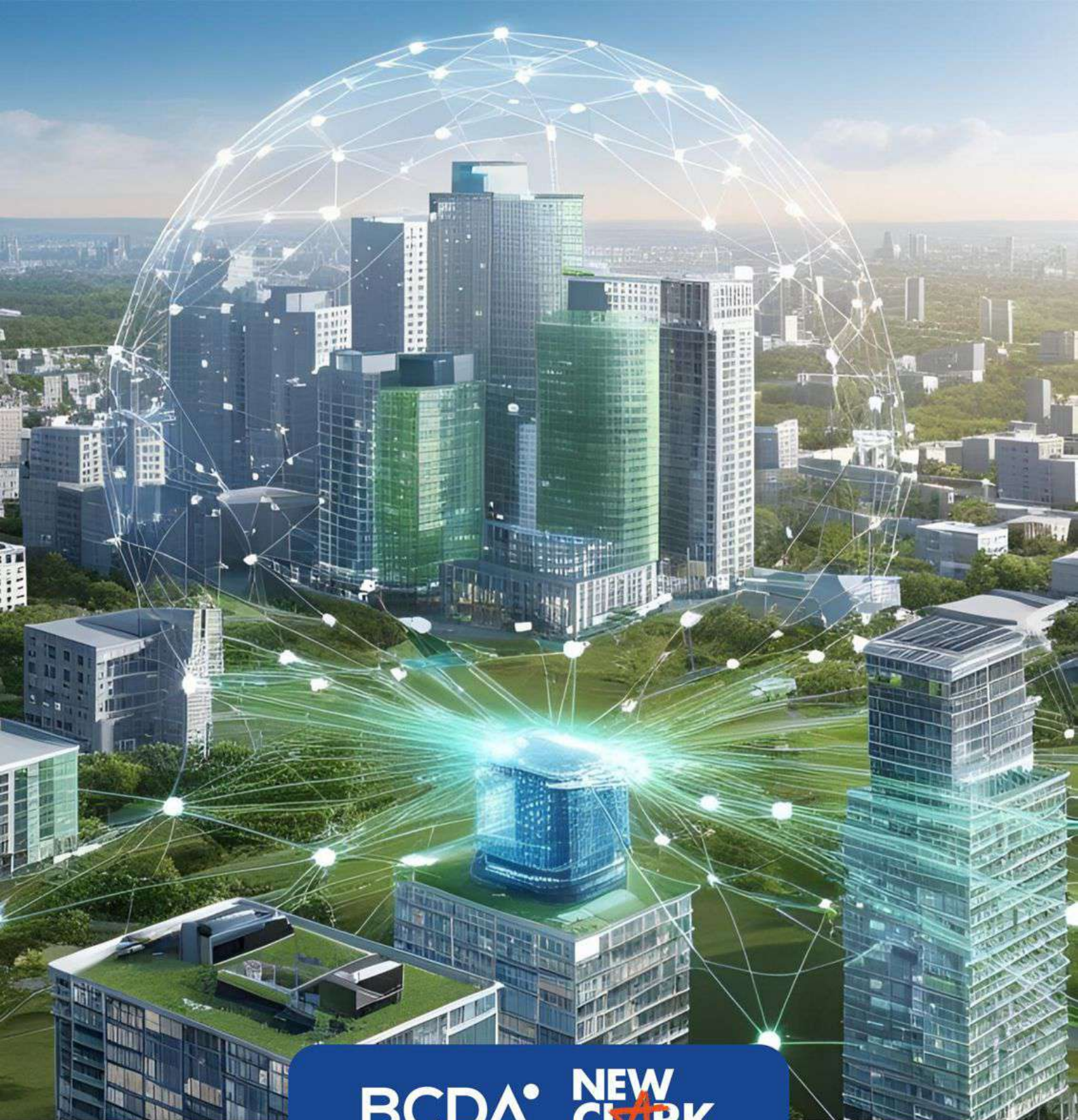




BCDA
Bases Conversion and
Development Authority

**NEW
CLARK
CITY**

INSTRUCTIONS TO BIDDERS

***Selection of Joint Venture Partner for the New Clark City (NCC)
Information and Communications Technology (ICT) Passive
Infrastructure Project***

Bases Conversion and Development Authority

**THE NEW CLARK CITY ("NCC") INFORMATION AND COMMUNICATIONS
TECHNOLOGY ("ICT") PASSIVE INFRASTRUCTURE PROJECT**

Instructions to Bidders

May 2025

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DISCLAIMER

The information contained in the Bidding Documents, Information Documents and any other information, whether verbal or written, provided by the Bases Conversion and Development Authority (the “**BCDA**”), or on behalf of the BCDA, is provided to 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.

The Bidding Documents are not agreements and are neither offers nor invitations by the BCDA to the Bidders or any other person. The BCDA, their employees and advisors are not bound by any of the contents of the Bidding Documents or Information Documents. The purpose of the Bidding Documents and Information Documents is to provide interested parties with information that may be useful to them in making their Bids pursuant to the Bidding Documents. The Bidding Documents and Information Documents include statements that reflect various assumptions and assessments arrived at by the BCDA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. The Bidding Documents and Information Documents may not be appropriate for all persons, and it is not possible for the BCDA, their employees or 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 Bidder should, therefore, conduct its own investigations and analysis 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 BCDA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The BCDA, their employees and advisors make no undertaking, assurance, representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations, principles of restitution or 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 Bidders, including the completeness, adequacy accuracy, correctness, and reliability of the Bidding Documents, Information 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.

The BCDA also accepts no liability of any nature, whether resulting from negligence or howsoever caused, arising from reliance of any Bidder upon the statements contained in the Bidding Documents or Information Documents.

The BCDA may, in their 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. The BCDA, their employees and advisors, however, shall not be liable to any 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 BCDA is bound to select a Bidder or to appoint the selected Bidder, as the case may be, for the Project, and the BCDA reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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**Republic of the Philippines
BASES CONVERSION AND DEVELOPMENT AUTHORITY**

NCC ICT PASSIVE INFRASTRUCTURE PROJECT

INSTRUCTIONS TO BIDDERS

INTRODUCTION

The Bases Conversion and Development Authority (“**BCDA**”) invites interested parties to apply, qualify and submit Bids for the competitive selection by BCDA of its private partner in an incorporated joint venture (“**JV**”) for the disposition of BCDA’s passive ICT infrastructure through the commercialization, and as necessary, expansion, repair, and maintenance of the passive information and communications technology (“**ICT**”) infrastructure, such as conduits, fiber optic cables, chambers, colocation facilities, and others in New Clark City (the “**Project**”).

These Instructions to Bidders provide for the procedures and requirements for the preparation and submission of Qualification Documents and Bid Proposals (comprised of the Technical Proposal and the Financial Proposal) by Bidders and the evaluation criteria and rules to be followed by the BCDA in the selection of a Winning Bidder to undertake the Project. The selection of a Winning Bidder shall be done pursuant to a public bidding in accordance with the PPP Code and the PPP Code IRR, the applicable provisions of which are deemed incorporated by reference into these Instructions to Bidders.

Project Description

New Clark City (“**NCC**”) is located in Tarlac Province in the Central Luzon Region (Region III), next to Pampanga Province. The NCC footprint covers 97.7 km² and is adjacent to the former US Camp O’Donnell airbase, in addition to some small local villages and towns. NCC is characterized by the Cutcut River which tracks from South-West to East through the area.

BCDA envisions resilient, cost-efficient, and ubiquitous ICT infrastructure and services across the footprint of NCC to support smart urban development. The Project underpins this vision as it aims to develop, through a JV, the passive ICT infrastructure in NCC that will be offered to Data Transmission Providers (“**DTPs**”) on a wholesale, non-discriminatory basis, such that all DTPs receive the same pricing and terms and conditions (including service levels and service credits) regardless of location within NCC (the “**Open Access Model**”).

The goal of the NCC Open Access Model is to create a vibrant and innovative competitive market for ICT services that serves the interests of government, enterprise and citizens. It will help attract high-value residents and businesses through affordable, innovative and carrier-grade ICT that ensures the delivery of futureproof broadband to support smart, modern living for all. The Open Access strategy will allow multiple DTPs to share the same physical network and associated costs and the DTPs shall be businesses offering ICT services to third parties, and not predominantly providing internal business management services.

The Project will be undertaken under a joint venture contractual arrangement. The scope of the JV for the Project will involve the disposition of BCDA’s passive ICT infrastructure by carrying out the commercialization, and as necessary, expansion, repair, and maintenance of passive physical ICT infrastructure including, but not limited to, conduits, fiber optic cables, chambers, and colocation facilities, and others in NCC. The JV scope shall also include the last mile connection direct to home or office up to the network termination point within the lettable area of a building, apartment, office or other facility. Infrastructure and services provided by the JV shall be configured to ensure that the end-users in all lettable locations will

have a choice of DTPs. In exchange for its services, the JV shall collect tariffs from its DTP customers in accordance with the terms of the JV Agreement.

The term of the JV will be twenty-five (25) years, extendable for a maximum period of twenty-five (25) years upon the mutual agreement of the parties. Based on projections for NCC development and locator demand, preliminary cost estimates place the total cost of the Project over the JV term at approximately PhP 2,500,000,000.00.

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SECTION 1 BIDDING PROCESS

1.1 PBAC & ADVISORS

1.1.a Pre-qualification/Qualification Bids and Awards Committee

The Pre-qualification/Qualification Bids and Awards Committee of BCDA ("**PBAC**") created by the BCDA on 15 May 2025 shall administer the Bidding Process for the Project.

1.1.b Transaction Advisors

The Asian Development Bank ("**ADB**") has been appointed by the BCDA to act as their transaction advisor for the international competitive Bidding Process. As transaction advisor, the ADB will assist the BCDA in undertaking and ensuring a fair, transparent and bidding process that will mobilize private sector participation in the implementation of 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, its Annexes and Schedules;

1.2.a(2) the draft JV Agreement and its Schedules; and

1.2.a(3) the Information Memorandum;

provided, that only the Portable Document Format (.pdf) file version of the same will be considered as the official published version.

