**SPECIAL BIDS AND AWARDS COMMITTEE (SBAC)**

**General Bid Bulletin No. 1-2018**

**Subject : Clark International Airport Project (“Project”) – Operations and**

 **Maintenance (O&M)**

TO ALL BIDDERS:

1. Please be informed that in order to access the Data Room where the Bidding Documents for the Project will be made available, a Confidentiality Undertaking in the form set out in **Annex A** must be executed by your authorized representative.
2. Your authorized representative must also submit an executed authorization letter using the template in **Annex B**. The SBAC reserves the right to require additional proof of the authority of the authorized representative. Failure to submit the said proof may lead to the revocation of the Bidder’s access to the Data Room.
3. You are further required to provide the SBAC with one (1) e-mail address which will be given access to the Data Room.

For your guidance and information.

Issued this 30th day of April 2018.

**JOSHUA M. BINGCANG**

Chairman

Special Bids and Awards Committee

for the Clark International Airport Project

**ANNEX A**

**CONFIDENTIALITY UNDERTAKING**

This Confidentiality Undertaking (the “**Undertaking**”) is executed in favor of the Bases Conversion and Development Authority (“**BCDA”**) by *[Name of Bidder]* (the “**Recipient**”).

1. **Confidential Information**

Recipient is interested in obtaining information from the BCDA, in furtherance of the Clark International Airport Project – Operations and Maintenance (**“Project”**) which will entail: (i) the management, operations, and maintenance of the Clark International Airport including the existing terminal; and, (ii) the completion, fit-out and management, operations, and maintenance of the New Terminal Building for Clark International Airport. The selection process shall be undertaken through a public bidding in accordance with the Philippine BOT Law (Republic Act No. 6957, as amended by Republic Act No. 7718), and its Revised Implementing Rules and Regulations. By reason of such interest of the Recipient, the BCDA proposes to disclose certain Confidential Information (as defined below) to the Recipient. Recipient acknowledges that the BCDA has the exclusive right to determine what information it may furnish to the Recipient.

As used herein, *“***Confidential Information***”* means all information concerning the BCDA or its assets, liabilities or obligations furnished to Recipient directly by any of the BCDA’s officials, employees, and legal, technical, financial advisors, agents or other representatives (“BCDA Representatives”), including: (i) information obtained by Recipient (a) during the due diligence process, (b) through site visits to BCDA and/or CIA or its offices and facilities and (c) through any management presentation by the BCDA; (ii) information contained in any other written material furnished or otherwise made available to Recipient; (iii) information furnished to Recipient electronically or through the Data Room; (iv) information presented to Recipient or its advisors orally, whether presented in a management presentation or another forum; and (v) all analyses, compilations, forecasts, studies or other documents prepared by Recipient or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information.

As used herein, “**Data Room**” means the online repository of information in electronic format that will be used by the BCDA for the storing and distribution of Confidential Information to the Recipient.

Notwithstanding the foregoing, information disclosed by the BCDA which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said information is (i) part of the public domain without violation of this Agreement or (ii) disclosed pursuant to administrative or judicial action; *provided,* that, the Recipient shall use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify the BCDA thereof and give the BCDA the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Agreement.

1. **No Representation**

Recipient acknowledges and agrees that the BCDA is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Recipient releases the BCDA or any of its official and employees of any liability to the Recipient or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by the Recipient. Only those representations or warranties that are made to Recipient in a definitive agreement issued by the BCDA in connection with the Project, as, and if it is executed by the BCDA, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

1. **Recipient’s Obligations**

Unless the BCDA gives its prior written authorization, Recipient shall, during a period of one (1) year from the date of disclosure of any Confidential Information hereunder:

1. not use the Confidential Information for any other purpose than for the Project;
2. protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
3. limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives, or (as applicable) other persons, partnerships or corporations with whom the Recipient shall form a consortium for purposes of submitting a bid for the Project (collectively, the “**Representatives**”) who need to know such Confidential Information and only for the purpose of evaluating the Project and who have executed and delivered a confidentiality undertaking in favor of the BCDA covering the Confidential Information.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated by Recipient except for purposes of evaluating the Project. Upon the request of the BCDA, Recipient shall either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by the BCDA, within ten (10) days of such request; *provided,* however, that Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to Recipient providing the BCDA written notification of such regulatory purpose with details satisfactory to the BCDA. Without limiting the generality of the foregoing, in the event that the Project is not consummated with Recipient (for any reason whatsoever, including but not limited to the Recipient’s not (i) submitting a bid or (ii) being declared the winning bidder), neither Recipient nor its Representatives shall use any of the Confidential Information for any purpose. Recipient will be responsible for any breach of this Agreement by its Representatives.

During the course of Recipient’s evaluation, Recipient shall make all inquiries and other communications directly to the BCDA in writing and addressed to the BCDA’s representative at the address provided below. Recipient agrees not to directly or indirectly contact or communicate with any other official or other employee of the BCDA concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of the BCDA.

1. **Communications With Other Bidders**

Except as may be required by applicable law, Recipient shall refrain from communicating, and cause its Representatives to refrain from communicating, directly or indirectly, with any Bidder about the Project, or about any subject related to the Project; *provided,* however, that Recipient may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement with the BCDA covering the Confidential Information.

1. **Governing Law and Venue**

This Undertaking shall be governed by and construed in accordance with the laws of the Republic of the Philippines and Recipient consents to the exclusive jurisdiction of the courts of Makati City (to the exclusion of all others) for any dispute arising out of this Undertaking.

1. **No Implied Waiver**

Failure of the BCDA to insist in any one or more instances upon strict performance by the Recipient of any of the terms of this Undertaking shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

1. **No Commitment**
2. Recipient acknowledges that the BCDA has reserved the right to terminate or suspend, at any time and without cause, further participation in the investigation by Recipient and to refuse to disclose any further Confidential Information to Recipient.
3. This Undertaking does not constitute a solicitation of bids for the Project.

Recipient also acknowledges and agrees that no contract or agreement providing for the Project shall be deemed to exist between Recipient and the BCDA, as applicable, unless and until a definitive agreement has been executed and delivered by Recipient and the BCDA.

1. **Severability**

If any term of this Undertaking is held by a court of competent jurisdiction to be invalid or unenforceable, then this Undertaking, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

**IN WITNESS WHEREOF,** Recipient has executed this Undertaking in [*insert place of execution*] on [*insert date*].

|  |
| --- |
| **[NAME OF BIDDER]**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Authorized Representative)Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Signed in the Presence of:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEX B**

*[Letterhead]*

**AUTHORIZATION LETTER**

[date]

**Bases Conversion and Development Authority**

**Special Bids and Awards Committee for the Clark International Airport Project**

2/F BCDA Corporate Center,

Bonifacio Technology Center

31st Street corner 2nd Avenue

Bonifacio Global City, Taguig City

Attention: **JOSHUA M. BINGCANG**

Chairman, Special Bids and Awards Committee for the Clark International Airport Project – Operations and Maintenance

Gentlemen:

In connection with the intended participation of (*name of* *Bidder*) in the bidding process for the Clark International Airport Project – Operations and Maintenance (the “**Project**”), I hereby certify, based on *(insert basis of authority)*, that (*name of authorized representative*) is authorized to request access to the Data Room and to sign the Confidentiality Undertaking attached as Annex A to General Bid Bulletin No. 1-2018 on behalf of *(name of Bidder)*.

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

Name:

Email Address:

Yours,

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

[name]

[Corporate Secretary/Equivalent Officer]

[name of Bidder]