidders as to whether or not their Technical Proposals were rated as “Complying” or “Non- Complying.”
- 10.1.h Qualified Bidders with Complying Technical Proposals shall be informed of the date, time and venue of the Third Envelope Opening Date and invited to witness the same. Such Bidders may send a representative to observe the opening of the Third Envelope. Qualified Bidders who do not send a representative are deemed to have waived the opportunity to witness the opening of the Third Envelope.
- 10.1.i Qualified Bidders with Non-Complying Technical Proposals shall be informed of the reason/s why their Technical Proposals were considered as “Non- Complying.”
- 10.1.j The PBAC shall return to the disqualified Bidders their unopened Financial Proposals and Bid Securities, unless the ground for their disqualification was any of the events listed in Section 7.3 (*Forfeiture of Bid Security*), in which case the Bid Security shall be forfeited.
- 10.1.k Within fifteen (15) working days from receipt of the “Notice of Disqualification,” a disqualified Bidder may avail of the remedies under Section 9.11.
- 10.1.l All Bidders whose Technical Proposals were found to be “Complying” shall be considered on equal footing insofar as the Technical Proposals are concerned. Hence, the Winning Bidder shall be determined exclusively on the basis of the Bid Amount.

10.2 OPENING OF THIRD ENVELOPE AND EVALUATION OF FINANCIAL PROPOSAL

- 10.2.a On the Third Envelope Opening Date, the PBAC will begin the opening proceedings by announcing the names of the Qualified Bidders with Complying Technical Proposals and such other details as the PBAC may consider appropriate. The PBAC shall then open the Third Envelope of each Qualified Bidder one at a time, in the order in which the Bids were received.
- 10.2.b The PBAC shall evaluate the Financial Proposal of each Qualified Bidder with a Complying Technical Proposal based on the completeness and responsiveness of the following documents to the requirements of Section 5.2 (*Financial Proposal*) –
 - (i) Bid Amount (Annex FP-1); and
 - (ii) Project Financing Plan (Annex FP-2).
- 10.2.c If the contents of the Third Envelope are found to be incomplete or non- responsive, the PBAC shall automatically disqualify the entire Bid, and immediately return the Bid Security to the Bidder concerned.
- 10.2.d Each Qualified Bidder with a Complying Technical Proposal may send a representative to witness the opening of the Third Envelope. Such representatives shall sign the register confirming their attendance. Qualified Bidders with a Complying Technical Proposal who do not send a representative to witness the opening of the Third Envelope shall be deemed to have waived the opportunity to witness the opening.
- 10.2.e The Financial Proposals that meet the requirements of Section 5.2 (*Financial Proposal*) shall be ranked by the PBAC based on the Bid Amount alone.
- 10.2.f In the event of a tie, the tied top-ranked Bidders shall be requested to resubmit their Financial

Proposals within four (4) hours from the time the PBAC adjourns the opening of the Financial Proposals. Immediately upon the resubmission of the Financial Proposals of the tied Bidders, the revised Financial Proposals shall be opened and ranked by the PBAC based on the Bid Amount alone, and the top-ranked Bidder based on the criteria in Section 10.2.e shall be considered the Best Bid. The same procedure shall be followed until the tie is broken.

SECTION 11: CONFIDENTIALITY

11.1 CONFIDENTIALITY DURING BIDDING PROCESS

Information relating to the examination, clarification, evaluation and comparison of Bids and recommendations concerning the award of the Project shall not be disclosed to any of the Bidders or other persons not officially involved with the Bidding Process; provided, that the DOTr and MIAA, including the PBAC, shall not have the obligation to keep any information submitted by a Bidder confidential after the signing of the Concession Agreement or the lapse of one hundred eighty (180) days after the Bid Submission Date, whichever comes earlier.

11.2 BIDDING DOCUMENTS

The PBAC shall not return either the original or the copies of any Bid submitted by a Bidder, other than as specified in Section 9 (*Opening and Evaluation of Qualification Documents*) and Section 10 (*Opening and Evaluation of Bid Proposals*).

SECTION 12: NOTICE OF AWARD, POST-AWARD REQUIREMENTS & EXECUTION OF CONCESSION AGREEMENT

12.1 ISSUANCE OF NOTICE OF AWARD

12.1.a Within seven (7) calendar days from the PBAC recommendation, the DOTr Secretary shall decide on the award.

12.1.b Within five (5) calendar days from the approval of the award by the DOTr Secretary, he shall issue the Notice of Award to the Bidder with the highest post-qualified Bid, which shall thereafter be known as the Winning Bidder.

12.2 POST-AWARD REQUIREMENTS

The Notice of Award shall prescribe that, within twenty (20) days from the Winning Bidder's official receipt of the Notice of Award, the Winning Bidder must submit the following documents to the PBAC as conditions precedent for the execution and signing of the Concession Agreement ("Post-Award Requirements"):

12.2.a Notice of Award signed by the authorized representative of the Winning Bidder;

12.2.b In case a special purpose company (SPC) has already been formed for purposes of undertaking the Project, evidence of the formation of a domestic corporation which will be the Concessionaire, consisting of certified true copies issued by the Philippine Securities and Exchange Commission (**SEC**) of the certificate of incorporation, articles of incorporation and by-laws of the Concessionaire (collectively, the "**Concessionaire Constitutional Documents**"). If the Winning Bidder is a consortium, the shareholders of the Concessionaire and the respective percentage shareholdings of its members should be the same as those shown in the Winning Bidder's Annex QD-3B. If the Winning Bidder is a corporation, the shareholding structure of the

Concessionaire should comply with Section 12.2.e;

- 12.2.c Certified true copies issued by the authorized officer of the Concessionaire, duly notarized, of resolutions adopted by the board of directors of the Concessionaire attesting that the Concessionaire conducted an organizational meeting of its stockholders and elected its regular board of directors and corporate officers and authorizing the execution, delivery and performance of the Concession Agreement.
- 12.2.d If the Winning Bidder is a Consortium: (i) an agreement, using the form in **Annex CP-1**, indicating that the Consortium Members are jointly and severally liable for the obligations of the Concessionaire under the Concession Agreement, and (ii) an undertaking of the members thereof to infuse the required equity contribution to the consortium;
- 12.2.e If the Winning Bidder is a corporation: (i) a treasurer's affidavit attesting to the actual paid-up capital of the Concessionaire and (ii) subscription agreement between the Winning Bidder and the Concessionaire or shareholders agreement between the Winning Bidder and the Concessionaire;
- 12.2.f Letters from reputable financial institutions expressing their willingness to provide sufficient credit facilities as required in the Winning Bidder's Financial Proposal using the form in **Annex CP-2**;
- 12.2.g Submission of the Construction Performance Security;
- 12.2.h Proof of payment of the fees for Transaction Advisory Services for the Project, the amount for which shall be specified prior to the Bid Submission Date;
- 12.2.i Certified true copy of a valid Tax Clearance Certificate (TCC), issued by the appropriate office in the Bureau of Internal Revenue (BIR), pursuant to Executive Order No. 398 (series of 2005), as implemented by Revenue Regulations No. 3-2005, of the Winning Bidder, or in case of a Consortium, of each Consortium Member; provided that if the Bidder or Consortium Member is a foreign entity without previous or on-going commercial activities in the Philippines, or which otherwise does not derive income from Philippine sources, a certified statement duly signed by the Bidder or the Consortium Member's authorized representative stating that such Bidder or Consortium Member is not subject to income or business tax in the Philippines.
- 12.2.j In case the Winning Bidder submitted unauthenticated documents on or before the Bid Submission Date, foreign documents duly authenticated before a Philippine consular official at the relevant Philippine consulate, pursuant to Section 1.4.

12.3 NOTIFICATION OF COMPLIANCE WITH POST-AWARD REQUIREMENTS

Within five (5) days from the DOTr's timely receipt of the Post-Award Requirements from the Winning Bidder in accordance with Section 12.2, the DOTr Secretary shall determine and notify the Winning Bidder of its compliance with all of the Post-Award Requirements.

12.4 FAILURE TO COMPLY WITH POST-AWARD REQUIREMENTS

Failure to comply with the Post-Award Requirements within the prescribed twenty (20)- day period, or within any additional extensions granted by the PBAC, without reasonable justification acceptable to the DOTr and MIAA, shall result in the forfeiture of the Winning Bidder's Bid Security and the withdrawal of the Notice of Award.

12.5 DISQUALIFICATION OF WINNING BIDDER

The Winning Bidder will be disqualified, its Notice of Award will be withdrawn, and its Bid Security will

be forfeited if, at any time after the issuance of the Notice of Award and prior to the signing and execution by the DOTr and MIAA of the pre-signed Concession Agreement, the Winning Bidder is found to have violated the provisions of this Instructions to Bidders. The PBAC shall thereafter be free to consider the next highest qualifying Bid Proposal.

12.6 CONSTRUCTION PERFORMANCE SECURITY

12.6.a On or before the Signing Date, and as condition for the return by the DOTr of the Bid Security of the Winning Bidder, the Winning Bidder must post an Construction Performance Security in the amount of **Three Billion Four Hundred Twelve Million Pesos (Php 3,412,000,000.00)**, in the form of an irrevocable letter of credit, using the form in **Annex CP-3** of the Concession Agreement, without modification.

12.6.b The Construction Performance Security must be issued by a domestic universal/commercial bank or an international bank authorized by the BSP to transact in the Philippines.

12.7 EXECUTION OF CONCESSION AGREEMENT

12.7.a Within five (5) days from the receipt by the Winning Bidder of notice from the DOTr Secretary that all of the Post-Award Requirements have been complied with, the Concessionaire shall execute the Concession Agreement with the DOTr.

12.7.b The failure by the Concessionaire to execute the Concession Agreement within the prescribed period shall be a ground for the forfeiture of the Winning Bidder's Bid Security and the withdrawal of the Notice of Award.

12.8 NEXT HIGHEST COMPLYING BIDS

12.8.a The Bidder with the next Best Bid ("**Second Best Bid**") shall be notified in writing by the PBAC of its selection (in lieu of the Bidder with the Best Bid) and issued a Notice of Award if any of the following events or circumstances occurs:

- (i) the Winning Bidder (or the Concessionaire) does not fulfill the Post-Award Requirements or execute the Concession Agreement within the prescribed periods; or
- (ii) the Winning Bidder (or the Concessionaire), any of the Winning Bidder's Consortium Members, or Affiliates, or the officers, employees, agents, and advisors of any of these entities is found to have (i) engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice, (ii) a Conflict of Interest, or (iii) violated the Bidding Period Lock-Up Rules.

12.8.b The Bidder with the Second-Best Bid shall assume the status of the Winning Bidder from and after the date of receipt of the Notice of Award and must then comply with the Post-Award Requirements. If such Bidder fails in any of these requirements, the process may again be repeated with the next Best Bid and so on. This process will be repeated every time a Winning Bidder is unable to fulfill the requirements of this Section (*Notice of Award, Post-Award Requirements and Execution of Concession Agreement*), until the earlier of the date of Execution of the Concession Agreement and one hundred eighty (180) days after the Bid Submission Date, beyond which, the PBAC may request for an extension of the validity of Bids in accordance with Section 6.2.d.

12.9 SINGLE BIDDER

If only one Bidder submits a Bid Proposal, or there is only one Qualified Bidder, or only one Bidder submits a Technical Proposal and Financial Proposal that is complete and responsive, the PBAC shall proceed with the Bidding Process subject to the relevant provisions of the BOT Law and its IRR.

SECTION 13: GENERAL CONDITIONS AND PROHIBITIONS

13.1 GENERAL CONDITIONS

By submitting its Bid, the Bidder acknowledges and agrees that:

- a. it, including all Consortium Members, and Affiliates, and their respective officers, employees, agents and advisors shall observe the highest standard of ethics during the Bidding Process;
- b. it, including all Consortium Members, and Affiliates, and their respective officers, employees, agents and advisors shall not commit any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice;
- c. it, including all Consortium Members, and Affiliates, and their respective officers, employees, agents and advisors, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process;
- d. it, including all Consortium Members, proposed contractors and Affiliates, and their respective officers, employees, agents and advisors, understands that the Philippine Competition Commission (PCC) is reviewing the Project for the purpose of issuing a certificate of project exemption pursuant to PCC Memorandum Circular No. 19-001 on the “Process for Exemption from Compulsory Notification in Solicited Public-Private Partnership Projects” and shall observe and comply with such undertakings as the PCC may determine to be necessary and appropriate as a condition for the exemption;
- e. it, including all Consortium Members, proposed contractors and Affiliates, and their respective officers, employees, agents and advisors understands further that a certificate of project exemption may not be issued by the PCC, and in that eventuality, shall comply with the requirements of compulsory notification, if applicable, pursuant to Republic Act No. 10667 or the Philippine Competition Act and its Implementing Rules and Regulations; and
- f. it accepts all the terms and conditions of the Bidding Documents.

13.2 CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, UNDESIRABLE, AND RESTRICTIVE PRACTICES

- 13.2.a If a Bidder, any Consortium Member, or Affiliate, the Winning Bidder or the Concessionaire, as the case may be, is found to have, directly or indirectly, engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice during the Bidding Process, or after the issuance of the Notice of Award or the execution of the Concession Agreement, the PBAC/DOTr shall –
- (i) reject or disqualify the Bid of or withdraw the Notice of Award to such Bidder, without being liable in any manner whatsoever to the Bidder;
 - (ii) forfeit and appropriate the Bid Security of such Bidder, without prejudice to any other right or remedy that may be available to the DOTr and MIAA;
 - (iii) seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and/or entities involved in such practices; and

- (iv) permanently prohibits or disqualifies individuals and/or entities involved in such practices from participating in any bidding of the DOTr and MIAA from the date that they are found to have directly or indirectly engaged in any such practices.

13.2.b For the purposes of this Section, the following terms shall have the meanings hereinafter assigned to them:

- (i) **“Corrupt Practice”** means any of the prohibited acts and omissions punishable under Republic Act No. 3019 (**“Anti-Graft and Corrupt Practices Act”**), Act No. 3815 (**“Revised Penal Code”**), Republic Act No. 6713 (**“Code of Conduct and Ethical Standards for Public Officials and Employees”**), Republic Act No. 7080 (**“Plunder Law”**), and other applicable laws and relevant rules and procedures, by which a person improperly and unlawfully enriches or benefits himself or others, or induces others to do so, and includes the offering, giving, receiving, or soliciting of anything of value to influence the actions of any person connected with the Bidding Process or the execution of the Concession Agreement;
- (ii) **“Fraudulent Practice”** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating and the like, especially when involving misrepresentation, omission, concealment, suppression, non-disclosure or disclosure of incomplete facts, in order to influence the Bidding Process or the execution of the Concession Agreement;
- (iii) **“Collusive Practice”** means a scheme or arrangement between two or more Bidders, with or without the knowledge of the government, designed to establish the Bid Amount at artificial, non-competitive levels;
- (iv) **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person’s participation in the Bidding Process or the execution of the Concession Agreement;
- (v) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the DOTr, MIAA or the PPP Center with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and
- (vi) **“Restrictive Practice”** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among Bidders, Consortium Members, or the Affiliates of any of these entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.

13.3 CONFLICT OF INTEREST

13.3.a. Bidders, Consortium Members, and Affiliates in the Project, must not have any Conflicts of Interest. Any of the following will be considered a Conflict of Interest:

- (i) a Bidder, any of its Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) is a member of another Consortium, or an Affiliate of a member of another Consortium.
- (ii) a Bidder, any Consortium Member (if the Bidder is a Consortium), or any of their Affiliates (of either a Bidder or of the Consortium Member) has ownership interest of at least 20% in any other Bidder, any Consortium Member of any other Bidder, or any of its Affiliates that is nominated to fulfill any of the Qualification Requirements;

- (iii) a Board director, partner, officer, employee, or agent of a Bidder, any Consortium Member (if the Bidder is a Consortium), or any of their Affiliates who is directly involved in any capacity to the Bidding Process of such Bidder, any Consortium Member (if the Bidder is a Consortium), or any of their Affiliates, is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder, any Consortium Member of another Bidder, or any of their Affiliates.
- (iv) A Bidder, any of its Consortium Members, or any Affiliate of any of these entities, has participated as consultant to the DOTr, MIAA, or the PPP Center in connection with the Project; or
- (v) a Bidder, any of its Consortium Members, or any Affiliate of any of these entities, engages any legal, financial, or technical advisor of DOTr, MIAA or the PPP Center at any time from 24 August 2023 until the Bid Submission Date and was directly involved in any capacity in the Project.

13.3.b The phrase “directly involved in any capacity” shall refer to actual participation in the deliberations and/or decision-making for the bidding process of the Bidder or access to the documents related to it, that would give the director, partner, officer, employee, or agent knowledge / information regarding the bid of such Bidder, including the act of voting on any matter related to the Bidding Process of two or more Bidders, such as but not limited to the approval of the relevant entity’s participation in the Bidding.