From time to time, the Bidding Documents may be amended or revised through the issuance of Bid Bulletins by the PBAC. Upon notice or communication to the Bidders regarding the issuance of a Bid Bulletin by the PBAC, the same shall automatically be incorporated into and made an integral part of the particular Bidding Document to which it relates. Any such notice or communication shall be deemed given "when so sent by electronic mail in the electronic mail addresses provided by the Bidders.

1.2.b The JV Agreement and its Schedules shall be the principal document governing the relationship between the BCDA and the JV Partner.

1.2.c In case of conflict between the Bidding Documents, the provisions of the JV Agreement shall prevail.

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

1.2.d(1) between two or more Sections of these Instructions to Bidders, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;

- 1.2.d(2) between the Sections of these Instructions to Bidders and the Annexes or Schedules, the Sections shall prevail;
- 1.2.d(3) between any two Annexes, the Annex relevant to the issue shall prevail;
- 1.2.d(4) between any two Schedules, the Schedules relevant to the issue shall prevail;
- 1.2(d)(5) between any value written in numerals and that in words, the latter shall prevail; and
- 1.2.d(6) between the JV Agreement and any documents in the Data Room, the JV Agreement shall prevail.

1.2.e Rules of Construction and Interpretation

Unless the context otherwise requires:

- 1.2.e(1) “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;
- 1.2.e(2) References to any document or agreement shall be deemed to include references to any annex or scheduled attached there to; and 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;
- 1.2.e(3) References to a person include his successors and permitted assigns;
- 1.2.e(4) References to any gender include all genders, and references to the singular include the plural, and vice versa;
- 1.2.e(5) References to Sections or Annexes which do not specify what document they are referenced to are Sections or Annexes to this ITB;
- 1.2.e(6) Headings are for convenience only and shall not affect the interpretation or construction of any provision of this ITB; and
- 1.2.e(7) 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.f 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.

1.2.g Definition of Terms

Unless otherwise provided, the following terms used in these Instructions to Bidders shall have the following meanings (capitalized terms which are not expressly defined herein

shall have the same meanings as those ascribed to them in the JV Agreement):

“Acceptable Bank” means a universal bank or a commercial bank that is licensed by the *Bangko Sentral ng Pilipinas* (a list of which is provided in **Schedule 2**), and acceptable to BCDA.

“Affiliate” means a corporation or entity effectively Controlled by or Controlling the Bidder or associated with the Bidder under common ownership and Control.

“Annex” along with the relevant number refers to the documents submitted by the Bidder as part of its Bid, and as numbered in the Instructions to Bidders.

“Anti-Competitive Behavior” means any anti-competitive act, scheme, plan or agreement in connection with the Project, including any act of manipulation of the free use of access to the existing and additional facilities, land and project rights, and other in-kind contribution by BCDA to the JV.

“Appeal Fee” means the amount to be paid by the Bidder for purposes of appealing a decision of the PBAC in accordance with the PPP Code IRR.

“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.

“Authorization” means any consent, permission, license, concession, authorization, approval, confirmation or certificate, regulation, ruling, exemption, filing, variants, order, judgment, decree, obligation, notice, declaration, of, by, or with any Government Authority

“Authorized Officer” means, with respect to a legal entity, such legal entity's corporate secretary, president, general manager, chairman of the board, or treasurer, acting on behalf of such legal entity and is presumed to be authorized by such legal entity

“AVP” means an audio-visual presentation in .mp4 format containing an overview of the Bidder's Technical Plan

“BCDA” refers to the Bases Conversion and Development Authority.

“BCDA Board” refers to the Board of Directors of BCDA.

“BCDA-Supplied Information” means the documents that BCDA will provide to Bidders solely to provide background information on the Project.

“Best Bid” is defined in Section 10.2.d of these Instructions to Bidders.

“Bid” means the offer submitted by a Bidder to the PBAC to undertake the Project, consisting of the Bidder's Qualification Documents and Bid Proposals.

“Bid Bulletin/s” means the bulletin/s relating to the bidding for the Project as may be issued by the PBAC and published in the Data Room.

“Bid Proposal” means the Technical Proposal and Financial Proposal submitted by a Bidder to the PBAC.

"Bid Security" means the instrument to be provided by the Bidder as part of its Qualification Documents in accordance with Sections 4.3.b and 7 (*Bid Security*) of these Instructions to Bidders.

"Bid Submission Date" means the date when Bidders must submit their Bids to the PBAC.

"Bid Validity Period" means the period within which a Bid shall remain valid in accordance with Section 6.1.

"Bidder" means any partnership, corporation or Consortium that participates in the Bidding Process as described in Sections 2.1.a and 2.1.b of these Instructions to Bidders.

"Bidding Documents" means the documents that are issued to Bidders, as enumerated in Section 1.2.a of these Instructions to Bidders, including any notices and Bid Bulletins from the date of the first publication of the Invitation to Qualify and Bid until the execution of the JV Agreement.

"Bidding Process" or "Bidding" means the procurement process beginning from the first publication of the Invitation to Qualify and Bid until the signing of the JV Agreement, as described in Section 1.5 (*Summary of Bidding Process*).

"BIR" refers to the Bureau of Internal Revenue.

"Business Day" means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in Metropolitan Manila, Philippines are authorized or obligated by law or executive order to remain closed.

"Certificate of Successful Contract Implementation or Commercialization" means a certificate attesting to successful implementation or commercialization of 100% of the works/scope under a contract submitted as part of the Qualification Documents as required in Section 4.2.

"Commencement Date" means the date (not to exceed three (3) months after the signing of the JV Agreement, or such other date as the BCDA and the JV Partner may agree) on which all the conditions in the JV Agreement have been satisfied or waived in whole or in part by the BCDA or the JV Partner (as the case may be) in accordance with the JV Agreement.

"Commercialization" means all aspects of commercialization work and activities relating to the Project, as provided in the JV Documents.

"Commercialization Experience Requirements" means the Technical Qualification Requirements as provided in Section 2.2.f that must be met by a Bidder.

"Conflict of Interest" is defined in Section 13.3 of these Instructions to Bidders.

"Consortium" means an incorporated or unincorporated association of Consortium Members, in which (a) Consortium Member/s satisfying the Maintenance Experience Requirement and/or Commercialization Experience Requirement having not less than 30% interest, (b) the Consortium Member/s satisfying the Design and/or Construction Requirement having not more than 20% interest, and (c) the Consortium Member/s not nominated to fulfill any Technical Capability Requirement having not more than 30% total interest, bound by contract or law, solidarily undertaking, by mutual written agreement, a

common enterprise which is to participate in the Bidding Process for the Project.

“Consortium Agreement” means the written agreement, in the form prescribed under **Annex QD-2C**, under which the Consortium Members agree to be bound as an unincorporated association, solidarily undertaking thereunder a common enterprise which is to participate in the Bidding Process for and to undertake the Project, and shall include thereunder a stipulation in favor of BCDA whereby BCDA benefits from their joint and several obligation, and binding until: (1) the expiration of the Bidding Process, if the Consortium is not declared the Winning Bidder, or (2) the Sponsor Support Agreement is delivered to BCDA and the SPC accedes to all the rights and obligations of the Consortium under the JV Agreement, if the Consortium is declared the Winning Bidder.

“Consortium Member” means any juridical persons, which do not exceed three (3), in the common undertaking, solidarily liable with respect to the Bid for the Project, and whose interest will be converted into an equivalent equity participation in the SPC that will become the JV Partner if the Consortium is awarded the Project.

“Construction” means all aspects of construction work and activities relating to the Project, as provided in the JV Agreement.

“Construction and Operations Performance Security” is defined in Section 12.2.b of these Instructions to Bidders and in the JV Agreement.

“Construction Experience Requirements” means the Technical Qualification Requirements as provided in Section 4.2.a Table 2(B) that must be met by a Bidder.

“Contractor” means an entity, which may be engaged by the JV Partner to undertake the Design and/or Construction in accordance with the JV Documents. A Contractor must be a single legal entity and (a) if a sole proprietorship, is registered with the DTI or equivalent body in case of foreign entities, or (b) if a legal person, is registered with the SEC or equivalent body in case of foreign entities.

“Control” (including, with correlative meanings, the terms **“Controlling”**, **“Controlled by”** and **“under common Control with”**) as used with respect to any corporation, partnership or other legal entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such corporation, partnership or other legal entity, whether through:

- (i) ownership, whether directly or indirectly, of at least fifty percent plus one share (50%+1) of the outstanding voting shares; or
- (ii) ownership, whether directly or indirectly, of at least twenty percent (20%) of the outstanding voting shares and (a) possession of at least fifty percent plus one share (50%+1) of the voting rights through voting trust or other voting agreements; or (b) the ability to elect a majority of the members of the Affiliate’s board of directors; or
- (iii) any legal agreement or arrangement.

For this purpose, the term “voting shares” includes partnership contribution, membership interests, units of participation, and other similar forms of ownership which are entitled to vote.

“Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, Restrictive Practice, and Anti-Competitive Behavior” are each defined in Section 13.2.b.

“Corporation” or **“corporation”** refers to an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence.

“Data Transmission” refers to the process of sending digital or digitized signals over a communication medium to one or more computing networks, communication, or electronic devices. It enables the transfer and communication of devices in point-to-point, point-to-multipoint and multipoint-to-multipoint environments.

“Data Transmission Provider” or **“DTP”** means any person, firm, partnership or corporation, government or private, engaged in the provision of Data Transmission services to the public.

“Data Room” online depository of Information Documents to be accessed by Bidders with a designated username and password.

“day” means a calendar day, unless otherwise specified.

“DED” means the detailed engineering designs as defined under the JV Agreement.

“Design” means all aspects of design work and activities relating to the Project, as provided in the JV Documents.

“Design and/or Construction Experience Requirements” means the Technical Qualifications Requirements as provided in Section 4.2.a that must be met by a Bidder.

“Design Experience Requirements” means the Technical Qualification Requirements as provided in Section 4.2.a Table 2(A) that must be met by a Bidder.

“draft JV Agreement” means the document provided as **draft JV Agreement**.

“DSG” refers to Design Standards and Guidelines.

“DTI” refers to the Department of Trade and Industry.

“Equity Premium Cap” has the meaning given to it in Schedule 6 of the draft JV Agreement.

“Expiration Date” means twenty-five (25) years from First Service Date, as may be extended in accordance with the JV Agreement

“Financial Model” is the model required to be submitted by the Bidder in compliance with Section 5.2.b.

“Financial Proposal” is defined in Section 5.2 of these Instructions to Bidders.

“Financial Qualification Requirements” is defined in Section 2.3 of these Instructions to Bidders.

“First Envelope” means the portion of the Bid containing the Bidder’s Qualification Documents and consists of the documents described in Section 4 (*Qualification Documents*) of these Instructions to Bidders.

“First Service Date” means the date on which all of Minimum Connectivity Services Requirement is available, which shall be within the first one hundred eighty (180) days

from the Commencement Date independent of the readiness of BCDA Contribution in the mode of Additional Facilities. The failure to attain such within the foregoing period shall be subject to Liquidated Damages under Section 16.7 of the JV Agreement.

“FP” means financial proposal.

“Government” means the Government of the Republic of the Philippines and any agency or instrumentality thereof, including the BCDA.

“ICT Industry Affiliates” means all Affiliates of the Bidder and Consortium Members engaged in the ICT industries.

“Information Documents” is defined in Section 1.3 of these Instructions to Bidders.

“Initial Reference Tariff Offer” refers to the fee to be charged by the JV to Lessees for the enjoyment and use of the JV facilities, which is to be calculated in accordance with Schedule 6 of the draft JV Agreement.

“Initial Reference Tariff Offer Period” is defined in Section 5.2.a(i) of these Instruction to Bidders.

“Instructions to Bidders” or **“ITB”** means these Instructions to Bidders, including all annexes and schedules attached thereto, issued by the PBAC, as amended by Bid Bulletins that may subsequently be issued by the PBAC.

“Invitation to Qualify and Bid” means the invitation by the PBAC to all interested parties to qualify and bid for the Project.

“JV Agreement” means the contract, including all annexes and schedules attached thereto, to be executed by the BCDA and the Winning Bidder (and subsequently acceded to by the JV Partner). A copy of the draft JV Agreement is included as part of the Bidding Documents.

“JV Partner” means the counterparty of the BCDA under the JV Agreement, which is a duly qualified and selected private entity to undertake the Project, being the Winning Bidder and/or a wholly owned entity formed by the Winning Bidder whose obligations under the JV Agreement are fully guaranteed by the Winning Bidder.

“Key Personnel” means the key personnel required for the Project in accordance with the requirements set out in **Schedule 3**.

“Lead Member” means, for a Bidder that is a Consortium, the Consortium Member having the highest percentage of interest in the Consortium, which should not be less than 33¹/₃%, and which should be designated in writing as such by the other Consortium Members.

“Legal Qualification Requirements” is defined in Section 2.1 of these Instructions to Bidders.

“Lock-Up Rules” is defined in Section 14.1 of these Instructions to Bidders.

“Maintenance” means all aspects of maintenance and repair work and activities relating to the Project, as provided in the JV Documents.

“Maintenance Experience Requirements” means the Technical Qualification

Requirements, as provided in Section 2.2.f that must be met by a Bidder.

"Master Development Plan for New Clark City" means the indicative written overall plan that identifies the components of New Clark City, including design guidelines, as may be updated from time to time by the BCDA.

"Minimum Connectivity Services Requirement" or **"MCSR"** means the products or services that the Joint Venture shall (and the JV Partner shall procure that the Joint Venture shall) provide, which shall include the (a) four (4) wholesale passive connectivity services as further described in MPSS throughout the New Clark City; and (b) related enabling co-location services at minimum one (1) Meet-Me-Room (**"MMR"**) facilities. For this purpose, for roads within New Clark City where BCDA is constructing or has constructed conduits, the JV shall be allowed to provisionally install aerial fibers where there is an immediate service requirement. The JV shall bear the cost of subsequently converting the provisional aerial fibers to underground fibers.

"Minimum Performance Standards and Specifications" or **"MPSS"** means the document provided as **Schedule 5**.

"NEDA" means the Philippine National Economic and Development Authority as reorganized and renamed to Department of Economy, Planning and Development pursuant to Republic Act No. 12145.

"Net Worth" means with respect to any person, corporation, partnership, or other legal entity, such person or entity's total assets minus total liabilities calculated in accordance with generally accepted accounting principles.

"New Clark City" or "NCC" means New Clark City situated in Capas, Tarlac province, the metes and bounds of which are stipulated in the map attached as **Schedule 1** of these Instructions to Bidders.

"Notice of Award" is defined in Section 12.1 of these Instructions to Bidders.

"Notice of Qualification" is defined in Section 9.3.a of these Instructions to Bidders.

"OLA" means Operational Level Agreement, an internal agreement within a DTP that a service provider defines for internal users to meet service level agreement.

"Outstanding Dispute with Government" refers to any: (a) conflict, dispute or unsettled issue, arising out of, or in connection with any project or contract of the BCDA or any entity effectively Controlled by the BCDA, including any unpaid account arising from contractual obligations with the BCDA or any entity effectively Controlled by the BCDA; or (b) pending dispute or alternative dispute before the courts or arbitral tribunal, or any other form of judicial, quasi-judicial or administrative action, including suspension or blacklisting proceedings, between the Bidder, any Consortium Member, and Contractor proposed by the Bidder, or any of their Affiliates, on the one hand, and the BCDA or any entity effectively Controlled by the BCDA, on the other, in connection with any project or contract of the BCDA or any entity effectively Controlled by the BCDA.

"Partnership" or **"partnership"** refers to a legal entity created by way of contract between two or more persons who bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

"PED" means the preliminary engineering designs as defined under the JV Agreement.

“Performance Standards” are the performance standards defined under the JV Agreement.

“PhP” means Philippine pesos, the lawful currency of the Republic of the Philippines.

“Post-Award Requirements” mean the requirements which must be complied with by the Winning Bidder (or the JV Partner) as a pre-condition to the execution of the JV Agreement, as described in Section 12.2 of these Instructions to Bidders.

“PPP Code” means Republic Act No. 11966 otherwise known as “An Act Providing for the Public-Private Partnership (PPP) Code of the Philippines”.

“PPP Code IRR” means the Implementing Rules and Regulations of the PPP Code.

“PPP Center” means the Philippine Public-Private Partnership Center.

“Pre-Bid Conference” is defined in Section 1.13 of these Instructions to Bidders.

“Prohibited Act” mean any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, Restrictive Practice, or Anti-Competitive Behavior as defined in Section 13.2.b of these Instructions to Bidders.

“Project” means the disposition of BCDA's passive ICT infrastructure through the establishment of a joint venture company that shall commercialize, and as necessary, expand, repair, and maintain the passive ICT infrastructure, such as conduits, fiber optic cables, chambers, colocation facilities, and others in NCC.

“Project Cost” means the total investment, including necessary or incidental expenses, to finance, design, construct, maintain, and commercialize the passive ICT infrastructures, facilities, and improvements of the Project or a part thereof (as applicable) and (where applicable) all relevant costs of money, interest charges, and inflation, but excluding the BCDA Contribution (as defined in the JV Agreement), any Liquidated Damages (as defined in the JV Agreement) paid by the JV or the JV Partner, and any amounts paid by the JV Partner in connection with the Bidding Process.

“Project Financial Plan” means the means the document provided as **Annex FP-3**.

“Project Period” means the term of the JV Agreement, which shall commence on the Commencement Date and end on the Expiration Date.

“Qualification Document” or **“QD”** is defined in Section 4 of these Instructions to Bidders.

“Qualification Requirements” means the criteria that a Bidder must meet to qualify for the Project, as described in Section 2 of these Instructions to Bidders, and includes Legal Qualification Requirements, Technical Qualification Requirements and Financial Qualification Requirements.

“Qualified Bidder” is defined in Section 9.3.a of these Instructions to Bidders.

“Rebasing Period” means, in the case of the first Rebasing Period, the period commencing on the first day of the eleventh (11th) year from First Service Date and ending on the last day of the fifteenth (15th) year from First Service Date, and, in the case of subsequent Rebasing Periods, the period commencing on the day following the last day

of the prior Rebasing Period and ending on the last date of the fifth year provided, however, that the last Rebasing Period shall end on the Expiration Date.

"Reference Tariff Offer" refers to the fee to be charged by the JV to Lessees for the enjoyment and use of the Facilities, which consists of the service fee per month and service activation fee for each of the JV Product Types.

"Restrictive Practice" is defined in Section 13.2.b(6) of these Instructions to Bidders.

"PBAC" means the PPP Bids and Awards Committee for the Project created by the BCDA.

"Schedule" means the documents attached to the draft JV Agreement and this Instruction to Bidders other than the Annexes.

"SEC" means the Philippine Securities and Exchange Commission.

"Second Envelope" means the portion of the Bid containing the Bidder's Technical Proposal and consists of the documents described in Section 5.1 (*Technical Proposal*).

"Special Purpose Company" or "SPC" means the special purpose company to be incorporated with the Securities and Exchange Commission by the Winning Bidder that will sign and/or accede to all the rights and obligations of the Winning Bidder under the JV Documents.

"Signing Date" is defined in the JV Agreement.

"Site" is defined in the JV Agreement.

"Sponsor Support Agreement" means the document to be executed by the Lead Member, required under and substantially in the form provided in the JV Agreement, stating that the Lead Member shall be jointly and severally liable with the SPC for all obligations of the SPC under the JV Agreement.

"Substitution" is defined in Section 14.1.b(2).

"Technical Plan" is the plan submitted by the Bidder as **Annex TP-1A** in compliance with Section 5.1.d.

"Technical Proposal" is defined in Section 5.1 of these Instructions to Bidders.

"TP" means technical proposal.

"Technical Qualification Requirements" is defined in Section 2.2 of these Instructions to Bidders.

"Third Envelope" means the portion of the Bid containing the Bidder's Financial Proposal and consists of the documents described in Section 5.2 (*Financial Proposal*).

"Undesirable Practice" is defined in Section 13.2.b(5) of these Instructions to Bidders.