13.3.c The same conflict of interest arises in case of consulting firms engaged by any Bidder. There shall be no Conflict of Interest if prior written disclosure is submitted by such consulting firm to its client Bidders and the PBAC, together with a conflict management plan which must be approved in writing by the PBAC.

13.3.d. A board director, partner, officer, employee, or agent of a Bidder or a Consortium Member (if the Bidder is a Consortium) must not be related by consanguinity or affinity up to the third civil degree to any member of the Head of the Agency or any of DOTr or MIAA’s officers or employees having direct access to information that may substantially affect the result of the Bidding, such as, but not limited to, the PBAC members, the TWG members, the PBAC Secretariat, and the legal, financial, or the Project’s technical advisors. This clause shall apply to the following persons:

- (i) If the Bidder is a partnership, to all its officers and members;
- (ii) If the Bidder is a corporation, to all its officers, directors, and controlling stockholders; and
- (iii) If the Bidder is a Consortium, the provisions of items (i) or (ii) of this Section 13.3.d shall correspondingly apply to each of the members of such Consortium, as may be appropriate.

Relationships of the nature described above or failure to comply with the provisions of this clause will result in the disqualification of the Bidder from further participating in the Bid Process.

13.3.e. The Bidders, Consortium Members, or any of their Affiliate must not have a direct contractual relationship with DOTr, that: (i) puts them in a position to have access to information about or influence the bid of another Bidder, or (ii) allows such entity to influence DOTr or MIAA’s decisions regarding this bidding process, or (iii) designates or appoints them to perform essential functions for the Project, other than as the Project Proponent, in the implementation, operation, or maintenance of the Project, in DOTr’s or MIAA’s behalf.

13.3.f. At any time before signing the Concession Agreement, any Bidder, Consortium Member, or any Affiliate of any of these, found to have a Conflict of Interest as defined in this Section, shall be disqualified from further participating in the Bidding Process. For Conflict of Interest involving another Bidder, then both Bidders shall be disqualified.

13.4 GROUNDS FOR DISQUALIFICATION

A Bidder may be disqualified from participation in the Bidding for any of the following reasons:

- a. late submission of its Bid or any part thereof;
- b. material or willful misrepresentation in the Bidding Process;
- c. any form of politicking or other lobbying with respect to the Bidding Process;
- d. illegal conduct or attempt to influence the PBAC's evaluation of the Qualification Documents or the Bid Proposal;
- e. Corrupt Practice, Fraudulent Practice, Collusive Practice, Coercive Practice, Undesirable Practice or Restrictive Practice in the Bidding Process, as defined in Section 13.
- f. any Conflict of Interest that would give it any unfair advantage in the Bidding Process, as defined in Section 13.3;
- g. failure to comply with any of the terms, conditions and instructions of these Instructions to Bidders; or
- h. other grounds for rejection or disqualification of Bidders under the BOT Law, and other applicable laws.

The grounds for disqualification in this Section shall also apply to all Consortium Members (in case the Bidder is a Consortium), and any Affiliates proposed by a Bidder to fulfill any of the Qualification Requirements. The disqualification of any Consortium Member or Affiliates of a Bidder, a Consortium or a Consortium Member, shall result in the disqualification of the Bidder or the entire Consortium.

SECTION 14: BIDDING PERIOD LOCK-UP RULES

14.1 LOCK-UP RULES DURING THE BIDDING PROCESS

The following rules ("Bidding Process Lock-Up Rules") shall apply from the Bid Submission Date until the execution of the Concession Agreement ("Bidding Period"):

- 14.1.a. For a Bidder that is a corporation, partnership or any other juridical entity, no changes shall be made in the ownership structure of such Bidder, as provided in the Bidder's Business structure (Annex QD-3A). This rule shall not apply to publicly-listed companies, with respect to their public float.
- 14.1.b. For a Bidder that is a Consortium, no changes shall be made in the composition of the Consortium and in the committed percentage interest of each Consortium Member in the Concessionaire, as provided in the Bidder's Business Structure (Annex QD-3B).
- 14.1.c. No Bidder shall be allowed to withdraw or substitute its Designated Operator upon submission of its Bid.

14.2 LOCK-UP RULES DURING THE CONCESSION PERIOD

- 14.2.a No changes shall be allowed in the shareholder or percentage structure of the Winning Bidder from Bid Proposals Submission Date until the signing by the Project SPC/s of the accession agreements to the Concession Agreements. However, a Consortium Member of the Winning Bidder may form a holding company or a subsidiary which would hold its entire interest in the Winning Bidder. All Consortium Members may form a holding company or subsidiary which

would hold their collective interests in the Winning Bidder, provided, that the shareholding or equity structure of such holding company or subsidiary shall reflect the Consortium Members' percentage interest in the Consortium on Bid Proposals Submission Date, and such shareholding or equity structure shall not change until the signing by the Project SPC/s of the accession agreements to the Concession Agreement.

- 14.2.b All limitations and restrictions applicable to the Consortium Members with respect to their interest in the Project SPC/s shall continue to apply to each of the Consortium Members irrespective of the holding structure they enter into, subject to the provisions of the Concession Agreement.
- 14.2.c Entities that are used by a Winning Bidder for purposes of satisfying the Qualification Requirements shall be subjected to Lock-Up rules with respect to their ownership interest and/or affiliation with, or appointment as Designated Operator of, the Project SPC/s for a defined period as may be provided in the Concession Agreement.

SECTION 15: GOVERNING LAW AND RULES

The provisions of the BOT Law and other applicable Philippine laws shall govern all matters not specifically covered by these Instructions to Bidders and other Bidding Documents.

SECTION 16: DEFINITIONS

Unless otherwise provided, the following terms used in these Instructions to Bidders shall have the following meanings:

- 16.1 "Affiliate" means a person, corporation or any entity Controlled by or, in the case of a Parent Company, Controlling the Bidder or Consortium Member (as the case may be) or associated with the Bidder or Consortium Member (as the case may be) under common ownership and Control.
- 16.2 "Airline" refers to an individual, partnership, corporation, or any other juridical entity that is a holder of any of the following permits issued by the Civil Aeronautics Board: (1) A valid and effective permit for a domestic carrier to operate scheduled or non-scheduled international or domestic passenger air transportation services; or (2) A valid and effective foreign air carrier's permit to operate scheduled or non-scheduled passenger services.

For avoidance of doubt, an individual, partnership, corporation, or any other juridical entity providing dedicated cargo transport services shall not be deemed an Airline.
- 16.3 "Airline-Related Entity" is an individual, partnership, corporation, or any other juridical entity that: (1) is an Airline; or (2) is an Affiliate of an Airline.
- 16.4 "Annual Passenger Throughput" of an airport is the sum total of its arriving and departing passengers, on a scheduled or non-scheduled commercial flight, for one year. This would not include arriving and departing passengers on general aviation flights. A transit passenger, who does not leave the airport terminal is counted once, as an arriving passenger.
- 16.5 "Auditor" means an external independent auditor who must be a reputable international auditing company with presence and operations in at least ten jurisdictions, including the Philippines. For the purpose of determining presence and scope of operations, an auditor's partner firms in other jurisdictions will be considered.

- 16.6 “Authorized Issuer” means the authorized representative of the airport company or concessionaire, and who should execute QD-11 (Certification for Operations & Maintenance Experience), in favor of the entity nominated to fulfill the Operation & Maintenance Experience.
- 16.7 “Bidder” means any individual, partnership, corporation, or any other juridical entity, or Consortium that participates in the Bidding Process.
- 16.8 “Bid Proposal” means the Bid Security, and Additional Requirements for Consortia with New Members, Technical Proposal, and Financial Proposal to be submitted by the Bidders pursuant to the Instructions to Bidders that will be released by PBAC after Pre-Qualification.
- 16.9 “Bid Submission Date” means the day to be set by the PBAC for the submission of the Bid Proposals.
- 16.10 “Bid Security” means the instrument provided by the Bidder to guarantee that it shall comply with all its obligations under the Instructions to Bidders.
- 16.11 “Bidding Documents” means the documents enumerated in Section 1.2.a.
- 16.12 “Bidding Process” or “Bidding” means the process beginning from the publication of the Invitation to Pre-Qualify and Bid until the signing of the Concession Agreement, as described in Section 1.
- 16.13 “BOT Law” means Republic Act No. 6957, as amended by Republic Act No. 7718, entitled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes”, and its Revised Implementing Rules and Regulations.
- 16.14 “Concession Agreement” means the contract to be executed between the DOTr and MIAA with the Winning Bidder or the legal entity formed by the Winning Bidder.
- 16.15 “Concession Period” means the period over which a concession will be granted to the Winning Bidder to undertake the Project, which shall be fifteen (15) years, extendable for another ten (10) years, provided that certain conditions are met as indicated in the Concession Agreement.
- 16.16 “Conflict of Interest” is defined in Section 13.3.
- 16.17 “Consortium” means an unincorporated association of natural or juridical persons bound by contract or law, solidarily undertaking by mutual written agreement a common enterprise which is to participate in the Bidding Process.
- 16.18 “Consortium Member” means any of the natural or juridical persons or group of persons comprising a Consortium, each having a definite interest in the common undertaking, solidarily liable in the Bid and whose interest will be converted into an equity participation in the corporation that will become the Project SPC/s if the Consortium is awarded and accepts the Project.
- 16.19 “Control” means, for purposes of defining an Affiliate of a Bidder or a Consortium Member, the power to direct, or cause the direction of the management policies and actions of a body corporate whether through:
- (a) ownership of at least fifty percent (50%) plus one share of the outstanding voting shares, or
 - (b) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights: (i) is equivalent to at least fifty percent (50%) plus one (1) share, or (ii) grants it the ability to elect a majority of the members of the Affiliate’s board of directors, or
 - (c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above; or
 - (d) a legal arrangement which grants it the power to govern or significantly influence the financial and operating policies of a body corporate.

In determining Control under (d), the Bidder or Consortium Member must submit, apart from Annex QD-8, a copy of the said legal agreement as well as a certification from an authorized representative of the grantor of such powers stating what powers are being granted, and to whom those powers are being granted as described in item (d).

In determining ownership by a corporation of the shares of another corporation, shares held both directly and indirectly or owned legally or beneficially will be counted.

- 16.20 “Corrupt Practice, Fraudulent Practice, Collusive Practice, Coercive Practice, Undesirable Practice, and Restrictive Practices” are each defined in Section 13.
- 16.21 “Designated Operator” means an entity designated by the Bidder to undertake the Operation and Maintenance of the Project but does not have any percentage interest in the Consortium.
- 16.22 “DOTr” means the Department of Transportation.
- 16.23 “Eligible Period” shall mean the period from 1 January 2013 to 31 December 2022.
- 16.24 “Financial Qualification Requirements” refers to the Qualification Requirements that must be met by the Bidder, as provided in Section 2.3.
- 16.25 “GCR Entity” means the concessionaire, or an entity or an Affiliate of an entity that has Significant Interest in the concessionaire, of any of the Greater Capital Region (GCR) airports, namely: (i) Clark International Airport, (ii) New Manila International Airport, and (iii) Sangley Point International Airport.
- 16.26 “GIS” means the General Information Sheet as per the format specified by the Philippine Securities and Exchange Commission (SEC).
- 16.27 “Grantors” means the Department of Transportation (DOTr) and the Manila International Airport Authority (MIAA).
- 16.28 “Interested Bidder” refers to an individual, partnership, corporation, or any other juridical entity, or Consortium that is interested in participating in the Bidding Process. Upon satisfaction of the requirements enumerated in Annex VDR (Instructions for Payment of Participation Fee and Data Room Access), the Interested Bidder shall then be deemed a Prospective Bidder.⁴
- 16.29 “International Airport” means an airport that handles air passenger traffic, including chartered flights, with at least 10% of the total traffic as international.
- 16.30 “KPIs” means the Key Performance Indicators measuring the Concessionaire’s performance under the Concession Agreement which it must comply with in undertaking the rehabilitation, operation, optimization and maintenance of the Project.
- 16.31 “Lead Member” means, for a Bidder that bids as a Consortium, the Consortium Member having the largest percentage interest in the Consortium, and which should be designated in writing as such by the other Consortium Members in case more than one Consortium Member equally possesses the largest percentage interest in the Consortium.
- 16.32 “MIAA” means the Manila International Airport Authority.
- 16.33 “Net Worth” shall mean the sum of subscribed and paid-up equity, including additional paid-in capital, and unrestricted retained earnings. Unrestricted retained earnings means the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting

⁴ Bid Bulletin No. 2 (Date of Issuance)

therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; (3) not required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingencies (as defined in SEC Memorandum Circular No. 11-08, December 5, 2008); and (4) not otherwise covered by any other legal restriction on the ability of the company to distribute or otherwise apply its equity.

If the Bidder or Consortium Member is an investment fund or an entity owned by an investment fund, the net worth of such Bidder or Consortium Member shall, in addition to the items enumerated in the preceding paragraph of this Section 16.33, include the amount of the investment fund's uncalled capital commitments, provided, that an authorized representative of the investment fund shall certify: (1) the amount of the uncalled capital commitments that may be called, (2) that all conditions for calling that amount of uncalled capital commitments, except the award of the NAIA PPP Project to the consortium of which the investment fund is a Consortium Member, are fulfilled as of the Bid Submission Date, and (3) that such uncalled capital commitments are callable at the sole discretion of the General Partner of the Consortium Member or of the Affiliate of the Consortium Member.

- 16.34 "PBAC" means the joint Pre-Qualifications, Bids and Awards Committee for Public-Private Partnership Projects of the DOTr and the MIAA for the Project.
- 16.35 "Parent Company" means a single person, single corporation or any single entity Controlling the Bidder or Consortium Member (as the case may be).
- 16.36 "Project SPC" means a domestic special purpose company/ies incorporated pursuant to the Revised Corporation Code of the Philippines for the purpose of undertaking the Projects.
- 16.37 "Prospective Bidder" refers to an individual, partnership, corporation, or any other juridical entity, or Consortium that has paid the Participation Fee and complied with other requirements to gain access to the Virtual Data Room and Physical Data Rooms. Only Prospective Bidders have the personality to lodge queries to the PBAC in relation to these Instructions to Bidders.
- 16.38 "Public-Private Partnership Center" means the successor of the BOT Center and Coordinating Council of the Philippine Assistance Program (CCPAP), the agency mandated under Section 12 of the Republic Act No. 6957, as amended by Republic Act No. 7718, to coordinate and monitor projects implemented under the Act, pursuant to Administrative Order No. 105 (s. 1989), as amended by Administrative Order No. 67 (s. 1999), as amended by Administrative Order No. 103 (s. 2000), and Executive Order No. 144 (s. 2002), as amended by Executive Order No. 8 (s. 2010).
- 16.39 "SEC" means the Securities and Exchange Commission.
- 16.40 "Set-Aside Deposit" means the amount referred to in Section 2.3.a(1), which amount shall be deposited by the Bidder with a domestic universal/commercial bank or an international bank authorized by the BSP to transact in the Philippines and which amount shall not be withdrawn by the Bidder for the duration of the Bidding Process.
- 16.41 "Significant Interest" means:
- (a) Ownership of at least thirty-three percent (33%) plus one share of outstanding voting shares, or
 - (b) (i) possession of voting rights through voting trusts or other voting agreements such that the total number of shares owned or over which it has voting rights is equivalent to at least thirty-three percent (33%) plus one share, or (ii) the ability to elect one-third (1/3) of the members of the board of directors of the concessionaire of a GCR airport.

(c) a legal agreement which has an arrangement with similar effect, as in (i) or (ii) above.

16.42 “Unsatisfactory Performance” means,

- (a) with respect to any project or contract, within the last ten (10) years prior to the Bid Submission Date, and as evidenced by a final judicial pronouncement, arbitration award, or an agreement by way of settlement/compromise wherein there is a decision on or an acknowledgment of a material breach on any of the following:
 - (i) material failure to satisfactorily perform any of its material obligations on any contract;
 - (ii) expulsion from any project or contract;
 - (iii) termination or suspension of any of its projects or contracts due to breach of its obligations thereunder; or
 - (iv) violation of laws and/or regulations applicable to any of its projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;
- (b) inclusion in (i) a blacklist issued by the Government Procurement Policy Board (**GPPB**), the Department of Public Works and Highways (**DPWH**), the Construction Industry Authority of the Philippines-Department of Trade and Industry (**CIAP-DTI**) or any pertinent governmental agency of the Philippines or (ii) the Debarred and Cross-Debarred Firms & Individuals list of major international financial institutions such as the World Bank, European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank, African Development Bank Group, and the Asian Infrastructure Investment Bank, whether as an individual contractor, partnership, corporation, or any other juridical entity, or as a member of a joint venture or consortium; or
- (c) involvement in any corrupt, fraudulent, collusive, coercive, undesirable, or restrictive practice, as evidenced by final judicial pronouncement.