"Unsatisfactory Performance" means any of the following:

- a) Within the last five (5) years:

1. failure to satisfactorily perform any of its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
 2. expulsion from any project or contract;
 3. termination or suspension of any of its projects or contracts due to breach of its obligations; or
 4. material 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 any governmental agency of the Philippines, (ii) the sanctions list issued by the Asian Development Bank posted in the ADB website (<https://lnadbg4.adb.org/oga0009p.nsf>) or (iii) in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website (www.worldbank.org/debarr), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
- c) Involvement in any Prohibited Act or having Conflicts of Interest.

“VAT” means value-added tax.

“Wholesale Services Agreement” means open access wholesale passive service offer, whether by sale or lease or other similar arrangement, on ICT infrastructure that is available on generally equal terms to DTPs on a non-discriminatory basis.

“Winning Bidder” whose Bid is determined by the PBAC as the most advantageous Bid and, thus, granted a Notice of Award for the Project.

“Withdrawal” is defined in Section 14.1.b(1).

“Works” is defined in the JV Agreement.

“year” means a calendar year, unless otherwise specified.

1.3 INFORMATION DOCUMENTS

In addition to the Bidding Documents, certain documents will be provided to the Bidders solely to provide background information on the Project (**“Information Documents”**), which documents shall be made available in the Data Room. Instructions on how to access the Data Room will be provided to Bidders through a Bid Bulletin.

1.4 INDICATIVE BIDDING SCHEDULE

Table 1 below provides an indicative schedule for the Bidding Process.

Table 1. Indicative Schedule

Milestone	Responsibility	Target Date
Publication of Invitation to Qualify and Bid	PBAC	23 May 2025
Start of the Release of Bidding Documents and Information Documents	PBAC	28 May 2025 to 4 June 2025
Start of the Purchase of Bidding Documents and Information Documents	Bidders	28 May 2025 to 4 June 2025
Start of the Opening of Data Room	PBAC	28 May 2025 to 4 June 2025
Pre-Bid Conference	PBAC	04 June 2025
One-on-One Meetings	PBAC/Bidders	9-13 June 2025
Last day of submission of queries from Bidders	Bidders	20 June 2025
Issuance of final Instructions to Bidders	PBAC	01 July 2025
Issuance of final JV Agreement to Bidders	PBAC	01 August 2025
Bid Submission Date	Bidders	04 September 2025
Opening of of the First Envelope	PBAC	04 September 2025
Opening of the Second Envelope	PBAC	22 September 2025
Opening of the Third Envelope	PBAC	20 October 2025
Issuance of Notice of Award	BCDA Board	14 November 2025
Submission of Post-Award Requirements	Winning Bidder	04 December 2025
Notification of compliance with Post-Award Requirements	PBAC	10 December 2025
Signing Date of JV Agreement	BCDA Board & Winning Bidder	15 December 2025

The schedule may be changed by the PBAC at any time, without incurring any liability to the Bidders. Bidders shall be notified by the PBAC of any changes in the indicative schedule through Bid Bulletins.

All references to dates and times under these ITB 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 competitive bidding for the Project shall be conducted in accordance with the rules and procedures for the simultaneous bidding process provided under the PPP Code and the PPP Code IRR, the applicable provisions of which are deemed incorporated herein by reference.

The general procedure for the Bidding shall be as follows:

- 1.5.a The PBAC shall conduct a Pre-Bid Conference in accordance with Section 1.13 (*Pre-Bid Conference*).
- 1.5.b Bidders will be given the opportunity to provide comments, request clarifications, and make drafting suggestions on the draft Bidding Documents through one-on-one meetings and submissions of formal queries/comments. The Final Draft of the Bidding Documents, including the JV Agreement, are subject to approval by relevant authorities in accordance with applicable laws and regulations.
- 1.5.c The Bid Submission Date is indicatively scheduled to be on 04 September 2025 in accordance with the prescribed schedule and procedure under Section 8.5 (*Deadline and Place of Submission of Bids*).
- 1.5.d On or before the Bid Submission Date but prior to the deadline indicated in this ITB, the Bidders shall submit to the PBAC their Qualification Documents and Bid Proposals in one (1) sealed box, which shall contain the separately sealed envelopes as follows: (i) Qualification Documents (the “**First Envelope**”), (ii) the Technical Proposal (the “**Second Envelope**”) and (iii) the Financial Proposal (the “**Third Envelope**”), which shall be packed and sealed in accordance with Section 8.4 (*Format of Submission of Bid*).
- 1.5.e On the Bid Submission Date, immediately after the time fixed for the deadline of submission of Bids under Section 8.5 (*Deadline and Place of Submission of Bids*), the PBAC shall open the First Envelope and ascertain whether the required Bid Security is complied with and whether the First Envelope is complete. The PBAC, in accordance with the schedule in Section 1.4 (*Indicative Bidding Schedule*), shall 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. The Qualified Bidders shall be informed of the date, time and venue for the opening of the Second Envelope. Disqualified Bidders of the Qualification evaluation shall be informed of the reasons for their disqualification and their Bid Proposals will be returned unopened together with their Bid Security.
- 1.5.f The evaluation of the Technical Proposal and Financial Proposal of the Qualified Bidders shall be simultaneous. The Winning Bidder shall be determined by considering the scores obtained by the Qualified Bidders in their Technical Proposal and Financial Proposal provided that the Qualified Bidder's Technical Proposal passes the Minimum Scoring Threshold .
- 1.5.g On the Second Envelope Opening Date, the PBAC shall open the Second Envelope of each Qualified Bidder and ascertain whether the same is complete. The PBAC, in accordance with the schedule in Section 1.4 (*Indicative Bidding Schedule*), shall 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 meet the evaluation criteria. The Qualified Bidders whose Technical Proposals meet the Minimum Scoring Threshold based on the evaluation criteria are rated as “Complying”. The Qualified Bidders whose Technical Proposals are rated as “Complying” shall be informed of the date, time and venue for the opening of the Third Envelope. The Third Envelope shall then be evaluated.

- 1.5.h Qualified Bidders with “Non-Complying” Technical Proposals shall be informed why their Technical Proposals were found to be “Non-Complying” and their Financial Proposals will be returned by the PBAC un-scored or un-evaluated together with their Bid Security; *provided*, that in case all of the Qualified Bidders are rated “Non-Complying”, their Financial Proposals will be retained by the PBAC un-scored or un-evaluated together with their Bid Security and the PBAC may undertake the procedure for requiring the correction of the Technical Proposals.
- 1.5.i On the Third Envelope Opening Date, the PBAC shall open the Third Envelope of each Qualified Bidder and ascertain whether the same is complete. If determined complete, the PBAC shall then evaluate and score the Financial Proposal submitted by the Qualified Bidders with “Complying” Technical Proposals. Financial Proposal Amounts, which are required to be stated in a currency, are to be stated in Philippine Pesos (Php). The PBAC, in accordance with the schedule in Section 1.4 (*Indicative Bidding Schedule*), shall rank the scores of the Bidders based on their combined Technical Proposal and Financial Proposal scores in accordance with Section 10.3 (*Technical and Financial Criteria for Evaluation*) and determine the Bidder who submitted the Best Bid.
- 1.5.j Within three (3) calendar days from the date the PBAC determines the Best Bid, the PBAC shall submit to the BCDA Board a recommendation of award.
- 1.5.k Within three (3) calendar days from submission by the PBAC of its recommendation of award, the BCDA Board shall decide on the award and issue the Notice of Award to the Winning Bidder within three (3) calendar days from approval thereof.
- 1.5.l The Winning Bidder shall comply with the Post-Award Requirements provided in Section 12.2 (*Post-Award Requirements*) within twenty (20) calendar days from its receipt of the Notice of Award.
- 1.5.m Within five (5) calendar days from receipt of all Post-Award Requirements, the BCDA Board shall determine and notify the Winning Bidder of its compliance of all the conditions stated in the Notice of Award.
- 1.5.n Within five (5) calendar days from the receipt by the Winning Bidder of notice from the BCDA Board that all of the Post-Award Requirements have been complied with, the Winning Bidder shall enter into the JV Agreement with the BCDA.

1.6 REVISIONS AND CLARIFICATIONS TO THE BIDDING DOCUMENTS

The PBAC reserves the right to amend, revise, modify, clarify, or supplement any section of the Bidding Documents at any stage of the Bidding Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated in writing to all parties who purchased the Bidding Documents or to the relevant Bidders, depending on the stage of the Bidding Process, through Bid Bulletins issued by the PBAC. Upon notice or communication to the Bidders regarding the issuance of a Bid Bulletin, in accordance with Section 1.2.a (*Bidding Documents*), the same shall automatically be incorporated into and made an integral part of the relevant Bidding Document. Failure of a Bidder to secure the Bid Bulletins shall constitute a waiver of its right to be informed thereof.

The last set of Bid Bulletins shall be issued by the PBAC no later than thirty (30) days prior to the Bid Submission Date. Thereafter, no new Bid Bulletins amending, revising, or modifying the Bidding Documents shall be issued.

1.7 RESPONSIBILITIES OF BIDDERS

- 1.7.a Notwithstanding any information given in the Bidding Documents, Information Documents and any additional communications from the BCDA 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 Documents, Bidding Process and Project;
 - 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 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 Site, terrain, geological, subsurface, archaeological, meteorological, and hydrological conditions; existing works, facilities, respective capacities and plans for future works, and proposed capital development in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or relevant legal or other regulatory issues affecting the Project; environmental, social, gender concerns and issues; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications, and other relevant factors; resource requirements; market demand projections; the financial viability of the Project; and risks and contingencies that may affect the cost, duration, execution, implementation and completion of the Project.
- 1.7.b The Bidders, any Consortium Member, Contractor, Maintenance Contractor, Commercialization Contractor, or any Affiliate used to satisfy a Qualification Requirement, the Winning Bidder and/or the JV Partner shall not be entitled to, and shall not make, any claim against the BCDA, 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, Bidding Process or Information Documents; or
 - 1.7.b(2) that incorrect or insufficient information relating to the Bidding Process, Bidding Documents and/or Information Documents that were given to them by the BCDA, or any other associated party.

- 1.7.c By submitting its Bid, a Bidder acknowledges, and warrants that it has fully discharged its responsibilities above and contained elsewhere in the Bidding Documents and that it has examined and accepted all the terms and conditions in all of the Bidding Documents and other BCDA-Supplied Information, and the Bidding Process.
- 1.7.d The Bidders acknowledge that the draft JV Agreement is subject to review by the relevant reviewing bodies and may still be revised until the issuance of the final JV Agreement.

1.8 COSTS AND EXPENSES OF PARTICIPATION

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

Only persons who have purchased the Bid Documents shall be allowed to participate in the Bidding Process and to access the Data Room. Each Bidder must pay Two Hundred Fifty Thousand Philippine Pesos (PhP250,000.00) for the Bidding Documents.

The payment for the Bidding Documents shall be payable in cash (through manual payment or wire transfer to the bank account designated below) or manager's check issued by a bank in the Philippines and made out to the BCDA, which payment shall be non-refundable.

Name of Bank	:	Landbank of the Philippines
Branch	:	Bonifacio Global City
Account Name	:	Bases Conversion and Development Authority
Account No.	:	3902-1005-11
SWIFT	:	TLBPPHMM

Under no circumstances, whether qualified or disqualified a Bidder shall be entitled to reimbursement of the purchase costs for the Bidding Documents. A Bidder may, however, be entitled to a refund of the amount it paid for the Bidding Documents if the BCDA should cancel or terminate the Bidding Process without any fault on the part of such Bidder, except if such Bidder is disqualified pursuant to these Instructions to Bidders or there is a failed bidding.

Entities that have previously purchased the Forms and Annexures from the original tender¹ shall not be required to purchase the Bidding Documents again but will be given such Bidding Documents free of charge for this re-tender of the Project under the PPP Code upon the relevant entity's request.

The person duly authorized under a notarized Special Power of Attorney ("**SPA**") executed by a Bidder to purchase the Bidding Documents must present to the PBAC his/her authorization from a Bidder and must provide an electronic mail address where all correspondence of the BCDA to the Bidder shall be sent. Upon receipt of payment, the Bidder will be issued an official receipt and given copies of the Bidding Documents and access to the Data Room.

1.9 QUERIES AND COMMENTS ON BIDDING DOCUMENTS

¹ Pertains to the original tender of the Project on 25 October 2023.

1.9.a A Bidder may submit queries and/or comments on the Bidding Documents. Queries on the Bidding Documents must be concrete or clarificatory, make reference to the particular section or clause of the Bidding Document, and cannot be purely hypothetical in nature.

1.9.b All queries and/or comments must be submitted as follows:

(i) by E-mail to:

PBAC for the NCC ICT Passive Infrastructure Project

Attention: Hedda Y. Rulona

E-mail: pbac_ict@bcda.gov.ph; pbac_ict_twg@bcda.gov.ph

(ii) or by personal delivery the original copy of the queries/comments to the PBAC at the following address:

PBAC for the NCC ICT Passive Infrastructure Project

Attention: Hedda Y. Rulona

Address: Bases Conversion and Development Authority

2/F Bonifacio Technology Center

31st Street corner 2nd Avenue, Bonifacio Global City, Taguig

City

Telephone: +63 2 8575 1765

1.9.c Bidders must submit their queries and/or comments in sets and in the following format prior to the dates indicated in Table 1 or prior to the dates notified by the PBAC through a Bid Bulletin:

- (i) excel format, in the format separately provided in a Bid Bulletin; and
- (ii) signed pdf format of the excel file described in the preceding item in Section 1.9.b(i).

1.9.d The PBAC shall exert its best efforts to respond to all reasonable queries received. Responses to queries and any modifications to the Bidding Documents will be made on a non-attributable basis and shall be posted in the Data Room. All Bid Bulletins issued by the PBAC shall be deemed to be incorporated in and made an integral part of the relevant Bidding Document upon notice or communication to the Bidders in accordance with Section 1.2.a (*Bidding Documents*).

1.10 OWNERSHIP OF DOCUMENTS

All documents submitted by a Bidder to the PBAC pursuant to these Instructions to Bidders shall become the property of the BCDA and any information obtained by the BCDA from such documents may be reasonably used by them subject to the confidentiality clause in Section 11 (*Confidentiality*) and the Confidentiality Undertaking submitted by a Bidder as part of its Qualification Documents.

1.11 LANGUAGE AND FOREIGN DOCUMENTS

1.11.a The Bid and all submissions to PBAC shall be prepared and written in the English language. Any document written in a foreign language shall be accompanied by an English translation and authenticated by a Philippine consular official. The authentication of such document should follow the

authentication rules of the relevant Philippine consular office. In case of conflict, the English translation shall prevail.

1.11.b All documents that are required to be submitted under oath, acknowledged, or sworn to must be complied with as follows:

1.11.b(1) if executed in the Philippines, it must be sworn to or acknowledged before a Philippine Notary Public;

1.11.b(2) if executed outside the Philippines, either;

- i. It is sworn to or acknowledged before a Philippine consular official authorized to administer oaths; or
- ii. It may be sworn to or acknowledged before any person authorized to administer oaths in that jurisdiction, provided that the same shall be authenticated before a Philippine consular official authorized to authenticate documents at the Philippine consulate nearest the place of execution or certified pursuant to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, otherwise known as the *Apostille Convention*, if the foreign country where the document was issued or executed is a signatory to the *Apostille Convention*.

1.11.b(3) If the document was issued by a foreign authority, the Bidder must submit a certified true copy of such document issued by such foreign authority that is either:

- i. certified pursuant to the *Apostille Convention*, if the foreign country where the document was issued or executed is a signatory to the *Apostille Convention*; or
- ii. authenticated by a Philippine consular official authorized to authenticate documents at the Philippine consulate nearest the place of execution, if the foreign country where the document was issued or executed is not a signatory to the *Apostille Convention*.

1.11.c In foreign countries where there is no Philippine embassy/consulate and is not a party to the *Apostille Convention*, the document issued or executed therein shall only be notarized by a notary public in the said foreign country and then legalized by the relevant department in the foreign country's Ministry of Foreign Affairs or its equivalent, who must also state in the same document that there is no Philippine embassy/consulate in that foreign country. No authentication by the Philippine embassy/consulate shall be required in such case.

1.11.d If the document is a foreign law or regulation, the Bidder need only to 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, authenticated by the Philippine consular official or through an Apostille issued by competent government authority (as the case may be) referred to in the first sentence of Section 1.11.b without prejudice to the second sentence of Section 1.11.b; or (b) a certification from the embassy or consular office of the relevant foreign country in the Philippines that such

excerpt is an accurate copy of the foreign law; or (c) the notarized affidavit of a practicing lawyer duly admitted in the relevant foreign jurisdiction, quoting verbatim the applicable law and stating that the same was in force at the time of the execution of the affidavit.

- 1.11.e If the document is written in a foreign language, the Bidder must also submit an accurate English translation of such document, accompanied by a notarized certification by the authorized representative of the entity involved or by a translator in the relevant foreign country that such translation is accurate. This must also be authenticated by the Philippine consular official or through an Apostilled issued by competent government authority (as the case may be) referred to in the first sentence of Section 1.11.b without prejudice to the second sentence of Section 1.11.b. In case of conflict, the English translation shall prevail.
- 1.11.f 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.g For each instance in these Instruction to Bidders, 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.

1.12 SITE VISITS

The PBAC shall make arrangements for Bidders to visit the site for the Project. All Bidders who purchase the Bidding Documents may conduct a maximum of two (2) days of site visits by sending requests to BCDA through the following contact persons:

Stevenson E. Tugas, Jr.: +639176569140
Lucky Niño Baula: +639190096657
 E-mail: pbac_ict_twg@bcda.gov.ph
 Telephone: +63 2 8575 1765

1.13 PRE-BID CONFERENCE

The PBAC shall conduct a Pre-Bid Conference to further clarify any part of the Bidding Documents and/or the Bidding Process and to answer any relevant questions from Bidders. The details of the date and time of the Pre-Bid Conference shall be provided in a separate Bid Bulletin. Interested parties and Bidders may attend the Pre-Bid Conference.

The Pre-Bid Conference shall be on the date stipulated in Section 1.4 (*Indicative Bidding Schedule*) to be conducted in-person on 04 June 2025 at 2 pm at the Asian Development Bank Headquarters located at 6 ADB Avenue, Mandaluyong City 1550, Metro Manila, Philippines and/or through video conferencing. Bidders who wish to participate virtually in the Pre-Bid Conference shall send a request by electronic mail in accordance with Section 1.9b. BCDA will thereafter send the relevant registration details for the Pre-Bid Conference to the relevant Bidder. All Bidders that wish to attend the Pre-Bid Conference through video conferencing must register on or before 02 June 2025 at 5 pm.

No provision, term, or condition in the Bidding Documents shall be modified by statements made at the Pre-Bid Conference unless such statements are confirmed in writing and contained in a Bid Bulletin issued by the PBAC. Within seven (7) calendar days from the Pre-Bid Conference, the Bidders must confirm in writing the questions and concerns which they raised during the Pre-Bid Conference in accordance with Section 1.9 (*Queries and Comments on Bidding Documents*). The PBAC reserves the right to issue a Bid Bulletin modifying the Bidding Documents even if the Bidders fail to confirm in writing the questions and concerns that they raised during the Pre-Bid Conference.

1.14 MEETINGS WITH GOVERNMENT

By participating in the Bidding Process, a Bidder agrees that the PBAC may arrange one-on-one meetings with the Bidders. The meetings shall be held on the dates indicated in Table 1 or as otherwise informed by the PBAC. Bidders may also request one-on-one technical consultation meetings with for clarifications and queries. Bidders may submit their requests via email to the Secretariat indicating their requested schedule for the meeting. A Bidder scheduled for a one-on-one meeting must submit its questions and comments on the Bidding Documents at least five (5) calendar days prior to such meeting, following the same procedures indicated in Section 1.9 (*Queries and Comments on Bidding Documents*). No provision, term or condition of the Bidding Documents shall be modified by statements made during these meetings unless such statements are confirmed in writing and contained in a Bid Bulletin issued by the PBAC. Within five (5) calendar days from the one-on-one meeting, each Bidder must confirm in writing the questions and concerns which were raised during the meeting, if such questions have not been previously submitted to the PBAC. The PBAC reserves the right to issue a Bid Bulletin modifying the Bidding Documents even if a Bidder fails to confirm in writing the questions and concerns, which it raised during the one-on-one meeting.