For avoidance of doubt, the references to “judicial pronouncement” and “arbitration award” above are not limited to those promulgated in the Philippines or by Philippine courts or entities. In the case of Qualified Key Personnel, this definition shall only apply insofar as such personnel have been found personally liable under (a) and (c) by a judicial pronouncement or arbitration award.

16.43 “Winning Bidder” means the highest ranked Bidder determined by the PBAC and issued a Notice of Award as described in Section 12.1, or as may be designated under the procedure in Section 12.8.

ANNEX VDR

INSTRUCTIONS FOR PAYMENT OF PARTICIPATION FEE AND DATA ROOM ACCESS FOR THE NINOY AQUINO INTERNATIONAL AIRPORT (NAIA) PPP PROJECT

In order to access the Virtual Data Room (**VDR**) and the Physical Data Rooms (**PDR**) where the Bidding Documents and certain information and data for the Project will be made available, Interested Bidders are required to complete the following steps:

1. The Interested Bidder shall complete the payment of the non-refundable Participation Fee of Two Million Seven Hundred Fifty Thousand Philippine Pesos (PhP 2,750,000.00) or Fifty Thousand United States Dollars (USD 50,000.00) through deposit to the designated bank account of Manila International Airport Authority (MIAA) as provided below:

Philippine Peso Payments:

Bank: Landbank of the Philippines
Account Name: MIAA for E-Payments
Account No.: 0271-1322-20
Swift Code: TLBPPHMM

US Dollar Payments:

Bank: Landbank of the Philippines
Account Name: MIAA for E-Payments
Account No.: 0274-0044-60
Swift Code: TLBPPHMM

2. A Non-Disclosure Undertaking in the form set out in **Annex VDR-A** must be executed by the Interested Bidder's authorized representative.
3. An Authorization Letter using the template in **Annex VDR-B** shall also be signed and executed by the Interested Bidder's authorized representative. The Pre-Qualifications, Bids and Awards Committee (PBAC) duly constituted for the Project reserves the right to require additional proof of the authority of the authorized representative. Failure to submit the said proof may lead to the suspension or revocation of the Prospective Bidder's access to the VDR and PDR.
4. The Prospective Bidder is required to provide at least one (1) and as many e-mail address(es) as it considers necessary which will be given access to the VDR. In the case of PDR, the Prospective Bidder may nominate up to twenty (20) individuals or representatives. To gain access to the VDR and PDR, the Prospective Bidder shall indicate the complete names, email addresses, and appropriate designation or position in the entity to where the nominees belong to (i.e., Prospective Bidder, Prospective Bidder Representative, Prospective Partner, Prospective Partner Representative).
5. The Interested Bidder shall submit (i) the scanned or screen captured copy of the transaction receipt/deposit slip as proof of payment, (ii) the duly executed Non-Disclosure Undertaking, (iii) the duly executed Authorization Letter, and (iv) the VDR and PDR contact email/s, complete

names of individuals nominated to be given access to the data rooms and their designations as required in specific detail in the Section 4 above by:

- a. Submitting scanned copies to: NAIA PPP Pre-Qualifications Bids and Awards Committee (PBAC)

Attention: **Chairman, NAIA PPP PBAC**
Through the BAC Secretariat

proc-bsd@dotr.gov.ph

(cc): naiaproject@ppp.gov.ph

- b. Submitting printed copies to the following:

Attention: NAIA PPP Pre-Qualifications Bids and Awards Committee (PBAC)
Secretariat

Address: Unit 62, Columbia Tower, Ortigas Ave., Mandaluyong City, Metro Manila, Philippines 1550

6. The Interested Bidder shall then be provided an access link to the Bidding Documents through the VDR, physical access to the PDR, and be referred to in these Instructions to Bidders as a Prospective Bidder. The Bidding Documents will be provided in electronic format only. The draft Concession Agreement and its Annexes will be made available at a later date. *The Grantors (DOTr and MIAA) reserve the right to reject any or all bids, declare a failure of bidding, modify the Bidding Documents or any aspect thereof anytime, and/or not award the contract for any reason whatsoever and without need for any explanation.*

ANNEX VDR-A

NINOY AQUINO INTERNATIONAL AIRPORT PPP PROJECT NON-DISCLOSURE UNDERTAKING

This Non-Disclosure Undertaking (the “**Undertaking**”) is executed in favor of the Grantors, Department of Transportation and Manila International Airport Authority (“**Grantors**”) by [Name of Bidder] (the “**Prospective Bidder**”) for the NINOY AQUINO INTERNATIONAL AIRPORT PPP PROJECT (“**Project**”).

RECITALS:

1. The Project is proposed to be undertaken pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718, or the Build-Operate-Transfer (“BOT”) Law, by the Department of Transportation (“DOTr”) and the Manila International Airport Authority (“MIAA”) as implementing agencies and co-grantors. The Project has been approved by the National Economic and Development Authority Board at its meeting held on July 19, 2023.
2. Following the Project’s approval on July 19, 2023, the DOTr and MIAA (“Grantors”) are directed to proceed with its tender. Thus, the Grantors have arranged for a Virtual Data Room (VDR) and Physical Data Rooms (PDR) to make available to Prospective Bidders certain confidential documents and information relating to the Project.
3. This Undertaking is required to establish the rights and obligations in respect of such Confidential Information and other matters relating to information shared or made available by the Grantors.

NOW THEREFORE, in consideration of being granted access to the VDR, this Undertaking is issued in accordance with the following terms and conditions:

1. DEFINITION OF TERMS

The following terms, when used herein, shall have the following meanings:

“**Confidential Information**” means any *privileged and proprietary information* disclosed during the bidding process for the Project that relate to or are connected with the Project and the Grantors, including all confidential and/or proprietary knowledge, document, data or information of the Grantors that relates to the Project. Confidential Information shall include Project-related data and information shared by the Grantors in both the VDR and the PDR arranged by the Grantors for the Project, as well as those disclosed during one-on-one meetings, site visits, conferences and other discussions held in connection with the bidding process for the Project.

“**Prospective Bidder**” refers to an individual, partnership, corporation, or any other juridical entity, or Consortium that has paid the Participation Fee and complied with other requirements to gain access to the VDR and PDR. Only Prospective Bidders have the personality to lodge queries to the PBAC in relation to the Instructions to Bidders.

“Prospective Partner” refers to an individual, partnership, corporation, or any other juridical entity, which the Prospective Bidder intends to partner with or form a consortium with for the submission of its Bid for this Project.

“Representatives” means the respective directors, officers, employees, agents, consultants, advisors, subcontractors, or other representatives, including legal counsel, accountants, financial advisors, and any professional consultant or agent retained by the relevant party.

“Transaction Advisors” means the advisors, consultants and experts assisting and advising the Grantors in relation to the Project.

“Undertaking” means this Undertaking, as amended, varied or supplemented.

2. NATURE OF CONFIDENTIAL INFORMATION

2.1 The Grantors are willing and agree to disclose the Confidential Information to Prospective Bidders of the Project.

2.2 Unless otherwise agreed to in writing, and subject to the terms of this Undertaking, Prospective Bidders will not divulge or disclose the Confidential Information or make the same available to any person or entity, other than to their Representatives or Prospective Partners and Representatives for the sole purpose of conducting the necessary due diligence, participating in the tender for the Project and putting together a proposal or bid for the Project. Prospective Bidders will make appropriate arrangements to ensure that any such persons will be made aware of the confidential nature of the Confidential Information and shall ensure that they adhere to the terms of this Agreement. Prospective Bidders, their Representatives, and Prospective Partners and their Representatives will not use the Confidential Information for any purpose other than as stated herein, i.e., conducting the necessary due diligence, participating in the tender process and putting together a proposal or bid for the Project.

2.3 In the event of an unauthorized disclosure of any of the Confidential Information, Prospective Bidders shall immediately, to the extent practicable and legally permissible, notify the Grantors immediately, on becoming aware that any of the Confidential Information has been disclosed to, or obtained by, a third party otherwise than as permitted by this Undertaking, together with full details of such unauthorized disclosure.

2.4 Prospective Bidders acknowledge and agree that subject to Section 3 below:

(a) Prospective Bidders agree to comply with the VDR protocols and guidelines, attached herein as Annex VDR-C, and other guidelines that may be issued in relation to access to and for all the information and documents uploaded in the VDR or made available in the PDR, in relation to the Project. Prospective Bidders shall at all times take all necessary steps and measures to safeguard and preserve the confidentiality of the Confidential Information, which shall include but not be limited to ensuring secure storage of the Confidential Information and taking legal action and injunctions, as necessary, against their unauthorized or accidental disclosure. They shall also limit access to the Confidential Information only to those Representatives involved in the Project, and to whom it is strictly necessary to

disclose the Confidential Information in connection with their intent to submit a proposal or bid for the Project.

- (b) The Confidential Information disclosed by the Grantors may contain confidential and proprietary information from third parties to which an equivalent duty of confidentiality is owed to. Bidders acknowledge that insofar as they receive Confidential Information relating to such third parties, they shall be bound to preserve its confidentiality in accordance with the terms of this Undertaking. The Prospective Bidders and Bidders shall hold the Grantors free and harmless from any and all claims, injuries, damages, losses, and liabilities arising out of any breach of the duty of confidentiality to third parties.
- (c) Prospective Bidders and Bidders shall not use the Confidential Information for any purpose other than for conducting the necessary due diligence and putting together a proposal or bid for the Project.

3. PERMITTED DISCLOSURE

3.1 Notwithstanding anything to the contrary in this Undertaking, the Grantors agree that Prospective Bidders may disclose Confidential Information to the following parties:

- a) Representatives of Prospective Bidders on a need-to-know basis. Prospective Bidders shall (i) ensure that such Representatives are aware of the confidential nature of the Confidential Information and Prospective Bidders' obligations under this Undertaking, before disclosing Confidential Information to such Representatives; (ii) ensure compliance by such Representatives of the obligations and duty of care imposed on the Prospective Bidders under this Undertaking.
- b) Prospective Partners of Prospective Bidders. The Prospective Bidder shall (i) ensure that such Prospective Partners and their Representatives are aware of the confidential nature of the Confidential Information and Prospective Bidders' obligations under this Undertaking, before disclosing Confidential Information to such Prospective Partners; (ii) ensure compliance by such Prospective Partners and their Representatives of the obligations and duty of care imposed on the Prospective Bidders under this Undertaking.
- c) Such third parties to which Prospective Bidders may be required under applicable law or by a government requirement (whether or not of a statutory nature), order, decree, regulation, rule or court order to disclose the Confidential Information. In the case of disclosure pursuant to court order, Prospective Bidders shall (if possible) provide the Grantors with sufficient notice to allow or arrange for allowable parameters for the Prospective Bidders to make representations to the relevant court about disclosure of Confidential Information.

3.2 Notwithstanding anything else contained in Section 3, the term "Confidential Information" shall be deemed not to include information or material that:

- a) disclosure is expressly permitted under this Undertaking or by written agreement of or consent by the Grantors;

- b) is already in the possession of Prospective Bidders (other than through a breach of any right of the Grantors) at the time of disclosure as shown by relevant written records in existence at the time of disclosure;
- c) is lawfully obtained by Prospective Bidders from a third party without breach of this Undertaking;
- d) is independently developed by Prospective Bidders without breach of this Undertaking; or
- e) has entered the public domain other than as a result of a breach of this Undertaking.

4. PUBLIC ANNOUNCEMENTS

Prospective Bidders shall not make any public announcement through any medium, such as prints or electronic media, discussion and negotiation in connection with any matter that refers to Confidential Information or the Grantors and their Transaction Advisors, without the prior written consent of the Grantors.

5. NO WARRANTY

- 5.1 Although the Grantors and its Transaction Advisors have endeavored to include in the Confidential Information all information that they believe to be relevant and material in connection with Project, Prospective Bidders understand that neither the Grantors nor their Transaction Advisors have made or make any representation or warranty as to the accuracy or completeness of the Confidential information.
- 5.2 Except as may be set forth in a separate written agreement between the Grantors and the Prospective Bidders or interested parties, the Grantors and their Transaction Advisors make no representations or warranties, express or implied, as to the quality, authenticity, accuracy and completeness of the Confidential Information, and Prospective Bidders expressly acknowledge the same.

6. BINDING EFFECT AND ASSIGNMENT

This Undertaking shall be binding upon and inure to the benefit of the Grantors and their respective successors and assigns. This Undertaking may not be assigned by Prospective Bidders without the prior written consent of the Grantors.

7. MODIFICATION AND WAIVER

- 7.1 No modification or waiver of any of the provisions hereof, or any representation, promise or addition hereto, or waiver of any breach hereof, shall be binding upon either party unless made in writing and signed. No waiver of any particular breach shall be deemed to apply to any other breach, whether prior or subsequent to a waiver.

- 7.2 Neither the failure nor any delay by the Grantors in exercising any right, power or privilege under this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

8. GOVERNING LAW AND RESOLUTION OF DISPUTES

This Undertaking shall be governed by and construed in accordance with Philippine law. Any dispute, controversy or claim arising out of, relating to, or in connection with this Undertaking, shall be governed by the existing alternative dispute resolution process, rules and regulations under Philippine law.

9. TERM

The Prospective Bidders' obligations under this Undertaking will continue for a period of one (1) year from the date of signing hereof unless otherwise agreed upon.

10. RELATIONSHIP BETWEEN PARTIES

- 10.1 Nothing in this Undertaking nor the disclosure of Confidential Information by the Grantors pursuant hereto shall be construed in any way as:
- a) precluding the Grantors in any way from dealing with other parties in relation to the Project;
 - b) an express or implied agreement by the Grantors to bear any cost or expense incurred by the Prospective Bidders or interested parties in the review of the Confidential Information or otherwise in relation to the Project; and/or
 - c) establishing a partnership between the Grantors and Prospective Bidders.
- 10.2 The Prospective Bidders have no power or authority, by virtue of this Undertaking, to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the Grantors as to any matter or thing to be done in relation to the Project.

11. SEVERABILITY

The invalidity or unenforceability of any provision of this Undertaking shall not affect the validity or enforceability of any other provisions herein which shall remain in full force and effect.

12. REPRESENTATION AS TO AUTHORITY

The Bidders represent that they have full power, authority and legal right to execute and deliver this Undertaking and have taken all necessary action to authorize the same.

13. NO COMMITMENT

The Prospective Bidders acknowledge that the Grantors have reserved the right to terminate or suspend, at any time and without cause, further participation in the investigation by the Prospective Bidder and to refuse to disclose any further Confidential Information to the Prospective Bidder.

This Undertaking does not constitute a solicitation of bids for the Project.

IN WITNESS WHEREOF, the parties have caused this Undertaking to be executed in the manner appropriate to each as of the date and place first above written.

[NAME OF PROSPECTIVE BIDDER]

By: _____

(Authorized Representative)

Date: _____

Signed in the Presence of:

ANNEX VDR-B

[Letterhead]

AUTHORIZATION LETTER

[Date]

**Pre-Qualifications, Bids, and Awards Committee for the
Ninoy Aquino International Airport PPP Project
Department of Transportation
Manila International Airport Authority**

Attention: **UNDERSECRETARY TIMOTHY JOHN R. BATAN**
Chairman, Pre-qualifications Bids and Awards Committee for the Ninoy
Aquino International Airport Public-Private Partnership Project

Gentlemen:

In connection with the intended participation of (*name of Prospective Bidder*) in the bidding process for the Ninoy Aquino International Airport Public-Private Partnership Project (the “**Project**”), I hereby certify, based on (*insert basis of authority*), that (*name of authorized representative*) is authorized to request access to the Virtual Data Room and to sign the NAIA PPP Project Non-Disclosure Undertaking on behalf of (*name of Bidder*).

Please provide access to the Virtual Data Room to the following person with this email address:

Name:
Email Address:

Yours,

[name]
[Corporate Secretary/Equivalent Officer]
[name of Prospective Bidder]

**ANNEX VDR-C
VIRTUAL DATA ROOM GUIDELINES**



Introduction

1. The Pre-qualifications, Bids and Awards Committee (PBAC) for Public Private Partnerships of the Implementing Agencies, Department of Transportation (DOTr) and the Manila International Airport Authority (MIAA) has created a virtual data room (VDR), which is a secure online facility for storing, distributing, accessing, monitoring the question-and-answer process, and bid documents to interested parties for the Ninoy Aquino International Airport (NAIA) PPP Project (“the Project”).
2. The VDR aims to provide an online platform for Prospective Bidders to undertake their due diligence review by making available electronic versions of bid/tender documents and other related project documents in a secure and controlled environment.
3. The VDR is a repository with distinct advantages in terms of its accessibility. As with similar technology-based platforms, the VDR can provide this service 24 hours a day, 7 days a week during the entire bidding period.