1.15 ONE BIDDER, ONE SUBMISSION

Each Bidder may submit only one application to be declared as a Qualified Bidder. A Bidder shall not be a member of another Consortium, nor have an Affiliate that is a member of another Consortium. No Consortium Member shall be a member of more than one Consortium, nor have an Affiliate that is a member of another Consortium.

To ensure a level playing field and the competitiveness of the Bidding Process, there are restrictions on the extent of affiliation and ownership between Bidders and members of different Consortia. These are described in greater detail in Section 13.3 (*Conflict of Interest*).

These restrictions, however, do not cover or limit the participation of proposed Contractors, which may be proposed by more than one Bidder provided that such Contractors: (1) are not themselves (or through their Affiliates) (i) Bidders, (ii) Consortium Members or (iii) Affiliates of any of the Bidders or Consortium Members; and (2) are compliant with the applicable requirements set forth in Section 13.3 (*Conflict of Interest*) with regard to Contractors. If a Contractor complies with the requirements of this Section 1.15 (*One Bidder, One Submission*), it shall not be considered a Conflict of Interest for the purposes of these Instructions to Bidders.

1.16 ACCEPTANCE OF CRITERIA AND WAIVER OF RIGHTS TO ENJOIN PROJECT

Without limiting or negating the terms of the Acceptance of Criteria Waiver of Rights to Enjoin Activity submitted as part of the Qualification Documents of the Bidder, a Bidder unequivocally accepts the Qualification Requirements criteria established by the PBAC of the BCDA and such Bidder, including all Consortium Members, nominated Contractors, and ICT Industry Affiliates, irrevocably waives, to the fullest extent allowable by law, any right it may have to, and shall not seek or obtain, any writ of injunction or prohibition or restraining order, or any

other form of coercive judicial, quasi-judicial or administrative writ, process or issuance, or any other similar remedy or course of action intended to have similar effect, including but not limited to any claim for payment of costs, fees, expenses or damages, in any jurisdiction, against the BCDA, the PBAC, its Affiliates, BCDA's advisers or any other person or entity as would prevent, suspend, restrain, or in any manner forestall, hinder, or render inconvenient any stage of the Bidding Process, the award of the JV Agreement and other relevant JV Documents to the Winning Bidder, or the carrying out of the JV Agreement and other relevant JV Documents.

1.17 BID PROPOSAL CURRENCIES

The valuation of all assets and the amount of cash to be contributed by the JV Partner to the JV shall be quoted in PhP.

SECTION 2 QUALIFICATION REQUIREMENTS

To qualify to bid for the Project, a Bidder must comply with all the Legal Qualification Requirements, Technical Qualification Requirements and Financial Qualification Requirements provided in this Section 2 (*Qualification Requirements*).

2.1 LEGAL QUALIFICATION REQUIREMENTS

2.1.a The following entities shall be eligible to participate in the Bidding Process:

- (a) Partnership;
- (b) Corporation; or
- (c) Consortium.

If the Bidder is a partnership or corporation, it must be registered with the SEC. If the Bidder is a foreign partnership or corporation, it must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign partnership or corporation was registered for creation or recognition of its juridical personality or capacity. The Bidder must certify that it, its Affiliates, and contractors whose projects and experience are being submitted as evidence of fulfillment of the Technical Qualification Requirements or Financial Qualification Requirements, as applicable, have no record of Unsatisfactory Performance within the last five (5) years from the Bid Submission Date (using the form in **Annex QD-5**).

2.1.b If the Bidder is a Consortium, its members must be partnerships or corporations registered with the SEC. If any member of the Consortium is a foreign partnership or corporation, such member must be registered with 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.

Each Consortium Member must certify that it, its Affiliates, and contractors whose projects and experience are being submitted as evidence of fulfillment of the Technical Qualification Requirements have no record of Unsatisfactory Performance within the last five (5) years from the Bid Submission Date (using the form in **Annex QD-5**).

The total interest in the Consortium of all Consortium Member/s not nominated to satisfy any of the Technical Qualification Requirements shall not exceed 30%.

- 2.1.c Regardless of the Bidder's ownership, the Bidder undertakes that it does not and shall not engage in any Anti-Competitive Behavior (using the form in **Annex QD-13**).
- 2.1.d If the Bidder that is a Consortium becomes the Winning Bidder, it shall cause the incorporation of a Special Purpose Company or SPC, which shall either sign and execute, or accede to the JV Agreement and other relevant JV Documents. In the incorporation of such SPC, the Consortium Members shall ensure that the SPC shall benefit from and maintain the qualifications and experience of the Consortium which were used as basis for the eligibility and award of the Project to the Bidder that is a Consortium.

2.2 TECHNICAL QUALIFICATION REQUIREMENTS

- 2.2.a The Technical Qualification Requirements consist of (i) Design and Construction Experience Requirements, (ii) Maintenance Experience Requirements and (iii) Commercialization Experience Requirements. Unless specified otherwise in the relevant sections of this document, the entity fulfilling each area of Technical Qualification Requirements shall be the following:
 - (1) if the Bidder is a partnership or corporation:
 - i the Bidder itself; and/or
 - ii an Affiliate of the Bidder
 - (2) if the Bidder is a Consortium:
 - i a Consortium Member; and/or
 - ii an Affiliate of the Consortium Member
- 2.2.b There shall be **no aggregation of experience** by different entities from the foregoing list for all of the Technical Qualification Requirements. The nominated entity itself must comply with the relevant Technical Qualification Requirement for which it is being nominated. Each entity whose completed projects are being submitted to fulfill the relevant Technical Qualification Requirement must certify that they have **no Unsatisfactory Performance Record** (using the form in **Annex QD-5**).
- 2.2.c If selected as a Winning Bidder, the entity or entities proposed by Bidder to meet the Technical Qualification Requirements, which are declared eligible by the PBAC, shall be recognized/named in the JV Agreement and other relevant JV Documents without need for further consent from BCDA, subject to compliance with applicable law. The use of any entity other than those recognized/named in the JV Agreement and other relevant JV Documents as having been declared eligible by the PBAC will require the prior written consent of BCDA; provided, that such prior written consent of the BCDA is not required for contracts, which are less than One Hundred Million Philippine Pesos (PhP100,000,000.00) in contract value, and will be subject to the Winning Bidder's demonstration to the BCDA's satisfaction that the proposed entity meets the requirements in Section 2.2.e, whichever is applicable, and other requirements relevant to the entity being replaced, if any.
- 2.2.d Design and Construction Experience Requirements

For the Design and Construction Experience Requirements, the Bidder may nominate the same entity or different entities to fulfill the Design Experience Requirements and Construction Experience Requirements.

- (1) If one (1) entity fulfills both the Design Experience Requirements and the Construction Experience Requirements, the same projects may be relied upon by such entity to satisfy both requirements.
- (2) If the Bidder nominates two (2) different entities to fulfill the Design and Construction Experience Requirements, the Bidder shall nominate only one (1) entity each to fulfill the Design Experience Requirements and Construction Experience Requirements.
- (3) A Contractor can be nominated by the Bidder to fulfill the Design Experience Requirements and/or the Construction Experience Requirements.

2.2.e DESIGN AND CONSTRUCTION EXPERIENCE REQUIREMENTS

- 2.2.e(1) The entity nominated to fulfill the Design and Construction Experience Requirements must have client-side or in-house experience of satisfactorily completing the design of **ALL** of the eligible projects referred to in Table 2 below, whether locally or abroad, within the last five (5) years prior to the Bid Submission Date.

Table 2(A): Design Experience Requirements

Eligible project/ facilities	Minimum requirement
Design of underground optical fiber multi-conduit network	More than one hundred (100) kilometers of underground optical fiber multi-conduit network within seven (7) passive Integrated Networks. An “Integrated Network” is defined as a multi-conduit network with multiple fiber routes/cables built to a common design that serves an identifiable, contiguous area aggregated back to a central network site/connection point with capability for interconnection to the equipment of more than one (1) DTP.
Design of fiber installations to address Mixed End User Base including residential and enterprise buildings, government, and other end points	More than one hundred thousand (100,000) Billable End-Points including Mixed End User Base within seven (7) Integrated Networks. “Billable End-Points” refer to the DTP end-user points that are connected or connectable to an Integrated Network. “Mixed End User Base” means different customer market segments, e.g., a mix of business and residential.

Design of passive wholesale network services (e.g., end-to-end dark fiber services)	At least one (1) passive fiber wholesale network delivering services to at least two (2) DTPs.
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Table 2(B): Construction Experience Requirements

Eligible project/facilities	Minimum requirement
Construction of underground optical fiber multi-conduit network	More than one hundred (100) kilometers of underground optical fiber multi-conduit network within seven (7) Integrated Networks
Construction of fiber installations to address mixed end user base including residential and enterprise buildings, government, and other end points	More than one hundred thousand (100,000) billable end points including mixed end user base within seven (7) Integrated Networks
Configuration of passive wholesale network services (e.g., end-to-end dark fiber services)	At least one (1) passive fiber wholesale network delivering services to at least two (2) DTPs.

- 2.2.e(2) Any entity nominated to satisfy the Construction Experience Requirements must possess a valid license issued by the Philippine Contractors Accreditation Board (“**PCAB**”) License Category AA and License Classification Large B. The PCAB License must be in General Engineering, Electrical Works or Communication Facilities. In case the entity nominated to satisfy the Construction Experience Requirements is of foreign origin, such entity must submit an equivalent license from an equivalent accreditation institution in its country of origin, provided that such foreign nominee must secure a license and accreditation from the PCAB after the Bidder is awarded the Project. In case that an equivalent license is not issued by the foreign Construction Experience nominee’s country of origin, a notarized statement to this effect should be issued by the authorized representative of the Construction Experience nominee, provided that such foreign nominee must secure a license and accreditation from the PCAB after the Bidder is awarded the Project.
- 2.2.e(3) In case the entity nominated to fulfill the Design and/or Construction Experience Requirements is a Consortium Member or the Affiliate of a Consortium Member and such entity is not also nominated to fulfill either the Maintenance Experience Requirements or the Commercialization Experience Requirements, the equity of such Consortium Member in the Consortium must not exceed twenty percent (20%).