Virtual Data Room Guidelines

4. The VDR Guidelines sets out the rules on the management of the VDR and define roles and responsibilities of the Project Team. These Guidelines aim to establish efficient VDR management practices that will promote the use of the VDR as a repository of project documents, address accountability requirements, as well as satisfy Prospective Bidders’ requirements for tender and project information.

Users of the Virtual Data Room

5. The following entities may be given access to the VDR. Their roles are briefly described in general terms below:
 - (i) Implementing Agency
PBAC Members is responsible for all aspects of the pre-bidding and bidding process.
 - (ii) PPP Center
The agency created by virtue of the Executive Order No. 8 series of 2010, as amended by Executive Order No. 136 series of 2013, and mandated to facilitate the implementation of the country’s PPP Program and Projects.
 - (iii) Transaction Advisor (TA)
Asian Development Bank is the Transaction Advisor and its consultants from PwC, Landrum and Brown, Pinsent Masons, Lacle, Marsh and PJS Law. Intralinks is the designated VDR facility provider and provider of technical support and systems maintenance. Intralinks is the designated provider of VDR platform and services, including technical support and systems maintenance.

Prospective Bidders is a party which has paid the Participation Fee and complied with other requirements to gain access to the Virtual Data Room

6. Project Team shall refer to the government-side entities participating in the Project, i.e. DOTr, MIAA, PPPC, Transaction Advisor and its Consultants.

7. A VDR Manager and co-managers shall be designated from among the Project Team members, namely the Manager, nominated from the PBAC Secretariat, and co-managers, nominated from the Transaction Advisor and its Consultants.

VDR Functional Description

8. The VDR is an online repository of bidding documents in a secure environment. The VDR Provider will oversee the technical administration and systems support of this facility.

9. Online access to the VDR is available 24/7. The VDR functionalities consist of the following:

- Repository of project data and secondary data
- Upload and download of bid documents and other project related files.
- Project inquiries collection
- Issuances of bid bulletins
- Email and data room notifications and announcements
- Support for multiple users, roles, and permissions
- Secure log-in and access
- Access and audit logs
- Provide hands-on support for technical queries
- Host multiple user accounts

Specific Roles and Responsibilities

10. This section defines the specific roles and responsibilities of the Project Team in the management of a Project VDR. (See Annex 1 for a matrix of roles and responsibilities.)

(i) PBAC

- a. The PBAC designates a VDR Manager from the PBAC Secretariat. The PBAC Secretariat will act as the central repository of all information to be uploaded into the VDR.
- b. The PBAC will be responsible for requesting the creation of a project VDR.
- c. The PBAC will provide the names of the Project Team members who will be given access to the VDR.
- d. The PBAC is and the sole source of official bid announcements and project documents. Project inquiries shall be answered by the PBAC through supplemental bid bulletin and other official notices.
- e. The PBAC will be responsible for ordering the deactivation of a project VDR.

(ii) Transaction Advisor (TA) and VDR Manager

The TA will be the co-manager and will manage the VDR on a daily basis. Their tasks will include the following:

- a. creation and maintenance of user accounts for the Project Team and interested parties;
- b. uploading of bid announcements and other project files;

- c. monitoring of Prospective Bidder queries and responses posted on the VDR; and
- d. data entry, creation and editing of user accounts and supporting the VDR Manager in the uploading of documents.

(iii) PPPC – will monitor activities and provide observations and recommendations as may be necessary.

(iv) VDR Provider is Intralinks and their tasks include:

- a. create Project VDR and VDR Managers' accounts;
- b. ensure security and provide technical support;
- c. oversee the security and administration of the VDR; and
- d. maintain logs on interested parties/Prospective Bidder log-ins; and (v) provide training on the use of the VDR.

(v) Interested Parties/Prospective Bidders

- a. will be given online access to a project VDR to obtain bidding information and facilitate due diligence review; and
- b. will be responsible for accessing the VDR Inbox regularly for updates.

Accessing the Project Virtual Data Room

11. After the VDR Manager and Co-managers' accounts have been created, the management of the VDR is turned over to the VDR Managers. The VDR Managers may then generate additional user accounts as per procedures set out in paragraph 12. This will ensure that control of VDR access is managed properly.

12. A first-time VDR user will receive a Welcome Email in his/her personal email address which will include: (a) A verification email which will allow the creation of an account in Intralinks, and (b) Basic instructions and information on Intralinks. For security purposes sharing of username and password is strongly discouraged.

13. A username and password will enable the VDR user to login to the VDR and navigate its features. When logging-in to the VDR for the first time, all users will be asked to agree to the facility's Terms of Use and Conditions. Not agreeing to these Terms of Use and Conditions will prevent the user from logging-in to his/her account.

14. Upon agreeing to the Terms of Use and Conditions, the user will be able to log-in and find more detailed instructions on how to navigate the VDR.

15. Continued access to the VDR will be at the discretion of the PBAC.

Formal Request from interested parties and Prospective Bidders

16. The VDR shall be open only to the interested parties and Bidders subject to the relevant confidentiality provisions and are required, in the first instance and at least two (2) business days before the requested commencement of access date, to have paid the participation fee set out in the ITB and submit a formal written request to the PBAC and shall specify:

- (i) the date of access;
- (ii) names of authorized representatives; and

(iii) provide evidence of payment of participation fee.

17. The formal request must be duly received by the PBAC. A copy of the request shall be furnished by email to the PBAC through the following contact details:

Attention: **Chairman, NAIA PPP PBAC**
Through the BAC Secretariat
proc-bsd@dotr.gov.ph
(cc): naiaproject@ppp.gov.ph

18. The PBAC shall have the discretion to approve the request for access and may impose such terms and conditions on access and use as may be deemed reasonable.

- (i) The PBAC Secretariat shall maintain a list of persons who have been authorized to access the VDR. Only those persons whose names appear on the said list may access the VDR.
- (ii) Prospective Bidders may request for authorized representatives to be granted access to the VDR following the above procedure.

19. Subject to the scheduling of access, following the issuance of such approval, the Prospective Bidder's authorized representatives may access the VDR at any time it is open from the date access is authorized until the Close of the VDR, but priority will be given to Prospective Bidders who are requesting access for the first time.

20. Prospective Bidders who have been granted authority to access the VDR shall coordinate with the VDR Manager for any concerns regarding the VDR, including scheduling of access thereto.

21. To ensure equal opportunity to all Prospective Bidders, each Prospective Bidder shall only be allowed a maximum of five (5) authorized representatives for each access.

Access Rights: Data Entry, Editing, Uploading and Archiving of Documents

22. Once the VDR has been activated and ready for use, the VDR Manager and Co-managers can create project profiles and upload documents into the VDR. DOTr and MIAA shall be the sole source of outbound documents that will be uploaded to the VDR.

23. The following table describes the access levels of the Project Team and Prospective Bidders:

VDR Users	Access Levels				
	Data Entry	Edit	Upload Documents	Download Documents	View
Ias – PBAC	No	No	No	Yes	Yes
VDR Manager and Co-managers	Yes	Yes	Yes	Yes	Yes
Transaction Advisor	No	No	No	Yes	Yes
PPP Center	No	No	No	Yes	Yes

Prospective Bidders	No	No	Yes*	Yes	Yes
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*Prospective Bidders queries

24. The following are the standard documents that will be uploaded to the VDR.

- Instructions to Bidders
- Bid Bulletins, Special Bid Bulletins
- Draft Concession Agreement
- Pre-Bid Conference Presentation
- Other relevant project documents

25. Other documents determined by the Project Team such as secondary data and annual reports, may be uploaded as approved.

26. Requests for changes on VDR data that need to be acted upon by the VDR Managers and co-Managers should be approved by the authorized representatives of the Project Team. The requests can be sent via email as long as the required approvals are clearly indicated by concerned parties.

Approval Protocols for Upload of Documents

27. The TA will send to the Ias an initial list ('clearance list') of documents that the TA intends to upload to the VDR. It will have a general description of each document and a snapshot of the first page of each document.

28. The Ias will secure internal approvals for each specified document, including the necessary clearance, from the PBAC, through the PBAC Secretariat as deemed necessary.

29. For each succeeding additional document/s which will be added to the VDR, the TA and Ias shall follow the same protocol set above. The VDR Manager and co-Managers are designated to upload documents to the VDR.

File Size

30. The VDR shall accept uploads of a maximum of 500 MB. In cases of an upload of a larger file size, the VDR Manager and co-Managers must coordinate with the VDR Provider for further support through support@intralinks.com.

Source of Official Electronic Project Documents

31. The sole source of official electronic announcements, bid bulletins and other related project documents shall be the PBAC and the PBAC Secretariat. This is to better monitor the source and accuracy of the documents and protect the integrity of the bidding process.

Document Formats and Digitization Specifications

32. Document types to be accessed in the VDR will consist of electronic versions of text documents, spreadsheets, photos, maps and other document types made available by the las.

33. If the electronic versions are not available and scanning of hardcopy documents must be done, the following minimum specifications for digitization (i.e., scanning) should be observed by the las. Preferred document formats and attributes:

- Text encoded PDF documents for searchability (not embedded scanned images unless necessary)
- MS Office formats
- Basic data formats (txt, csv, xml, etc.)
- Images encoded in TIFF, JPEG, or PNG format
- Minimum of 150 dpi image resolution
- Scanned images at 1:1 scale
- Maximum file size of 500 Mb (if higher is required, please contact support@intralinks.com)

Circulation of Documents

34. Downloaded files are not intended for public dissemination. Restrictions on their circulation may be further described in a Non-Disclosure Agreement between the Prospective Bidder and the las.

35. It is the responsibility of the Bidders to regularly check their respective emails or log into the VDR for the latest bid updates on the Project.

Inquiries of Prospective Bidders

36. Prospective Bidders shall use the VDR to submit their inquiries. Prospective Bidders must use the template as specified in the ITB. Electronic copies of questions uploaded in the VDR must be sent either through Microsoft Word or Excel format only. Queries on the Bidding Documents must be concrete or clarificatory, and not purely hypothetical in nature.

37. Format of Prospective Bidder queries and comments on bid documents is set out in Section 1.9 of the ITB.

Backing-Up the Project VDR Facility

38. Information, transactions, logs, and other data submitted or generated by the system shall be stored in the reports section of the VDR. Documents will be retained in the system within a period of 60 days upon deletion and/or closing of the VDR.

39. Any End User Files stored in the backup systems of the VDR provider shall be destroyed within thirty-five (35) days. Upon the request of PBAC, through the PBAC Secretariat, the VDR provider shall provide a certification of deletion or destruction of the End User Files uploaded to an Exchange.

40. The backup strategy adopted will enable the fast recovery of the functionality and integrity of the VDR should any issue arise, that may cause the system to break or corrupt its data.

41. The VDR Managers shall be responsible for ensuring the availability and security of backups as well as the recovery of the system.

VDR Technical Support

42. For technical issues, users may contact the following:

- (i) VDR Manager or co-Managers, and/or
- (ii) VDR Provider through the 24/7 technical support at support@intralinks.com

43. To preserve the integrity of the VDR facility, the following practices shall be adopted:

- User access shall be encrypted.
- A 1 hour “no activity” timeout is in force within the system to prevent unauthorized users from accessing the VDR in cases where computers are left unattended. When the timeout is reached, users will need to relogin to the system.
- To maintain the efficiency of the system, all transactions (uploading, downloading, etc.) within the VDR must complete within a 1-hour period. Otherwise, the system will timeout and the user will need to login again.
- Links to the log-in page will be sent to authorized users only.
- Actively monitor system performance and logs.
- Information Rights Management (IRM) protection, encryption and decryption, virus scanning and application of watermarks.
- Apply best practices in keeping server systems secure.
- Discourage user access in public hotspots such as internet cafés.

Deactivating a Project VDR

44. The order to deactivate the VDR will emanate from the PBAC. After deactivation, authorized users will no longer be able to access the VDR. Extended access of the VDR by Prospective Bidders and other users will be at the discretion of the PBAC.

45. Manual deactivation of the VDR will be done by the VDR Manager and co-Managers. This process of deactivation will include deactivating user accounts and archiving of the PPP project profile and its associated electronic document files.

Files Retention

46. Termination of the VDR must be requested by ADB OPPP. Upon termination, VDR provider shall prepare an offline archive of the End User Files uploaded to an exchange for the fee set forth in the relevant Work Order. It is understood and agreed by the parties that upon termination of any Work Order or written notification ADB OPPP, the exchange is marked for deletion forthwith, but remains on the Services for a period of sixty (60) days for technical reasons. The files within the VDR will not be accessible to any End Users but can be reactivated if requested by Client in writing.

Related Laws and Issuances

47. These Guidelines are subject to the provisions of the following laws:

- Republic Act No. 10173 or the Data Privacy Act of 2012

- Republic Act No. 10175 or the Cybercrime Prevention Act of 2012
- Republic Act No. 8792 or the Electronic Commerce Act of 2000
- Republic Act No. 8293 or the Intellectual Property Code of the Philippines
- Republic Act No. 9470 or the National Archives of the Philippines Act of 2007
- Other issuances of the National Privacy Commission

Annex 1 Summary Matrix – Roles and Responsibilities

VDR Tasks	IA	VDR Manager/Co-Managers	VDR Provider	PPP Center	Prospective Bidder
VDR Creation and Access					
Send request to create initial Username and Password for VDR Managers	Yes	No	No	Yes	No
Create VDR and initial username and password for VDR Managers	No	No	Yes	No	No
Create Usernames and Passwords for Project Team and Prospective Bidders	No	No	Yes (Automatically make the email address as the username)	No	Yes (Can set the password upon receiving email to sign up)
VDR Main Activities					
Data Entry, Editing, Updating*	No	Yes	No	No	No
Upload of Documents	No	Yes	No	No	No
Download Documents	Yes	Yes	Yes	Yes	Yes
Viewing Documents	Yes	Yes	Yes	Yes	Yes
Respond to Prospective Bidder Inquiries	No	Yes	No	No	No
Send request to Deactivate Project VDR	Yes	No	No	No	No
Deactivate Project VDR	No	No	Yes	No	No
VDR Support Tasks					
Source of Project Documents	Yes	Yes	No	No	No
Digitization of Documents	Yes	Yes	No	No	Yes
Project Files Retention	Yes	Yes	Yes (For 60 days upon deletion of VDR account)	Yes	Yes
Project Logs Retention	Yes	Yes	Yes	Yes	No

VDR Technical Security and Technical Support	No	No	Yes	No	No
--	----	----	-----	----	----

ANNEX QDC: LIST OF QUALIFICATION DOCUMENTS

Document Ref. No.	Document Name	Page No.	Complying Entity					Designated Operator (indicate name)
			Single Bidder (indicate name)	Consortium				
				Member name	Member name	Member name	Member name	
QDC	List of Qualification Documents							
QD-1	Form of Bid Letter							
QD-2A	Certification of Not Being an Airline-Related Entity							
QD-2B	Certification of Not Being a GCR Entity							
QD-3A / QD-3B	Business Structure							
QD-4	Basic Information Sheet							
QD-5	Notarized C Certification of Absence of Unsatisfactory Performance Record							
QD-6	Development Experience							
QD-7A	Certificate for Establishing Shareholding in an Airport Concessionaire							
QD-7B	Certificate on the Details of Development Experience							

QD-8	Certificate for Establishing Relationship with Affiliates and Parent Companies							
QD-9	Operation and Maintenance Experience							
QD-10	Notarized Statement of Capacity to Undertake the Operation & Maintenance Requirements of the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Operation & Maintenance Requirements of the Project							
QD-11A	Certificate for Establishing Shareholding in an Entity that Operated and Maintained an Airport							
QD-11B	Certificate on the Details of Operations and Maintenance Experience							
QD-12	Key Personnel							
QD-13	Notarized Certification of Absence of Unsatisfactory Performance Record for Qualified Key Personnel							
QD-14	Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Project, and Commitment to Enter into an Agreement with the							

	Concessionaire to Undertake the Qualified Key Personnel Requirements of the Project							
QD-15	Notarized Statement of Financial Capability							
QD-16	Notarized Application to Participate in the Bidding							
QD-17A	Notarized Corporate Authorizations and Designation of Authorized Representative							
QD-17B	Consortium Member's Notarized Authority to Participate in the Consortium and in the Bidding, and Designation of Lead Member and Authorized Representative of Consortium							

ANNEX QD-1: FORM OF BID LETTER

[Letterhead]

Republic of the Philippines)

) s.s.