- 2.2.e(4) For avoidance of doubt, Bidders may nominate a Contractor to satisfy the Design and/or Construction Experience Requirements. Further, subject to Section 1.15 (*One Bidder, One Submission*), different Bidders may submit the same Contractor to satisfy the Design and/or Construction Experience Requirements.

2.2.f MAINTENANCE EXPERIENCE REQUIREMENTS

- 2.2.f(1) The Bidder shall only nominate one (1) entity with either client-side or in-house experience to fulfill the Maintenance Experience Requirements and the entity nominated to fulfill the Maintenance Experience Requirements must have prior and current experience in maintaining the eligible projects/ facilities referred to in Table 3 below for a period of at least three (3) consecutive years within the last five (5) years prior to the Bid Submission Date:

Table 3: Maintenance Experience Requirements

Eligible project/ facilities	Minimum requirement
Providing connectivity and maintenance services of fiber assets to address Mixed End User Base including residential and enterprise buildings, government, and other end points	Service level agreements with a record showing restoration of services/ repair of outages within a maximum of eight (8) hours for 95% of the time for the prior consecutive five (5) years for (i) More than one hundred (100) kilometers of underground optical fiber multi-conduit network within seven (7) Integrated Networks AND (ii) 100,000 Billable End-Points.

- 2.2.f(2) In case the entity which fulfills the Maintenance Experience Requirements is a Consortium, the Consortium Member designated as the entity that fulfills the Maintenance Experience Requirements shall additionally meet the following shareholding requirements:
- (1) such Consortium Member, which must be either a partnership or a corporation, shall have at least thirty percent (30%) interest in the Consortium, or
 - (2) an Affiliate of such Consortium Member shall have at least thirty percent (30%) interest in the Consortium.

2.2.g COMMERCIALIZATION EXPERIENCE REQUIREMENTS

- 2.2.g(1) The Bidder shall only nominate one (1) entity with either client-side or in-house experience to fulfill the Commercialization Experience Requirements, and the entity nominated to fulfill the Commercialization Experiences must have prior and current experience in commercializing the eligible projects/ facilities referred to in Table 4 below for a period at least three (3) consecutive years within the last five (5) years prior to the Bid Submission Date:

Table 4: Commercialization Experience Requirements

Eligible project/ facilities	Minimum Requirement
Selling and leasing of wholesale passive asset services	At least one (1) relevant Wholesale Services Agreement

2.2.g(2) In case the entity which fulfills the Commercialization Experience Requirements is a Consortium, the Consortium Member designated as the entity that fulfills the Commercialization Experience Requirements shall additionally meet following shareholding requirements:

- (1) a Consortium Member, which must be either a partnership or a corporation, with at least thirty percent (30%) interest in the Consortium, or
- (2) an Affiliate of a Consortium Member with at least thirty percent (30%) interest in the Consortium.

2.2.h QUALIFIED KEY PERSONNEL

2.2.h(1) The Bidder, Consortium Members, Contractors, or Affiliates of these entities whose projects are being submitted to meet the Technical Qualification Requirements, must have, among their personnel, individuals with the qualifications and experience as required under **Schedule 3 ("Key Personnel")**.

2.2.h(2) In order to meet the qualifications and experience required in Section 2.2, a Bidder may propose persons who are employed or engaged, including external experts, by the Bidder itself, a Consortium Member or any of their proposed contractors or Affiliates of the Bidder or Consortium Member. The Bidder may not propose more than two (2) persons for each of the above key personnel and the experiences of the two individuals shall not be aggregated. For the avoidance of doubt, each of the Key Personnel qualifications must be met by different individuals.

2.2.h(3) 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 or substituted by new personnel possessing at least the same qualifications as those of the Key Personnel initially assigned to implement the Project subject to the prior written consent of the BCDA, which consent shall not be unreasonably withheld.

2.3 FINANCIAL QUALIFICATION REQUIREMENTS

2.3.a The Bidder, or a related entity as described in Section 2.3.b(a)(ii), or the Consortium, must

- 2.3.a(1) Possess a net worth of at least One Billion Philippine Pesos (PhP 1,000,000,000.00) or its equivalent as of its latest audited financial statements which must be dated not earlier than 31 December 2024; and

- 2.3.a(2) Provide evidence that it has the capability to raise loans of at least Five Hundred Million Philippine Pesos (PhP 500,000,000.00) or its equivalent, subject to Section 2.3.f.
- 2.3.b The entity which fulfills the Financial Qualification Requirements may be:
- 2.3.b(1) If the Bidder is a partnership or corporation:
- i. The Bidder itself; or
 - ii. An Affiliate of the Bidder that will guarantee the obligations of the Bidder under the JV Documents in relation to the Project.
- 2.3.b(2) if the Bidder is a Consortium:
- i. The Lead Member; or
 - ii. The Consortium Members, by their respective net worth based on their latest audited financial statements dated not earlier than 31 December 2024, in proportion to their percentage of participation in the Consortium. For avoidance of doubt, the Consortium will only satisfy the Financial Qualification Requirements if each Consortium Member possesses a net worth, based on its latest audited financial statements dated not earlier than 31 December 2024, that is at least equal to One Billion Philippine Pesos (PhP 1,000,000,000.00) multiplied by its proposed percentage of participation in the Consortium.
- 2.3.c The entity/ies being submitted to fulfill the Financial Qualification Requirements must certify that it has no **Unsatisfactory Performance Record** (using the form in **Annex QD-5**).
- 2.3.d The Bidder must disclose all its ongoing and proposed government projects submitted to other government agencies or local government units of the Philippines (using the form in **Annex QD-14**), the corresponding project cost schedule, and the respective debt and equity financing components of such projects. If the Bidder is a Consortium, each Consortium Member must disclose the same.
- 2.3.e The Bidder must at all times comply with the rules and regulations of the *Bangko Sentral ng Pilipinas*, as may be applicable in meeting the requirements set forth for this Project.
- 2.3.f In its Notarized Statement of Financial Capability (**Annex QD-12**), the Bidder must ensure that its net worth as required in Section 2.3.a(1) and the amount indicated in its evidence of capacity to raise loans as required in Section 2.3.a(2) is at least respectively equivalent to the nominal total of equity and debt components indicated during the Initial Reference Offer Tariff Period in its Financial Model (**Annex FP-2**) and Project Financing Plan (**Annex FP-3**). The maximum score for the Financial Model (Annex FP-2) shall not be given in case the amounts indicated in the Notarized Statement of Financial Capability (**Annex QD-12**) is less than the nominal totals of equity and debt components during

the Initial Reference Offer Tariff Period in its Financial Model (**Annex FP-2**) and Project Financing Plan (**Annex FP-3**).

- 2.3.g That evidence of capacity to raise loans as required in Section 2.3.a(2) must be in the form of testimonials coming from established financial institutions that (a) are authorized by the *Bangko Sentral ng Pilipinas* to transact in the Philippines, or (b) has an investment foreign currency credit rating from a reputable agency which has an outstanding rating on the Republic of the Philippines.

2.3.h **Contributions of the Parties to the JV**

The contributions of the BCDA and the JV Partner to the JV shall be in accordance with the requirements of the JV Agreement.

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 shall be scored based on the evaluation criteria set out under Section 10.3 (*Technical and Financial Criteria for Evaluation*). 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 and the Qualified Bidder obtains the Minimum Scoring Threshold required under Section 10.3 (*Technical and Financial Criteria for Evaluation*); otherwise, the Technical Proposal shall be rated as “Non-Complying”.

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*). The Financial Proposal shall be scored based on the evaluation criteria set out under Section 10.3 (*Technical and Financial Criteria for Evaluation*). The Bidder with the Best Bid shall be declared as the Winning Bidder.

SECTION 4 QUALIFICATION DOCUMENTS (FIRST ENVELOPE)

On or before 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 (*Qualification Documents*):

4.1 Legal Qualification Documents

- 4.1.a Notarized Application to be Declared Eligible and to Submit Bid Proposal (using the form in **Annex QD-1** to be submitted by the Bidder.
- 4.1.b For a Bidder that is a partnership or corporations, Notarized Authority to Apply to be Declared Eligible and to Submit Bid Proposal and Designation of Authorized Representative (using the form prescribed in **Annex QD-2A**) to be submitted by the Bidder.

For a Consortium, each Consortium Member’s Notarized Authority to Participate in the Consortium and Apply to be Declared Eligible and to Submit

Bid Proposal, and Designation of Lead Member and Authorized Representative of Consortium (using the form prescribed in **Annex QD-2B**).

- 4.1.c Business Structure (using the form in **Annex QD-3A** for a Bidder that is a partnership or corporation, or in **Annex QD-3B** for a Bidder that is a Consortium). The Business Structure must also indicate the entities that fulfill the Technical Qualification Requirements and Financial Qualification Requirements in Sections 2.2 (*Technical Qualification Requirements*) and 2.3 (*Financial Qualification Requirements*); and any Contractors or Affiliates of these entities whose projects, experiences, or financial qualifications are being submitted to comply with the Qualification Requirements.
- 4.1.c(i) If the Bidder is a Consortium, the Business Structure must show the Lead Member and all Consortium Members, such that the sum total of the percentage interest of all Consortium Members must add up to one hundred percent (100%).
- 4.1.c(ii) Each Consortium Member must also provide an undertaking that it will enter into and submit a Consortium Agreement using the form in **Annex QD-2C** issued jointly by all Consortium Members, which shall specify the committed equity percentage of each Member.
- 4.1.c(iii) The Consortium Member with the highest percentage of interest in the Consortium must also provide an undertaking that it binds itself to be solidarily liable for the obligations of the SPC under the JV Agreement and other relevant JV Documents once the SPC adheres to the JV Agreement and other relevant JV Documents.
- 4.1.d Basic Information Sheet (using the form in **Annex QD-4**) to be submitted by all persons/entities listed in all sections of the Business Structure.

4.1.d(i) Required attachments, as applicable:

- 4.1.d(i)(1) Certified true copy of its latest 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 recognition or creation of its legal personality or capacity.

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the Bidder. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the Bidder, the certification (using the form in **Annex QD-8**) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 1.11 (*Language and Foreign Documents*).