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the authorized representative of *(name of Bidder)*, a *(corporation/partnership/Consortium)*, *(organized and existing under and by virtue of the laws of [(place of incorporation/registration) or (organized by agreement among its Consortium Members)]*), after having been duly sworn according to law, hereby declare for and on behalf of *(name of Bidder)* that:

1. In accordance with the Bidding Documents for the Ninoy Aquino International Airport PPP Project, *(name of Bidder)*, a *(partnership/corporation/Consortium)* with business address at [], hereinafter referred to as the Bidder, submits its Qualification Documents and Bid Proposals in accordance with the Instructions to Bidders to finance, design, construct, operate and maintain the Ninoy Aquino International Airport PPP Project in accordance with the Concession Agreement.
2. Bidder's Bid consists of the following components:
 - a. Qualification Documents;
 - b. Technical Proposal; and
 - c. Financial Proposal.
3. *(Name of Bidder)* declares that all statements made and the information and documents submitted in its Qualification Documents and Bid Proposals are true and correct as of the date of this statement, and any misrepresentation or false statement made therein shall be a ground for its disqualification.
4. *(Name of Bidder)* declares that it is compliant with ownership and control thresholds applicable to Airline-Related Entities and GCR Entities.
5. *(Name of Bidder)* authorizes the DOTr to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Qualification Documents and Bid Proposals, and to seek clarification from its clients and bankers regarding any technical and financial aspects. *(Name of Bidder)* also permits third parties to supply information required to verify statements and information submitted in its Qualification Documents and Bid Proposals.
6. *(Name of Bidder)*'s Bid Proposal is unconditional and unqualified. *(Name of Bidder)* understands and accepts all of the terms, conditions and other provisions of the Bidding Documents, including the final version of the Concession Agreement and its Schedules and the Information Memorandum.
7. *(Name of Bidder)* acknowledges the right of the DOTr to reject its Qualification Documents and Bid Proposal without assigning any reason and to cancel the Bidding process at any time, without incurring any liability to the *(name of Bidder)*.
8. *(Name of Bidder)*, including all its Consortium Members, and all of the entities it has identified to comply with the Qualification Requirements under the Instructions to Bidders, have not at any time (i) engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practices, (ii) have a Conflict of Interest (iii) violated the Bidding Period Lock-Up Rules.
9. *(Name of Bidder)* waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi-judicial or administrative writ, process or issuance against the DOTr to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Bidding Process, the award of the Project to the Winning Bidder, and the implementation of the Concession Agreement. *(Name of Bidder)* acknowledges that the DOTr is undertaking this Bidding

in the performance of its functions to ensure the provision of a critical basic necessity and that, therefore, the Project is of paramount public interest and importance and that the DOTr will suffer serious and irreparable damage on account of any breach by (name of Bidder) of these undertakings, and agrees that the breach of these undertakings shall result in its automatic disqualification to bid for the Ninoy Aquino International Airport PPP Project.

10. (Name of Bidder) agrees to keep its Bid Proposal valid for one hundred eighty (180) days from the Bid Submission Date.
11. In the event that (name of Bidder) is declared as the Winning Bidder, (name of Bidder) agrees to comply with the requirements of Section 12 (Notice of Award, Post-Award Requirements & Execution of Concession Agreement) of the Instructions to Bidders and execute the Concession Agreement with the within the deadlines set in the Instructions to Bidders.

(Date and Place of Execution.)

For and on behalf of *(Name of Bidder/Name of Consortium and List of Consortium Members)*

By:
(Name, Designation and Signature of Authorized Representative)

SUBSCRIBED AND SWORN TO before me this _____day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)* issued at *(City)* on *(date)*.

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ANNEX QD-2A: Certification of Not Being an Airline-Related Entity

Republic of the Philippines)
) S.S.

Certification of Not Being an Airline-Related Entity

As per authenticated records, this is to certify that (*Name of the Bidder / Consortium Member*) is not an Airline-Related Entity as defined in Section 16.3 of the Instructions to Bidders, and that:

1. (*Name of the Bidder / Consortium Member*) is not an Airline;
2. (*Name of the Bidder / Consortium Member*) does not have the power to direct or cause the direction of the management policies and actions of an Airline, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in an Airline, or (ii) the ability to elect a majority of the members of an Airline's board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements;
3. No Airline has the power to direct or cause the direction of the management policies and actions of (*Name of the Bidder / Consortium Member*), whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in (*Name of the Bidder / Consortium Member*), or (ii) the ability to elect a majority of the members of (*Name of the Bidder / Consortium Member*)'s board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements; and
4. (*Name of the Bidder / Consortium Member*) and an Airline are not subject to the same person's power to direct or cause the direction of their management policies and actions, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, or (ii) the ability to elect a majority of the members of the board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements.

Certified by:

Name of the Authorized Representative:
(Signature, name and designation of the Authorized Signatory)

SUBSCRIBED AND SWORN TO before me this (____) day of (month and year) at (place),
affiant exhibiting to me his/her (proof of identity acceptable under Philippine notarial
regulations), issued at (city) on (date).

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ANNEX QD-2B: Certification of Not Being a GCR Entity

Republic of the Philippines)
) S.S.

Certification of Not Being a GCR Entity

As per authenticated records, this is to certify that (*Name of the Bidder / Consortium Member*) is not a GCR Entity as defined in Section 16.25 of the Instructions to Bidders, and that:

1. (*Name of the Bidder / Consortium Member*) is not a concessionaire of any of the Greater Capital Region (GCR) airports, namely: (i) Clark International Airport, (ii) New Manila International Airport, and (iii) Sangley Point International Airport;
2. (*Name of the Bidder / Consortium Member*) does not possess at least one-third (1/3) voting rights in a GCR concessionaire, whether through: (i) direct or indirect ownership of at least thirty-three percent (33%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in a GCR concessionaire, or (ii) the ability to elect one-third (1/3) of the members of a GCR concessionaire's board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements;
3. (*Name of the Bidder / Consortium Member*) does not have the power to direct or cause the direction of the management policies and actions of an entity that has Significant Interest (as defined in Section 16.41 of the Instructions to Bidders) in a GCR concessionaire, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in an entity that has Significant Interest in a GCR concessionaire, or (ii) the ability to elect a majority of the members of the board of directors of an entity that has Significant Interest in a GCR concessionaire,, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements;
4. No entity that has Significant Interest in a GCR concessionaire has the power to direct or cause the direction of the management policies and actions of (*Name of the Bidder / Consortium Member*), whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or(i.b) the voting rights, in (*Name of the Bidder / Consortium Member*), or (ii) the ability to elect a majority of the members of (*Name of the Bidder / Consortium Member*)'s board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements; and
5. (*Name of the Bidder / Consortium Member*) and an entity that has Significant Interest in a GCR concessionaire, are not subject to the same person's power to direct or cause the direction of their management policies and actions, whether through: (i) direct or indirect ownership of at least fifty percent (50%) plus one (1) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, or (ii) the ability to elect a majority of the members of the board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements.

Certified by:

Name of the Authorized Representative:
(Signature, name and designation of the Authorized Signatory)

SUBSCRIBED AND SWORN TO before me this (____) day of (month and year) at (place),
affiant exhibiting to me his/her (proof of identity acceptable under Philippine notarial

regulations), issued at (city) on (date).

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ANNEX QD-3A: Business Structure (for a Bidder which is an individual, partnership, corporation or any other juridical entity)

1. Name of Bidder:

2. Contact Information of Bidder

a. Address	
b. Website	
c. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

3. Entity Proposed to Meet Development Experience

a. Name of Entity	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

- a. If this requirement is fulfilled by an Affiliate of the Bidder, provide evidence of such affiliation using the form prescribed in Annex QD-8.

4. Entity which fulfills the Operations and Maintenance Experience Requirement

a. Name of Affiliate	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

- a. If this requirement is fulfilled by an Affiliate of the Bidder, provide evidence of such affiliation using the form prescribed in Annex QD-8.

5. Entity Proposed to Meet Financial Capability Qualification Requirements

a. Name of Entity	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

- a. If this requirement is fulfilled by the Parent Company of the Bidder, provide evidence of such affiliation using the form prescribed in Annex QD-8.

For and on behalf of (Name of Bidder)

(Signature of Authorized Representative)

(Name, Title, and Date)

ANNEX QD-3B: Business Structure (for a Bidder which is a Consortium)

Name of Consortium: _____

1. Consortium Members

	Lead Member	Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation/ partnership)				
Role in Consortium				

2. Contact Information of Consortium Members

a. Lead Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If there are more Consortium Members, replicate the table above.]

3. Entity Proposed to Meet Development Experience

a. Name of Entity	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

- a. If this requirement is fulfilled by an Affiliate of a Consortium Member, provide evidence of such affiliation using the form prescribed in Annex QD-8.

4. Entity which fulfills the Operations and Maintenance Experience Requirement

a. Name of Affiliate	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

- a. If this requirement is fulfilled by an Affiliate of a Consortium Member, provide evidence of such affiliation using the form prescribed in Annex QD-8.

5. Entity Proposed to Meet Financial Capability Qualification Requirements

a. Name of Entity	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

- a. If this requirement is fulfilled by the Parent Company of a Consortium Member, provide evidence of such affiliation using the form prescribed in Annex QD-8.

For and on behalf of (Name of Consortium and Lead Member)

(Signature of Authorized Representative)

--

(Name, Title, and Date)

ANNEX QD-4: Basic Information Sheet

- a. To be submitted by all entities listed in all sections of the Business Structure (Annex QD-3A or QD-3B).
- b. Required attachment: In case of a corporation created pursuant to the Corporation Code of the Philippines, an SEC-certified true copy of its latest General Information Sheet (“GIS”).

In case of a foreign partnership, corporation or other juridical entity, the equivalent document (or a document providing similar information as required under a GIS) submitted to and acknowledged by the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The certification may come from either an appropriate government agency in a foreign country, or the entity’s corporate secretary or authorized representative. If it comes from the entity’s corporate secretary or authorized representative, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate having jurisdiction over the place of issue.

In case the foreign partnership, corporation or other juridical entity does not have a GIS or its equivalent, the entity shall submit a certification from its corporate secretary or authorized representative stating that no such document is available in the country where the entity is registered for recognition or creation of its juridical personality or capacity and such entity must also submit a document providing similar information as required in a GIS, certified either by the appropriate government agency in its home country, or by such entity’s corporate secretary or authorized representative. If the certification is made outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate having jurisdiction over the place of issue.

1. Name of Entity	
2. Type of entity (please check one)	Individual Partnership Corporation
3. Consortium Member or not? (please check one)	Yes No
3a. Airline Related Entity or not? (please check one)	Yes No
3b. GCR entity or not? (please check one)	Yes No
4. Affiliate of an entity listed in QD-3A or QD-3B?	Yes, Affiliate of _____ No
5. Place of Incorporation or Registration	
6. Year of Incorporation or Registration	
7. Principal Purposes or Businesses	

8. Shareholder or Partner Information

Name of Shareholder or Partner	Nationality	Percentage Total of Shareholding of Partnership Interest

[Note: Insert rows as necessary]

For entities listed on the Philippine Stock Exchange (“PSE”), the Bidder must submit the listed entity’s latest Public Ownership Report and List of Top 100 Stockholders, as submitted to the PSE. The information in such Report and List must be as of a date no earlier than 31 December 2022. Shares held by PCD Nominee may be lumped together in the List of Top 100 Stockholders.

For entities listed outside the Philippines, the Bidder must state where the entity is listed, and must submit the equivalent document/s that is/are submitted to the listed entities’ public or private regulator. The most recent submission to such a regulator must be submitted, provided that such submission contains information as of a date no earlier than 31 December 2022.

9. Information on Beneficial Owners who own more than 5% Beneficial Interest

Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership

[Note: Insert rows as necessary]

For and on behalf of
(Name of Entity)

For and on behalf of
(Name of Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)
(Name, Title, and Date)

(Signature of Authorized Representative)
(Name, Title, and Date)

ANNEX QD-5: Notarized Certification of Absence of Unsatisfactory Performance Record

Note: To be submitted by all entities proposed to meet the Technical Qualification Requirements or Financial Capability Qualification Requirements, as identified in the Business Structure (Annex QD-3A or QD-3B).

Bidder:	
Entity which fulfills a Qualification Requirement:	
Qualification Requirement:	
Relationship to Bidder	

Republic of the Philippines)
) S.S.

Notarized Certification of Absence of Unsatisfactory Performance Record

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of entity represented)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby certify, for and on behalf of *(name of entity represented)*, that *(name of entity represented)* does not have any record of Unsatisfactory Performance, as defined in Section 16 of the Instructions to Bidders.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

 (Name)
 (Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

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ANNEX QD-6: Development Experience

- a. To be submitted by the entity which fulfill the Development Experience Requirement in Section 2.2.e, as identified in the Business Structure (Annex QD-3A or QD-3B), Item 3.
- b. Required attachment for each qualifying airport investments:
- (i) Certificate of Details of Development Experience using the form prescribed in Annex QD-7.
 - (ii) If the project was completed by an Affiliate of the entity which fulfills the Development Experience requirement, evidence of such affiliation using the form prescribed in Annex QD-8.

1. Entity that fulfills the Development Experience Requirement in Section 2.2.e, as identified in item 3 of the Business Structure (Annex QD-3A or QD-3B).

Bidder:	
Entity Proposed to Meet Development Experience:	
Relationship to Bidder:	<i>(Bidder / Consortium Member)</i>

2. Project Completed* for Development Experience:

Name of Airport	
Location / Country	
Description of Qualifying Airport Investments (No. of years, nature of works)	
Dates over which the Qualifying Airport Investments were undertaken	Commencement Date: Qtr / Year Completion Date: Qtr / Year
Nature of Involvement	
Total Value of Qualifying Airport Investment	PHP: Original Currency [xxx]:
Name of Entity that Completed the Qualifying Airport Investments** Client* (if the entity named above was not the client)	

* Please provide details of the relevant project.

**Must be the Entity identified in #1 or an Affiliate. If an Affiliate, please attach an Auditor

Certificate of such affiliation as per format provided in Annex QD-8.

For and on behalf of (Name of Entity)

For and on behalf of (Name of Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)
(Name, Title, and Date)

(Signature of Authorized Representative)
(Name, Title, and Date)

ANNEX QD-7A: Certificate for Establishing Shareholding in an Airport Concessionaire

The entity nominated to fulfill the Development Experience requirement shall be required to obtain a certification from its corporate secretary following the format prescribed below:

This is to certify that *[name of the Bidder / Consortium Member / Affiliate]*:

[Describe the shareholding of the Bidder / Consortium Member / Affiliate in the airport owner or concessionaire. The equity interest of the Bidder / Consortium Member / Affiliate must be suitably described and similarly certified herein, and must clearly indicate that it held such equity interest within the Eligible Period. The same shall be further substantiated through the submission of the legal agreement or documentation evidencing such equity interest / shareholding in the airport owner or concessionaire.]

Certified by:

(Signature, name, and designation of the corporate secretary of the Bidder / Consortium Member / Affiliate)
Date:

Annex QD-7B: Certificate on the Details of Development Experience

For the airport project reference being submitted to fulfill the Development Experience requirement, the entity claiming such experience shall be required to obtain a certification from the Auditor following the format prescribed below:

This is to certify that [name of the Bidder / Member of Consortium / Affiliate] owned/was the Concessionaire for] the [name of airport].			
We further certify that the total estimated capital cost of qualifying airport investments, in historical prices, is PhP Million, of which the capital cost incurred during the Eligible Period in the respective years is as per the details presented below.			
Year	(Capital Cost incurred in PhP Million; historical prices)	(Capital Cost incurred in [Original Currency]; historical prices)	Exchange rate in pesos per unit of original currency ⁵
Year 1 (YYYY)			
Year 2 (YYYY)			
...			
Year 10 (YYYY)			
Total			
Certified by: Name of the issuer: Designation: Signature: Date:			

* Please provide the above information and certification for any additional airports.

⁵ Average exchange rate for the relevant year as published in the website of the Bangko Sentral ng Pilipinas, <https://www.bsp.gov.ph/SitePages/Statistics/exchangerate.aspx>

Annex QD-8: Certificate for Establishing Relationship with Affiliates and Parent Companies

If the experience belongs to an Affiliate or Parent Company of the entity, a certificate from an Auditor or the Corporate Secretary of the Affiliate or Parent Company (as the case may be) providing evidence of such relationship shall be submitted, substantially covering the details prescribed in the format below:

This is to certify that *[name of the Bidder / Consortium Member / Affiliate / Parent Company]* is an Affiliate / Parent Company of *[name of Bidder / Consortium Member / Affiliate / entity]* as defined in the Instructions to Bidders.

A brief description of such affiliation is given below:

[Describe the shareholding of the Applicant / Consortium Member and the Affiliate. Upon confirmation of the affiliate / parent-subsidiary relationship, such relationship may be suitably described and similarly certified herein. In case the control is exercised through a legal agreement, provide provisions of such legal agreement evidencing such control.]

Certified by:

Name of the Auditor:

Designation: (Signature, name and designation of the authorized signatory)

Date:

ANNEX QD-9: Operation and Maintenance Experience

- a. To be submitted by the entity or entities which fulfill the Operations and Maintenance Experience Requirement in Section 2.2.f, as identified in the Business Structure (Annex QD-3A or Annex QD-3B), Item 6.
- b. Required attachments:
- (i) Certificate for Establishing Shareholding in an Entity that Operated and Maintained an Airport using the form prescribed in Annex QD-11A.
 - (ii) Certificate on the Details of Operations and Maintenance Experience using the form prescribed in Annex QD-11B.
 - (iii) If the airport was or is being operated by an Affiliate of the entity which fulfills the Operations and Maintenance Experience requirement, evidence of such affiliation using the form prescribed in Annex QD-8.
 - (iv) Details on the entity which fulfills the Operations and Maintenance Experience Requirement in Section 2.2.f, as identified in item 6 of the Business Structure (Annex QD-3A or QD-3B).

Bidder	
Entity which fulfills the requirement	
Relationship to Bidder	<i>(Bidder / Consortium Member / Affiliate of Bidder / Affiliate of Consortium Member)</i>

Name of Airport	
Location / Country	
Scope of Operations and Maintenance at the Airport	[Landside, Terminals, Airside, Commercial, Air Traffic, etc]
Start Date of Operation By Proposed Entity	
End Date of Operation By Proposed Entity	
Nature of Involvement in the Airport	
Name of Entity that undertook the operation and maintenance of the airport	<i>(if not the entity nominated to fulfill this requirement, indicate relationship)</i>

For and on behalf of (Name of Entity)

For and on behalf of (Name of Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)
(Name, Title, and Date)

(Signature of Authorized Representative)
(Name, Title, and Date)

Annex QD-10: Notarized Statement of Capacity to Undertake the Operation & Maintenance Requirements of the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Operation & Maintenance Requirements of the Project

To be submitted by any Designated Operator proposed by the Bidder to qualify for the technical requirements under the category of Operation & Maintenance Experience in Section 2.2.f, as identified in the Business Structure (Annex QD-3A or Annex QD-3B), Item 4.

Bidder:	
Entity which fulfills the requirement:	
Relationship to Bidder:	

Republic of the Philippines)
) s.s.

Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Projects

I, *(insert name)*, *(insert citizenship)*, of legal age, with office address at *(insert address)*, as the *(insert position/designation)* of *(insert name of Designated Operator)*, a *(insert legal status such as corporation/partnership)* organized and existing under and by virtue of the laws of *(insert place of incorporation/registration)* hereby declare for and on behalf of *(name of Designated Operator)* that:

1. *(Name of Designated Operator)* is willing to participate, through the *(Name of Bidder)* in the bid for the Ninoy Aquino International Airport PPP Project in accordance with the Bidding Documents.
2. *(Name of Designated Operator)* has the required experience and capacity to undertake the requirements for its services in the Projects in accordance with the Bidding Documents.
3. Based on my personal knowledge or authentic documents, the information provided in Annex QD-5 is true and correct.
4. If selected by *(Name of Bidder)*, *(name of Designated Operator)* shall formally enter into a contract with the Project Proponent to perform the obligations and assume the attendant liabilities as Designated Operator for the Ninoy Aquino International Airport PPP Project

Date and Place of Execution.

For and on behalf of (Name of Entity)
 (Signature of Authorized Representative)
 (Name)
 (Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

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ANNEX QD-11A: Certificate for Establishing Shareholding in an Entity that Operated and Maintained an Airport

If the entity fulfilling the O&M Experience is not itself a third party previously designated to operate and maintain an airport, it shall be required to obtain a certification from its corporate secretary following the format prescribed below:

This is to certify that *[name of the Bidder / Consortium Member / Affiliate]*:

[Describe the shareholding of the Bidder / Consortium Member / Affiliate in the entity that operated and maintained an airport. The equity interest of the Bidder / Consortium Member / Affiliate must be suitably described and similarly certified herein, and must clearly indicate that it held such equity interest within the Eligible Period. The same shall be further substantiated through the submission of the legal agreement or documentation evidencing such equity interest / shareholding in the entity that operated and maintained an airport.]

Certified by:

(Signature, name, and designation of the corporate secretary of the Bidder / Consortium Member / Affiliate)

Date:

ANNEX QD-11B: Certificate on the Details of Operations and Maintenance Experience

For the project being cited as a reference to fulfill the Operations and Maintenance Experience requirement, a certificate shall be produced by the entity claiming such experience as evidence for having the said experience. Such certificate shall substantially cover the details required in the format prescribed below:

[If the entity nominated to fulfil the O&M requirement is a third party designated to be responsible for the O&M of the airport reference]:

This is to certify that *[name of the entity nominated to fulfill the O&M requirement]* undertook the day-to-day operations (landside and airside) of *[name of International Airport]*, dealing with relevant government authorities, investing and maintaining the related infrastructure (landside and airside) during the years of the Eligible Period shown below, and that during such period, the Annual Passenger Throughput at the International Airport was as shown below:

[Or, if the entity nominated to fulfill the O&M requirement has an equity interest of at least 10% in the entity that undertook the overall responsibility for operating and maintaining the airport]:

This is to certify that *[name of the entity nominated to fulfill the O&M requirement]* owned [x] percent of *[name of the qualifying International Airport]* as provided in our Annex QD-11A submission, from *[start date]* to *[end date]*, during which period the total Annual Passenger Throughput at the International Airport was as shown below:

Year	Total Annual Passenger Throughput	International Annual Passenger Throughput
Year 1*		
Year 2		
Year 3		
Year 4		
Year 5		

*Please reflect actual year/s.

Where the Annual Passenger Throughput of an airport is the sum total of its arriving and departing passengers for a stated period of time. A transit passenger, who does not leave the airport terminal, is counted once as an arriving passenger.

Certified by:

Name of the issuer:

Designation: (Signature, name and designation of the authorized signatory)

Date:

ANNEX QD-12: Key Personnel

Name of Bidder:

1. Individual previously in a senior management level role responsible for the management of the operation of an airport for a period of at least three (3) calendar years. The passenger throughput of the airport shall be at least **ten (10) million** passengers per annum during the Eligible Period.

Name	
Employer	
Position	
Nationality	
Date of Birth	

1.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

1.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

2. Individual previously in a senior management level role responsible for the management of repairs and maintenance of an airport for a period of at least three (3) calendar years. The passenger throughput of the airport shall be at least **ten (10) million** passengers per annum during the Eligible Period.

Name	
Employer	
Position	
Nationality	
Date of Birth	

2.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

2.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

3. Individual responsible for client-side delivery of a complex multi-year portfolio or program of projects that included the airport, design and construction projects at an airport with a throughput of at least **ten (10) million** passengers per annum during the Eligible Period.

Name	
Employer	
Position	
Nationality	
Date of Birth	

3.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

3.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

4. Individual responsible for the commercial development and marketing of an airport, having experience in commercial leasing management.

Name	
Employer	
Position	
Nationality	
Date of Birth	

4.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

4.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:

Professional License:	Year:	
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5. Individual responsible for project management (as a client, consultant, or contractor) for more than three air traffic management-related projects within the Eligible Period.

Name	
Employer	
Position	
Nationality	
Date of Birth	

5.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

5.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

6. Individual responsible for the preparation of an airport master plan (as a client or consultant) for more than 2 airports with a throughput of at least 10 million passengers within the Eligible Period. This person shall also have experience of complex terminal airport planning including the management of terminal stimulation.

Name	
Employer	
Position	
Nationality	
Date of Birth	

6.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

6.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:

Professional License:	Year:	
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7. Individual responsible (as a client, consultant, or contractor) for procurement and delivery of a complex multi-year portfolio or program of information technology system projects at an airport with a throughput of at least 10 million passengers per annum during the Eligible Period.

Name	
Employer	
Position	
Nationality	
Date of Birth	

7.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

7.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

If selected by (*name of Bidder*), (*name of Concessionaire*) undertakes to use the above-named key personnel in the implementation of the Ninoy Aquino International Airport PPP Project .

For and on behalf of (Name of Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

--

(Name, Title, and Date)

ANNEX QD-13: Notarized Certification of Absence of Unsatisfactory Performance Record for Qualified Key Personnel

Note: To be submitted by all persons proposed to meet the Technical Qualification Requirements of Qualified Key Personnel in Section 2.2.g.

Bidder:	
Qualification Requirement:	
Person which fulfills the Qualification Requirement:	

Republic of the Philippines)
) S.S.

Notarized Certification of Absence of Unsatisfactory Performance Record for all Qualified Personnel

I, (*name of Qualified Key Personnel*), (*citizenship*), of legal age, with office address at (*address*), hereby certify that I do not have any record of Unsatisfactory Performance, as defined in Section 16 of the Instructions to Bidders.

Date and Place of Execution.

(Signature of Qualified Key Personnel)

_____)
(Name)
(Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of (*month and year*) at (*place*), affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

Notary Public

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ANNEX QD-14: Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Qualified Key Personnel Requirements of the Project

To be submitted by any person proposed by the Bidder to qualify for the technical requirements under the category of Qualified Key Personnel in Section 2.2.g.

Bidder:	
Qualification Requirement:	
Person which fulfills the Qualification Requirement:	

Republic of the Philippines)
) s.s.

Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Projects

I, *(insert name of Qualified Key Personnel)*, *(insert citizenship)*, of legal age, with office address at *(insert address)*, hereby declare that:

1. I am willing to participate as a Qualified Key Personnel, through *(Name of Bidder)* in the bid for the Ninoy Aquino International Airport PPP Project in accordance with the Instructions to Bidders.
2. I have the required experience and capacity to undertake the required services for the Project in accordance with the Bidding Documents.
3. Based on my personal knowledge or authentic documents, the information provided in Annex QD-12 is true and correct.

Date and Place of Execution.

(Signature of Qualified Key Personnel)
 (Name)
 (Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

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ANNEX QD-15: Notarized Statement of Financial Capability

Note: To be submitted by the entity proposed to meet the Financial Capability Qualification Requirements, as identified in the Business Structure (Annex QD-3A or QD-3B).

Required Attachments:

1. Certified true copies of the latest audited financial statements and latest income and business tax returns, which must be for a fiscal period ending no earlier than December 2022 and certified true copy of the latest unaudited quarterly financial statements for the quarter ending prior to the month of the Bid Submission Date, and provided that the audited financial statements must be stamped “received” by the Bureau of Internal Revenue (“BIR”) or any Bureau of Internal Revenue authorized agent bank, or for foreign entities, the appropriate government agency equivalent to the Bureau of Internal Revenue in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. In the event that the laws of the foreign country where the foreign entity is registered do not require the submission of an audited financial statements to the government agency equivalent to the BIR but to another government agency that is mandated to incorporate companies and regulate businesses to ensure compliance with business registration and corporate legislation, the PBAC will accept the audited financial statements acknowledged/received by the latter government agency. The certification may be issued by an officer of the entity proposed to meet the Financial Capability Qualification Requirements, in which case the certification must be under oath and notarized, provided that the certification relating to the unaudited quarterly financial statements must be issued by the entity’s chief financial officer. If there is a discrepancy between the financial statements, the entity must submit the relevant supporting documents to explain the discrepancy. Furthermore, the corporate secretary or authorized representative of the foreign entity can issue the certification that a copy of the audited financial statements (acknowledged received by the relevant government agency) is a true copy. If a foreign entity is not required to submit its audited financial statements to any government office, the audited financial statements, certified by the corporate secretary or authorized representative, must be submitted.
2. Letter(s) from the potential lenders of the entity proposed to meet the Financial Capability Qualification Requirements attesting that the entity is banking with them, and that such entity is in good financial standing and is qualified to obtain credit accommodations from such bank/s to finance the project equivalent to the value of the debt requirement of the proposal. Such a letter or letters should come from a domestic universal/commercial bank or an international bank authorized by the Bangko Sentral ng Pilipinas (BSP) to transact in the Philippines.
3. If the Bidder or the Lead Member is proposed to comply with the Financial Capability Qualification Requirements, attach evidence of such affiliation.

Bidder	
Entity Proposed to Meet Financial Capability Qualification Requirements	
Relationship to Bidder	<i>(Bidder / Consortium Member)</i>

Republic of the Philippines)
) s.s.

Notarized Statement of Financial Capability

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of entity)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)*, after having been duly sworn according to law, hereby certify for and on behalf of *(name of entity)* that the information stated in this Notarized Statement of Financial Capability is true and that the attached documents are genuine and true copies of the original.

1. *(name of entity)* has a minimum net worth equivalent to at least [●] or its equivalent as of its audited financial statements which must be for a fiscal period ending in any month in [●], a certified true copy of which is attached to this certificate.
2. The financial summary of *(name of entity)* from *(most recent fiscal year)* is as follows:

Financial Information	<i>(Most Recent Fiscal Year)</i>
(indicate last day of accounting year)	
1. Total assets	
2. Total liabilities	
3. Total net worth	
4. Profits before taxes	
5. Profits after taxes	

3. *(name of entity)* is a client in good standing in at least one of the following financial institutions, as follows:

Name of Financial Institution		
Address		
Contact Person		

Date and Place of Execution.

For and on behalf of (Signature of Authorized Representative)

(Signature of Authorized Representative)

(Name) (Designation)

SUBSCRIBED AND SWORN TO before me this (●) day of *(month and year)* at *(place)*, each affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

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ANNEX QD-16: Notarized Application to Participate in the Bidding

Note: To be submitted by the Bidder.

[Letterhead]

Republic of the Philippines)
) s.s.

Application to Participate in the Bidding

I, (*name*), (*citizenship*), of legal age, with office address at (*address*), as the authorized representative of (*name of Bidder*), a (*corporation/partnership or Consortium*) (*organized and existing under and by virtue of the laws of [place of incorporation/ registration] or organized by agreement among its Consortium Members*), as indicated by the authorization certificate attached as [Annex QD-17A (for a partnership or corporation) or Annex QD-17B (for a Consortium)], after having been duly sworn according to law, hereby certify for and on behalf of (*name of Bidder*) that:

1. In accordance with the Bidding Documents for the Ninoy Aquino International Airport PPP Project (hereinafter referred to as the “**Project**”), the (*name of Bidder*), a (*partnership/corporation/Consortium*) with business address at (*business address*), is applying to participate in the Bidding for the Ninoy Aquino International Airport PPP Project and submits its Qualification Documents and Bid Proposals. (*name of Bidder*) accepts all the terms and conditions of the Bidding Documents.
2. (*name of Bidder*) confirms that all statements made and the information and documents provided in its Qualification Documents and Bid Proposals, including statements made and information and documents provided by all Consortium Members, their Affiliates, and proposed Designated Operator, in any of the Qualification Documents and Bid Proposals are true and correct, and any misrepresentation or false statement made therein shall be a ground for its disqualification from the Bidding.
3. (*name of Bidder*) authorizes the DOTr to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Qualification Documents and Bid Proposals, and to seek clarification from its clients and bankers regarding any technical and financial aspects. (*name of Bidder*) also permits third parties to supply information required to verify statements and information submitted in its Qualification Documents and Bid Proposals
4. (*name of Bidder*) acknowledges the right of the DOTr to reject its Qualification Documents and Bid Proposals without assigning any reason and to cancel the Bidding at any time, without incurring any liability.
5. (*name of Bidder*), including the entities it has proposed to meet the Qualification Requirements under the Instructions to Bidders, have not at any time engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practices, nor have a Conflict of Interest.
6. (*name of Bidder*) waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi-judicial or administrative writ, process or issuance against the DOTr to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Bidding for the Project. (*name of Bidder*) acknowledges that the DOTr is undertaking this Bidding in the performance of its function to ensure the provision of a critical basic necessity and that, therefore, the Project is of paramount public interest and importance and that the DOTr and the Government will suffer serious and irreparable damage on account of any breach by (*name of Bidder*) of these undertakings, and agree that the breach of these undertakings shall result in (*name of Bidder*)’s automatic disqualification from the Bidding.

Date and Place of Execution.

For and on behalf of (Name of Bidder/Name of Consortium / List of Consortium Members)

(Signature of Authorized Representative)

(Name) (Designation)

SUBSCRIBED AND SWORN TO before me this (●) day of (*month and year*) at (*place*), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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Annex QD-17A: Notarized Corporate Authorizations and Designation of Authorized Representative

Note: To be submitted by a Bidder that is a partnership or corporation

[Letterhead of Bidder]

Republic of the Philippines)

) s.s.

I, (name of corporate secretary or equivalent officer), after having been duly sworn according to law, hereby depose and state that:

1. I am a () citizen, of legal age and a resident of [];
2. I am the duly elected (*corporate secretary or equivalent officer*) of (*name of Bidder*) (the “**Bidder**”), a (*corporation/partnership*) organized and existing under and by virtue of the laws of (*the Philippines*);
3. At a (*regular/special*) meeting of the (*board of directors/partners*) of the Bidder, held on (*date*) at (*place*), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that (*name of Bidder*) be, and is, authorized to participate in the Bidding for the Ninoy Aquino International Airport PPP Project (“**Project**”) and to submit the Qualification Documents and Bid Proposals for the Project;

RESOLVED FURTHER, that in the event the Bidder is declared as the Winning Bidder, it commits to fulfill all the requirements in Section 12 (*Notice of Award, Post-Award Requirements & Execution of Concession Agreement*) of the Instructions to Bidders, including the submission and completion of the Post-Award Requirements, the posting of the Construction Performance Security and the signing of the Concession Agreement with the DOTr.

RESOLVED FURTHER, that (*name of representative*) be and is hereby appointed as the authorized representative of the Bidder during the Bidding Process, authorized to execute, sign, submit and receive documents for, and otherwise act in the name of, the Bidder;

RESOLVED, FINALLY, that any and all acts done and/or performed by (*name of representative*) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Bidder; and
5. The above resolutions are in accordance with the records of the Bidder.

Place, Date of Execution.

[Corporate Secretary or Equivalent Officer]

SUBSCRIBED AND SWORN TO before me this (●) day of (*month and year*) at (*place*), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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ANNEX QD-17B: Consortium Member's Notarized Authority to Participate in the Consortium and in the Bidding, and Designation of Lead Member and Authorized Representative of Consortium

Note: For a Bidder that is a Consortium, to be submitted by each Consortium Member

[Letterhead of Bidder]

Republic of the Philippines)
) s.s.

I, (corporate secretary or equivalent officer), after having been duly sworn according to law, hereby depose and state that:

1. I am a () citizen, of legal age and a resident of [●];
2. I am the duly elected (corporate secretary or equivalent officer) of (name of Consortium Member), a (corporation/partnership) organized and existing under and by virtue of the laws of (the Philippines);
3. At a regular/special meeting of the (board of directors/partners) of (name of Consortium Member), held on (date) at (place), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that (name of Consortium Member) be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and committed percentage interests in the Consortium, in the Bidding for the Ninoy Aquino International Airport PPP Project (“**Project**”) and to submit the Qualification Documents and Bid Proposals for the Project;

Name of Consortium Member	Nationality	% Interest

RESOLVED FURTHER, that (name of Consortium Member) in the exercise of its interest in the Consortium hereby:

- (a) designates (name of Lead Member of Consortium) as Lead Member of the Consortium with the authority to represent Consortium during the Bidding for the Project;
- (b) designates (name of authorized representative of Consortium) as the authorized representative of the Consortium during the Bidding for the Project, and for such purpose shall have the authority to execute, sign, submit and receive documents for, and otherwise act in the name of the Consortium.

RESOLVED, FURTHER, that any and all acts done and/or performed by (name of Lead Member of Consortium) and (name of authorized representative of Consortium) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

RESOLVED FURTHER, that the (name of Consortium Member) shall maintain its percentage interest in the Consortium in accordance with its Bid, the Instructions to Bidders and the Concession Agreement, and thereafter shall comply with the requirements and restrictions on changes in ownership as stated in the Concession Agreement;

RESOLVED, FURTHER, that in the event that the Consortium is declared as the Winning Bidder, (name of Consortium Member) will cooperate with the other Consortium Members to register a domestic corporation with the Philippine Securities and Exchange Commission and comply with all other requirements specified in the Instructions to Bidders and the Concession Agreement ;

RESOLVED FURTHER, that in the event the Bidder is declared as the Winning Bidder, it commits to fulfill all the requirements in Section 12 (Notice of Award, Post-Award Requirements & Execution of Concession Agreement) of the Instructions to Bidders, including the submission and completion of the Post- Award Requirements, the posting of the Construction Performance Security and the signing of the Concession Agreement with the DOTr.

RESOLVED, FINALLY, that (name of Consortium Member) jointly and severally binds itself with the other Consortium Members listed above in undertaking the obligations of the Consortium in the Bidding for the Project until, if the Consortium is selected as the Winning Bidder, the corporation formed by the Consortium signs the Concession Agreement, or if the Consortium is not declared as the Winning Bidder within one hundred eighty (180) days after the Bid Submission Date, until one hundred eighty (180) days after the Bid Submission Date.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on (name of Consortium Member); and
5. The above resolutions are in accordance with the records of (name of Consortium Member).

Place, Date of Execution.

[Corporate Secretary or Equivalent Officer]

SUBSCRIBED AND SWORN TO before me this (●) day of *(month and year)* at *(place)*, each affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

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ANNEX TPC: LIST OF TECHNICAL PROPOSAL DOCUMENTS

Document Ref. No.	Document Name	Page No.
TP-1	Form of Bid Security	
Annex A to TP-1	Demand for Sight Payment	
TP-2	Notarized Statement for Submission of Technical Proposal	
TP-3	Executive Summary of the Bidder's Technical Proposal	
TP-4	Project Execution Analysis	
TP-4A	Risk Analysis	
TP-4B	Traffic Forecast	
TP-4C	Concept Masterplan	
TP-4D	Initial Works	
TP-4E	Airline Strategy	
TP-4F	Management Structure	
TP-4G	Timelines	
TP-4H	Approach to Design & Construction	
TP-4I	Approach to Handover to Operation & Maintenance	
TP-4J	Approach to Operation & Maintenance	
TP-4K	Approach to Commercial Activities	
TP-4L	Approach to Stakeholders	
TP-4M	Approach to Employees	
TP-4N	Approach to Service Quality	
TP-4O	Visualizations	
CP-1	Form of Undertaking to be Jointly and Severally Liable	
CP-2	Form of Willingness to Lend	
CP-3	Construction Performance Security	

ANNEX TP-1: Form of Bid Security

[Letterhead of Issuing Bank]

Department of Transportation Philippines

Place:

Standby Letter of Credit No. Date:

Dear Sirs:

We, [●], a corporation organized and existing under the laws of the Republic of the Philippines (the “**Issuer**”), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the “**Letter of Credit**”) in your favor and for the account of [insert name of Bidder or Consortium’s Lead Member] (the “**Bidder**”) relating to the obligations of the Bidder under the Instructions to Bidders of the NAIA PPP Project, which shall be valid and effective until [date that is one hundred eight (180) days after Bid Submission Date]. Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Instructions to Bidders except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is One Billion Seven Hundred Six Million Philippine Pesos (PhP [1,706,000,000.00]) (the “**Stated Amount**”).
2. Subject to the other provisions of this Letter of Credit, the Department of Transportation (**DOTr**) or the Manila International Airport Authority (**MIAA**), in the alternative, are hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from the DOTr/MIAA in substantially the form attached as Annex A, duly completed, and that is in the form of a letter on the DOTr’s/MIAA’s letterhead signed by any of its authorized signatories.
3. The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in the account (the “**Designated Account**”) designated by the DOTr/MIAA in accordance with Annex A. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.
4. We hereby agree to honor the drawing hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Bidder might raise against the DOTr’s/MIAA’s entitlement to payment, by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such demand. As used herein, the term “**Business Day**” means a day (other than Saturday and Sunday) when banks are open for business in Makati City, Philippines.
5. If the demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to the DOTr/MIAA that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, the DOTr/MIAA may attempt to correct the non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
6. This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of (i) 5 p.m. at the place of presentation on [insert date that is 180 days after Bid Submission Date], (ii) the date on which we have honored a drawing in an amount equal to the Stated Amount, or (iii) the date when we receive a written notice from the DOTr/MIAA that a replacement letter of credit, which is in full force and effect, has been substituted for this letter of credit (the “**Expiration Date**”).

7. All documents presented to the Issuer in connection with a drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to the DOTr/MIAA, or sent to the Issuer by fax to the following number:

Fax No. [●] (Answerback: [●]).

8. This Letter of Credit may not be canceled or amended without the prior written consent of the Issuer and the DOTr/MIAA.

9. This Letter of Credit sets forth our undertaking and our agreement with the DOTr/MIAA and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.

10. The Issuer hereby agrees that it shall have no recourse to the DOTr/MIAA if the Bidder fails at any time to pay any amounts which may from time to time be due and payable by it to the Issuer in relation to this Letter of Credit.

11. References in this Letter of Credit to the Instructions to Bidders or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The Instructions to Bidders and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.

12. This Letter of Credit is issued subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (“**ISP 98**”), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit. If this Letter of Credit should expire during an interruption of our business, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.

13. To the extent that the provisions of this Letter of Credit are not governed by ISP 98, this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, we have caused these presents to be executed in our name on this [●] day of [●] 2023.

[Issuing Bank] By

SUBSCRIBED AND SWORN TO before me this day of (*month and year*) at (*place*), affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

NOTARY PUBLIC

Doc. No.:
Page No.:
Book No.:
Series of 2023.

ANNEX A TO ANNEX TP-1: Demand for Sight Payment

To: [Name of Issuer] [Address]

Attn: []

Re: Irrevocable Standby Letter of Credit No. []

The undersigned, a duly authorized officer of the Department of Transportation (**DOTr**) or the Manila International Airport Authority (**MIAA**), makes reference to the Instructions to Bidders of the Ninoy Aquino International Airport PPP Project ("**Project**").

1. The DOTr/MIAA hereby demands payment (the "**Drawing**") under the Letter of Credit in the amount of [] PHILIPPINE PESOS (PHP []) in order to satisfy liabilities of the Bidder under the Instructions to Bidders.
2. The amount of the Drawing does not exceed the Stated Amount .

Please wire transfer the amount of the Drawing to [account details to be inserted by the DOTr/MIAA] (the "**Designated Account**").

IN WITNESS WHEREOF, the DOTr/MIAA has executed and delivered this certificate as of the [] day of 2023.

DEPARTMENT OF TRANSPORTATION / MANILA INTERNATIONAL AIRPORT AUTHORITY

By:

Name:

Title:

ANNEX TP-2: Notarized Statement for Submission of Technical Proposal

To be submitted by each Bidder

[Letterhead]

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the authorized representative of *(Bidder)*, a [*(corporation/partnership/other juridical entity or Consortium)*] *(organized and existing under and by virtue of the laws of [place of incorporation/registration] or organized by agreement among its Consortium Members)*], hereby:

1. Submit, for and on behalf of *(name of Bidder)*, that annexes required to be submitted as part of the Technical Proposal under this Instructions to Bidders, are being submitted herewith as mentioned below:

S.N.	Document Requirement	Submitted (Please mention Yes if complying)
1.	Annex TP-1	
2. (etc.)	(etc.)	(etc.)

2. Agree on behalf of the Bidder that non-submission of any of the above Annexes may lead to the Technical Proposal being rated as "Fail".
3. Agree on behalf of the Bidder that the PBAC reserves the right to reject the Technical Proposal of the Bidder if in the view of PBAC the Technical Proposal does not meet the KPI standards as specified in the corresponding Schedule to the Concession Agreement. In such a scenario, the Technical Proposal of the Bidder may be rated as "Fail".

(Date and Place of Execution.)

For and on behalf of *(Name of Bidder/Name of Consortium and List of Consortium Members)*

By:

(Name, Designation and Signature of Authorized Representative)

SUBSCRIBED AND SWORN TO before me this [] day of *(month and year)* at *(place)*, affiant exhibiting to me his/her (proof of identity acceptable under Philippine notarial regulations) issued at *(city)* on *(date)*.

NOTARY PUBLIC

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Series of 2023.

ANNEX TP-3: Executive Summary of the Bidder's Technical Proposal (not to exceed five pages)

ANNEX TP-4: Project Execution Analysis

The Project Execution Analysis must contain the following Sub-Annexes, at the minimum:

Sub-Annexes	Details
Annex TP-4A: Risk Analysis	<p>Bidder's detailed assessment of risks with respect to MIAA, CAAP, and the Project.</p> <p>The Bidder's detailed assessment must include the Bidder's proposed action plans to mitigate the impacts on the Project should Weaknesses and Key Threats occur, as well as Strengths and Opportunities.</p>
Annex TP-4B: Traffic Forecast	<p>Bidder's forecast of passenger traffic for the Project for 15 years with scenario analyses around key variables to provide, as a minimum, high, low and base cases;</p> <p>The Bidder's forecast shall, as a minimum, provide a split of the forecast information into; international traffic, domestic traffic, dedicated cargo traffic, general aviation traffic and military traffic. Passenger forecasts shall be split by international and domestic passengers;</p> <p>Bidder's methodology and resultant outputs related to peak traffic demand forecast (including peak to annual passenger ratio) for passengers and air transport movements at NAIA for various years of the concession period;</p> <p>Bidder's methodological approach and detailed assumptions in projecting passenger traffic forecast at NAIA for the Project (Not to exceed three A4 pages).</p>
Annex TP-4C: Concept Masterplan	<p>A Concept Masterplan for 15 years together with an associated description of the expected capital investment activities required during the first five years.</p> <p>The masterplan shall be a land use plan accompanied by such additional descriptive material and Passenger Terminal layout change information as is needed to convey assurance that the Concessionaire's plans can ensure that the capacity of the Airport will be maximised while improving Passenger service quality as required under the Concession Agreement.</p> <p>The associated description material provided shall outline how the Masterplan could support passenger numbers of at least 62 mppa within 15 years.</p> <p>Phasing information will be provided with masterplan drawings covering Years, 5, 10 and 15 of the Concession Period. The Year 15 drawing shall be prepared on the basis that the concession is extend to 25 years.</p> <p>The masterplan drawings showing the Project Land shall be submitted on A3 paper, with additional A3 pages provided for any areas of the Airport and / or Passenger Terminals where greater detail is required.</p>
Annex TP-4D: Initial Works	<p>Description and rationale (not to exceed ten pages) of Bidder's phased implementation of capital investment of equipment, systems, and other improvements to the Facilities at the Airport that will comprise the Initial Works.</p> <p>The expected capital investment activities for the first three years shall be provided in the format required for them to be included as the Initial Works in the Concession Agreement. The listing of Initial Works is not included in the ten-page limit.</p>

	The document shall include a preliminary draft contents page for the Airport Planning Standards Manual. This shall not be included in the ten-page limit.
Annex TP-4E: Airline Strategy	<p>An airline relationship strategy and plan (not to exceed five A4 pages) that will enable capacity optimisation at the Airport.</p> <p>The strategy may also include marketing points for promoting the airport to airlines, should additional airport capacity become available in the greater capital region such that traffic at the Airport is maintained.</p>
Annex TP-4F: Management Structure	A summary (not to exceed five A4 pages) of the Bidder's proposed managerial, and technical organization structure and its adequacy and suitability to undertake the Project.
Annex TP-4G: Timelines	<p>A series of Gantt Charts in sufficient detail to specify activities proposed to be undertaken to execute the Project.</p> <p>Gantt Chart 1:</p> <ul style="list-style-type: none"> • This shall cover the period between Signing Date and O&M Handover Date, and detail the production of the various plans and the like required of the Concessionaire. • It shall not include any items covered in Gantt Chart 2 but can show points of interface as dependencies or milestones. <p>Gantt Chart 2:</p> <ul style="list-style-type: none"> • This shall cover the period between Signing Date and the last Longstop Date, and detail how the Concessionaire will implement the expected capital investment activities to fulfil the requirements of the Concession Agreement. • The Gantt Chart shall cover; Mandatory Works, Initial Works and CAAP Works. • The level of detail in the Gantt Chart time schedule shall be sufficient for the identification of key Design, Construction and O&M Handover activities / tasks, dependencies and milestones for all elements of the Mandatory Works, Initial Works and Capex Works. <p>Gantt Chart 3:</p> <ul style="list-style-type: none"> • This shall cover the period from O&M Handover Date to the end of the 15 year and shall cover all activities / tasks related to the Operation and Maintenance of the Airport (i.e not covered by Gantt Chart 2). • Additional detail will be provided for activities / tasks related to the potential extension of the concession beyond the 15th year. <p>The Gantt Charts will be prepared in prepared in a standard project planning software tool and printed with a clearly legible font size on A3 paper, with a soft copy in PDF format provided. Examples of suitable software are: Primavera P6, Microsoft Project, ProjectLibre, and OpenProj. Microsoft Excel is not recommended.</p> <p>The Gantt Charts need not show resourcing but must show activities / tasks, dependencies and milestones.</p>

<p>Annex TP-4H: Approach to Design & Construction</p>	<p>A document (not exceeding five A4 pages) outlining the approach (including procurement and contract strategies) towards undertaking the Design and Construction of the Initial Works, Mandatory Works, and CAAP Works.</p> <p>The document must highlight the differences in approach that the Bidder considers will be necessary between the Mandatory Works, Initial Works and the CAAP Works.</p> <p>The document must include at least one page on safety and environmental management.</p> <p>The document may include a current list of potential firms (equipment suppliers, designers, architects, advisors, contractors) that the Bidder is considering. This shall not be included in the five-page limit.</p>
<p>Annex TP-4I: Approach to Handover to O&M</p>	<p>A document (not exceeding five A4 pages) outlining the approach towards undertaking the Handover Process of the Initial Works, Mandatory Works, CAAP Works and Other Works.</p> <p>The document must highlight the differences in approach that the Bidder considers will be necessary between the Mandatory Works, Initial Works and the CAAP Works.</p> <p>The document shall include a preliminary draft contents page for the Handover Manual. This shall not be included in the five-page limit.</p>
<p>Annex TP-4J: Approach to O&M</p>	<p>A document (not exceeding 10 A4 pages) explaining the approach to undertaking operations and maintenance of existing airport facilities, highlighting any difference in approach between the period when the Initial Works, Mandatory Works, and CAAP Works are ongoing. The document shall cover inter alia:</p> <ul style="list-style-type: none"> • Plans/ measures for avoiding any disruptions in existing operations during the execution of the Initial Works, Mandatory Works, and CAAP Works; • Plans for improvement in service quality while handling the projected passenger traffic; • Plans for provision of Information Technology systems for itself, third party service providers, government agencies, MIAA, among others; • Plans for development of integrated operations of the entire Airport Facilities including how airlines and other third parties will be engaged in key areas such the bringing into operation of the AOCC and A-CDM.
<p>Annex TP-4K: Approach to Commercial Activities</p>	<p>A document (not exceeding five A4 pages) outlining the approach to enhancing development of commercial activities as part of the Project including likely investments to be made by the Concessionaire or a third party under agreement with the Concessionaire.</p>
<p>Annex TP-4L: Approach to Stakeholders</p>	<p>A document (not exceeding six A4 pages) outlining the approach towards involvement of stakeholders like airlines, regulatory authorities, users, CAAP, MIAA, DOTr, etc. in a consultative process for undertaking (i) preparation of key plans and procedures, (ii) negotiating and agreeing on service-level agreements, and (iii) key activities as part of the Project.</p>
<p>Annex TP-4M: Approach to Employees</p>	<p>A document (not exceeding five A4 pages) outlining the approach towards the transition of the Affected Employees, including anticipated upskilling programs.</p>

<p>Annex TP-4N: Approach to Service Quality</p>	<p>A document (not exceeding five A4 pages) outlining the non-asset based improvements that the Concessionaire is planning on implementing at the Airport in order to ensure an improved level of service quality to Passengers and others at the Airport.</p> <p>Reference may be made to previous experience of the Bidders at other airports that they operate. In such case numerical evidence of the improvements should also be provided. Such evidence may be presented as an appendix to the document and be in addition to the five-page limit.</p> <p>The document shall include a preliminary draft contents page for the Performance Measurement Plan. This shall not be included in the five-page limit.</p>
<p>Annex TP-4O: Visualizations</p>	<p>A series of colour artistic impression renders / images as set out below that convey the sense of improvements to the Airport to be implemented through the Mandatory Works, CAAP Works, and Initial Works.</p> <p><u>List of Visuals</u></p> <ul style="list-style-type: none"> • (1No render) External view of at least one Passenger Terminal from landside • (1No render) External view of an element of the Landside Assets / Commercial Assets in the landside area of the Airport that will be improved • (3No renders) Internal views from at least two Passenger Terminals showing improved passenger facilities • (1No image) Masterplan layout drawing suitably simplified for public viewing highlighting key elements of the planned Works. <p>The visualizations shall be provided printed in colour on A3 size paper, and as higher and lower resolution jpg and png files suitable for use in media releases, publications, presentation and like upon opening of the bid.</p> <p>The visualizations shall include the logos of MIAA, DOTr, Bagong Pilipinas, and, if desired, the Bidder. If the Bidder does not have a logo then the Bidder's name may be included. Logos and / or names shall not obscure the primary image of the visualization.</p> <p>Provision of the required number of visualizations of the type listed shall be a compliance element of technical evaluation, but the content of the visualizations shall not be reviewed for compliance purposes.</p> <p>Bidders shall note that DOTr and MIAA, through the PBAC, shall have absolute discretion on the publication or otherwise of the visualizations.</p>

ANNEX FPC: LIST OF FINANCIAL PROPOSAL DOCUMENTS

Document Ref. No.	Document Name	Page No.
FP-1	Bid Amount	
FP-2	Financing Plan	
Attachment to FP-2	Financial Model	

ANNEX FP-1: BID AMOUNT

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the authorized representative of *(Bidder)*, a Consortium *(organized and existing under and by virtue of the laws of [place of organization by agreement among its Consortium Members])*, hereby declare for and on behalf of *(name of Bidder)* that:

In accordance with the Bidding Documents for the Ninoy Aquino International Airport PPP Project, (the "Project"), *(name of Bidder)*, a Consortium submits the Bid Amount, as follows:

Percentage share of Gross Revenue, excluding Passenger Service Charge Revenue, in words:	
Percentage share of Gross Revenue, excluding Passenger Service Charge Revenue, in figures:	

"Passenger Service Charge Revenue" means the sum of the revenues from (a). Domestic Passenger Service Charge (DPSC) net of VAT, National Government (NG) share, and National Civil Aviation Security Committee (NCASC) share; and (b). International Passenger Service Charge (IPSC) net of VAT, NG share, and NCASC share.

For and on behalf of *(Name of Bidder / Name of Consortium / List of Consortium Members)*

By:

(Name and Signature of Authorized Representative)

Date: [•]

ANNEX FP-2 : FINANCING PLAN

The Project Financing Plan should describe the Bidder's sources of funds and the terms of financing for both debt and equity required for the implementation of the Works for the Ninoy Aquino International Airport PPP Project.

The Project Financing Plan should be in an amount sufficient to cover all estimated costs for all of the Works and the upfront payment and annuity payments that shall be payable by the Concessionaire to MIAA in accordance with the Concession Agreement.

Financing must be in the form of equity and debt. At least twenty percent (20%) of the total financing, inclusive of contingencies, must be in the form of equity, and the remainder in debt or subordinated debt. For the avoidance of doubt, shareholder loans will be treated as equity provided that they are subordinated to all other debt.

SOURCES OF FUNDS						
Items / Sources	USD (if applicable)	PHP Equivalent	+	Local Currency (PHP)	=	Equivalent Total in Philippine Peso (PHP)
Exchange Rate						
1.1 Total Project Costs (excluding stand-by credit facility)						
1.2 Equity						
Lead Member Name:						
(Member of Consortium) Name:						
(Member of Consortium) Name:						
Other sources (specify) Name:						
Total Equity:						
1.3 Debt						
Lending Agencies (List individually)						
Lender 1 Name:						
Lender 2 Name:						
Total Debt:						
1.4 Net Cash Flow						
<i>Note: These projections should be consistent with figures shown in the financial model.</i>						

In support of the financing plan provided above, the following documents must be provided:

1. For each entity providing equity identified in Section 1.2, a notarized certification from its chief executive officer or treasurer/controller that such entity will provide the amount of equity stated in Section 1.2 at the relevant time.
2. If the Bidder plans to obtain an underwriter for all or part of the debt, a Letter of Intent from the proposed underwriter stating its willingness or interest to underwrite the specified amount.
3. As needed, breakdown of the financial projections (including explanation of assumptions) for free cash flows from Construction Start Date through Completion Date should be attached. These assumptions and financial projections should be consistent with the calculations and figures in the financial model.

ANNEX CP-1: Form of Undertaking to be Jointly and Severally Liable

[date]

Department of Transportation
Pre-Qualifications, Bids, and Awards Committee for PPP Projects

[Address]

Attention: **Atty. Timothy John Batan**
Undersecretary of Planning and Project Development

Undertaking to be Jointly and Severally Liable

We refer to the Instructions to Bidders, as amended or otherwise supplemented, for the *[name of project]*.

We, the undersigned Consortium Members of *(name of Consortium)*, jointly and severally bind ourselves with the Concessionaire in undertaking the obligations of the Concessionaire under the Concession Agreement.

For and on behalf of *(Name of Each Consortium Members)*

By:
(Name and Signature of Authorized Representative of Consortium Member)
Date: []

ANNEX CP-2: Form of Willingness to Lend

(Name of Institution)
(Date)
 Gentlemen:

In connection with the participation of (*name of Bidder*) in the Bidding Process for (*name of project*), we wish to express our interest and willingness, subject to the conduct of our internal due diligence processes, to provide or arrange the following credit facility/facilities for the special purpose corporation that the Bidder will incorporate, if and when it is declared by the Department of Transportation as the Winning Bidder, with the following indicative terms:

Type of Facility	
Amount	
Interest Rate	
Tenor and Grace Period (if any)	
Repayment Schedule	
Subordination	
Other Relevant Information	

We acknowledge that all of the terms and conditions of the final draft of the Concession Agreement, including all of its Schedules, as of the Bid Proposals Submission Date are no longer subject to any amendments or revisions.

Very truly yours,

(Signature of Authorized Representative)

(Name) (Designation)

ANNEX CP-3: Construction Performance Security

Form of Construction Performance Security

To: Department of Transportation
[Address]
(the "**Beneficiary**")

[Date]

Irrevocable Standby Letter of Credit No. []

At the request of the [Concessionaire] (the "**Applicant**"), we, [name of the bank], with business address at [address of bank], a corporation organized and existing under the laws of the Republic of the Philippines (the "**Issuing Bank**") issue this irrevocable, unconditional, standby letter of credit ("**Letter of Credit**") in your favor for [insert value] ("**Face Value**") effective from [insert date] on the following terms and conditions:

1. DEFINITIONS

Except as provided below, or to the extent that the context requires otherwise, words and expressions defined in the Agreement shall have the same meaning in this Letter of Credit:

"**Agreement**" the Concession Agreement to be entered into between the Government of the Republic of the Philippines, acting through its Department of Transportation and the [Beneficiary].

"**Business Day**" means a day (other than Saturday and Sunday) when banks are open for business in Makati City, Philippines

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the Schedule to this Letter of Credit under Clause 5.

"**Expiry Date**" means the date falling [] days/months from the date of issue of this Letter of Credit.

2. ISSUING BANK'S AGREEMENT

- a. The Beneficiary may request drawing or drawings under this Letter of Credit by submitting to the Issuing Bank a duly completed Demand. All Demands must be received by the Issuing Bank, as stated in Clause 5, before close of banking hours on or before the Expiry Date.
- b. Subject to the terms of this Letter of Credit, the Beneficiary may request partial and/or multiple drawings under this Letter of Credit by submitting a Demand in relation to each such drawing.
- c. Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary (or such other payee or payees as the Beneficiary specifies in the Demand) that it will pay to the Beneficiary (or such other payee or payees) the amount demanded in that Demand upon the due presentation by the Beneficiary of the Demand to the Issuing Bank.
- d. We hereby agree to honor each Demand hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Applicant might raise against the Beneficiary's entitlement to payment, by transferring in immediately available funds to the designated account the amount specified in a demand for payment at the opening of business on the first or second Business Day following the date of the Demand.
- e. The Letter of Credit shall not be discharged by any change in the Issuing Bank's constitution, constitution of Beneficiary or that of the Applicant or change in applicable laws.

- f. All charges, payments, commissions and other costs associated with the opening, amendment and renewal or any other act related to this Letter of Credit shall be paid by the Applicant. Failure of the Applicant to make such payments shall not affect our obligation under this Letter of Credit and the Beneficiary shall be paid the money due to it under this Letter of Credit without any deduction.

3. RENEWAL AND EXPIRY

- a. This Letter of Credit shall be renewable at the option of the Issuing Bank and the Issuing Bank shall exercise such option upon receipt of a written request from the Applicant seeking such renewal.
- b. The Issuing Bank will be released from its obligations under this Letter of Credit at the close of the banking hour on the Expiry Date.
- c. On the Expiry Date, the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid. For the avoidance of doubt, in the event that a Demand has been made on the Issuing Bank prior to the Expiry Date, the Issuing Bank's obligation to pay hereunder shall be deemed accrued notwithstanding that the due date for payment may fall after the Expiry Date.
- d. When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank forthwith.

4. PAYMENTS

All payments under this Letter of Credit shall be made in Philippine Peso and for value on the due date to the account of the Beneficiary specified in the Demand.

5. DELIVERY OF DEMAND

- a. All Demands under this Letter of Credit shall be presented in full compliance with the terms and conditions hereof by hand delivery at the *[place]* office of the Issuing Bank (or such other address of the Issuing Bank as the Issuing Bank may from time to time notify the Beneficiary for this purpose). Any Demand presented after 11.00 am shall be deemed received on the next Business Day.
- b. If a Demand hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to the Beneficiary that the Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a Demand was not effected in conformity with this Letter of Credit, the Beneficiary may attempt to correct any such non-conforming Demand and re-submit such Demand in accordance with the terms and conditions hereof.

[Alternate mechanism(s) for presentation of Demands to be agreed on a case-to-case basis with Issuing Bank and Beneficiary and this Clause will be amended accordingly.]

6. AMENDMENT

- a. Any amendment or cancellation of this Letter of Credit shall be operative only with the prior written consent of the Beneficiary.
- b. This Letter of Credit sets forth our undertaking and our agreement with the Beneficiary and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein or there amendments.

7. GOVERNING LAW

This Letter of Credit is issued subject to the International Standby Practices 1998 (**ISP98**), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit. To the extent that the provisions of this Letter of Credit are not governed by ISP98 this Letter of Credit shall be governed by the laws of the Republic of the Philippines.

8. TRANSFERABLE CREDIT

- a. This Letter of Credit is a transferable credit.
- b. This Letter of Credit is transferable any number of times to such person as may be specified in a transfer request provided that (i) this Letter of Credit may only be transferred for the full amount of this Letter of Credit and not in part; and (ii) transfer may only be made to a person or entity who has been appointed as a successor of the Beneficiary.
- c. Transfer of the letter of Credit to successor shall be effective only by the presentation to the Issuing Bank of this Letter of Credit accompanied by a transfer request.
- d. The Issuing Bank shall be obliged to effect the requested transfer unless the Issuing Bank, within ten (10) Business Days of receipt of the transfer request objected to the proposed transfer certifying that such transfer would or could reasonably be expected to result in it being in breach of a law or regulation applicable to it.
- e. If the Issuing Bank objects pursuant to the above clause, it shall promptly notify the Beneficiary and it shall not effect the requested transfer.
- f. If the Issuing Bank is obliged in accordance with Clause 8(d) above to effect the requested transfer it shall forthwith effect the same to the designated successor of the Beneficiary by endorsing the transfer on the reverse of this Letter of Credit and the transfer shall be effective only on return of this Letter of Credit to the new Beneficiary.
- g. Neither the Beneficiary nor the successor of the Beneficiary shall be liable to the Issuing Bank for any charges (including commissions, Payments, costs and expenses) of the Issuing Bank payable in connection with the transfer. Such charges shall be for the account of the Applicant. The Issuing Bank shall be obliged to effect the transfer regardless of whether or not those charges have been paid by the Applicant.
- h. No previous Beneficiary shall retain or have the right to make any Demand. All such rights shall be vested solely in the new Beneficiary.

Yours faithfully,

[Issuing Bank] By:

Note: Each of the irrevocable standby letter of credit shall be issued by an universal/commercial bank or an international bank authorized by the BSP to transact in the Philippines and which is acceptable to the Beneficiary.

SCHEDULE

FORM OF DEMAND FOR SIGHT PAYMENT

To: [Issuing Bank]

[Date]

Dear Sir/Ma'am,

Standby Letter of Credit no. [] (the "**Letter of Credit**") issued in favour of the Department of Transportation pursuant to the terms of the Concession Agreement dated [____] between the Applicant and the Beneficiary.

The Beneficiary refers to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. The Beneficiary certify that a sum of [] is due and payable to the Beneficiary by the Applicant in accordance with the terms of the Concession Agreement. The Beneficiary therefore demands payment of the sum of [].
2. Payment should be made to the following account:

Beneficiary:
Account Number:
Bank details: Name and address of the Bank, SWIFT Number
3. This Demand is being made in accordance with the terms of the Letter of Credit and the Concession Agreement.

Yours faithfully,

(Authorised Signatory)

For

[Beneficiary]