If in a particular foreign jurisdiction there is no document equivalent to the GIS, an officer of the entity registered in such foreign jurisdiction may instead submit a notarized

certification stating that there is no document equivalent to the GIS in the foreign country where it is registered. The notarized certification should also provide the information required under the GIS.

- 4.1.d(i)(2) Certified true copy of SEC Certificate of Incorporation (for corporations) or Certificate of Recording (for partnerships), 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 recognition or creation of its legal personality or capacity (as applicable).

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the Bidder. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the Bidder, the certification (using the form in **Annex QD-8**) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 1.11 (*Language and Foreign Documents*).

- 4.1.d(i)(3) Certified true copy of the latest Articles of Incorporation or Articles of Partnership 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 recognition or creation of its legal personality or capacity.

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the Bidder. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the Bidder, the certification (using the form in **Annex QD-8**) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 1.11 (*Language and Foreign Documents*).

- 4.1.d(i)(4) Certified true copy of the latest 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 recognition or creation of its legal personality or capacity.

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the Bidder. If it comes from the

entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the Bidder, the certification (using the form in **Annex QD-8**) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 1.11 (*Language and Foreign Documents*).

If an officer of the entity other than the Corporate Secretary or if the authorized representative/s of the Bidder certifies any of the foregoing documents, a notarized certification by the Corporate Secretary of the relevant entity authorizing such officer of the entity or authorized representative/s of the Bidder to certify the aforementioned documents and stating that such officer or authorized representative/s has/have access to or custody of the originals of the aforementioned documents of the relevant entity must be submitted.

- 4.1.e Notarized Certification of Absence of Unsatisfactory Performance Record (using the form in **Annex QD-5**) to be submitted by the authorized representative of the Bidder and all persons / entities listed in all sections of the Business Structure.
- 4.1.f A Notarized Acceptance of Criteria and Waiver of Rights to Enjoin Activity (using the form in **Annex QD-6A**) for a Bidder which is a partnership or corporation, **Annex QD-6B** for a Bidder which is a Consortium, to be submitted by each Consortium Member, **Annex QD-6C** for Bidders with ICT Industry Affiliates).
- 4.1.g An Authorization Letter (using the form in **Annex QD-7A** for a Bidder which is a partnership or corporation, or in **Annex QD-7B** for a Bidder which is a Consortium, to be submitted by each Consortium Member).
- 4.1.h A Notarized Certification Relating to Qualification Documents (using the form in **Annex QD-8**).
- 4.1.i A Notarized Confidentiality Undertaking in favor of the BCDA to be submitted by the Bidder; for a Bidder which is a Consortium, it is to be executed by all Consortium Members (using the form in **Annex QD-9**).
- 4.1.j A Notarized Undertaking Against Anti-Competitive Behavior to be submitted by the Bidder (using the form in **Annex QD-13**).
- 4.1.k A Notarized List of Ongoing or Proposed Projects or Contracts with other Government Agencies (using the form in **Annex QD-14**).
- 4.1.l List of Key Personnel (using the form in **Annex QD-15**). This is a list of key personnel who will fulfill the requirements of Section 2.2.h of these Instructions to Bidders. More than one name may be submitted for each position subject to Section 2.2.h(2).

4.2 Technical Qualification Documents

4.2.a Design Experience Requirements, or Construction Experience Requirements, or Design and Construction Experience Requirements (using the form in **Annex QD-10A and Annex QD-10B**) to be submitted by the entity or entities nominated to fulfill the Design Experience Requirements, or Construction Experience Requirements, or Design and Construction Experience Requirements in Section 3.2.5, as identified in the Business Structure, together with the following required attachments:

4.2.a(i) Notarized Certification of Absence of Unsatisfactory Performance Record (using the form in **Annex QD-5**).

4.2.a(ii) Following documents for the project(s) satisfying the specified Design and/or Construction Experience Requirements under Section 2.2.e (*Design and/or Construction Experience Requirements*):

4.2.a(ii)(1) To establish design of underground optical fiber multi-conduit network, the document described below, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design and/or Construction Experience Requirements that such copy is a true and faithful reproduction of the original:

1. For client-facing experience, copy of the Detailed Engineering Design (or equivalent) contract, which demonstrates the scope for completed design along with location certified by an independent party (e.g., client or consultant); or
2. For in-house experience, copy of the Detailed Engineering Design (or equivalent), which demonstrates the scope for completed design along with location.

4.2.a(ii)(2) To establish design of fiber installations to address Mixed End User Base including residential and enterprise buildings, government, and other end points, the document described below, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design and/or Construction Experience Requirements that such copy is a true and faithful reproduction of the original:

1. For client-facing experience, copy of Detailed Engineering Design (or equivalent) contract, which demonstrates the scope for completed design along with location and number of Billable End Points including Mixed End User Base certified by an independent party (e.g., client or consultant); or
2. For in-house experience, copy of Detailed Engineering Design (or equivalent), which demonstrates the scope for completed design along

with location and number of Billable End-Points including Mixed End User Base.

The documents enumerated in this Section 4.2.a(ii)(2) can be supplemented as necessary, with other relevant documents that contain the information specified above, provided that the supplemental documents are accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design and/or Construction Experience Requirements that such copy is a true and faithful reproduction of the original.

For avoidance of doubt, the same document may be used to satisfy the requirements under Section 4.2.a(ii)(1) and 4.2.a(ii)(2) as long as the document satisfies the requirements under both subsections.

4.2.a(ii)(2) To establish design of passive wholesale network services (e.g., end-to-end dark fiber services):

1. For client-facing experience:

(a) copy of Detailed Engineering Design (or equivalent) contract, which demonstrates the scope for completed design, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design and/or Construction Experience Requirements that such copy is a true and faithful reproduction of the original; AND

(b) product specification certified by an independent party (e.g., client or consultant). Such product specification must be accompanied by public information (e.g., printout of the website together with its Uniform Resource Locator) or documentation, which demonstrates service availability to at least two (2) DTPs (such documentation may be redacted, if necessary, in case commercial sensitivity needs to be removed); or

2. For in-house experience:

(a) copy of Detailed Engineering Design (or equivalent), which demonstrates the scope for completed design along with product specification, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design and/or Construction Experience Requirements that such copy is a true and faithful reproduction of the original; AND

(b) a certification entailing information on the service availability to at least one (1) DTP (such documentation may be redacted, if necessary, in case commercial sensitivity needs to be removed) (using the form in **Annex QD-10C**), which must be notarized.

4.2.a(iii) If the project was undertaken by an Affiliate of the Bidder or Consortium Member, evidence of such affiliation, as in the document mentioned in Section 4.1.d(i)(1).

4.2.a(iv) To establish construction of underground optical fiber multi-conduit network:

1. For client-facing experience, copies of (a) Final Acceptance Test certificates from an independent party (e.g., client, local administration/ road authority); OR (b) Certificate of Project Completion issued by a project owner indicating successful reinstatement of the underground optical fiber multi-conduit network accompanied by the Client Certification of Works completed, provided that either (a) or (b) is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Construction Experience Requirements that such copy is a true and faithful reproduction of the original; or
2. For in-house experience, certification by the senior representative of the entity meeting the requirement demonstrating successful installation of the underground optical fiber multi-conduit network (using the form in **Annex QD-10C**).

4.2.a(v) To establish construction of fiber installations to address mixed end user base including residential and enterprise buildings, government, and other end points:

1. For client-facing experience, copies of (a) Final Acceptance Test certificates from an independent party (e.g., client, local administration/ road authority); OR (b) Certificate of Project Completion issued by a project owner indicating successful reinstatement of the underground optical fiber multi-conduit network along with number of billable end points including mixed end user base accompanied with the documents demonstrating the connected customers being served over the multi-conduit network (e.g., extract from network management/planning tool), provided that either (a) or (b) is accompanied by a notarized certification (using the form in **Annex QD-8** of Instructions to Bidders Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Construction Experience Requirements that such copy is a true and faithful reproduction of the original; or
2. For in-house experience, certification by the senior representative of the entity meeting the requirement demonstrating successful installation of the underground optical fiber multi-conduit network along with number of billable end

points including mixed end user base accompanied by the documents demonstrating the connected customers being served over the multi-conduit network (e.g., extract from network management/planning tool) (using the form in **Annex QD-10C** of Instructions to Bidders Forms and Annexures), which must be notarized.

For avoidance of doubt, the same document may be used to satisfy the requirements under Section 4.2.a(iv) and (v) as long as the document satisfies the requirements under both subsections.

4.2.a(v) To establish configuration of passive wholesale network services (e.g., end-to-end dark fiber services):

1. For client-facing experience, product specification in a public or negotiated Reference Offer (e.g., website or contract extract), which demonstrates the service availability to at least two (2) DTPs (such documentation may be redacted, if necessary, in case commercial sensitivity needs to be removed; or
2. For in-house experience, certification by the senior representative of the entity which demonstrates the service availability to at least one (1) DTP (such documentation should show SLAs or Operating-Level Agreements (OLAs) and may be redacted, if necessary, in case commercial sensitivity needs to be removed) (using the form in **Annex QD-10C**), which must be notarized.

4.2.b Maintenance Experience Requirements (using the form in **Annex QD-10D**) to be submitted by the entity nominated to fulfill the Maintenance Experience Requirement(s) in Section 3.2.6, as identified in the Business Structure, together with the following required attachments:

4.2.b(i) Notarized Certification of Absence of Unsatisfactory Performance Record.

4.2.b(ii) The following, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Maintenance Experience Requirements that such copy is a true and faithful reproduction of the original:

1. For client-facing experience, copies of service level agreements, which demonstrate the service scope, service period, service scale (including Billable End-Points), performance of customer services, network availability and any other monitored performance metrics certified by an independent party (e.g., client or consultant); or
2. For in-house experience, copies of OLA, which demonstrate the service scope, service period, service scale (including Billable End-Points), performance of customer services, network availability and any other monitored performance metrics. The documents may also take the form of monthly Network Management Report, showing performance indicators such as fault repair times and fault rates.

The documents enumerated in Section 4.2.b(ii)(2) can be supplemented, as necessary, with other relevant documents that contain the information specified above, provided that the supplemental documents are accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Maintenance Experience Requirements that such copy is a true and faithful reproduction of the original

4.2.b(iii) Notarized Certificate of Successful Contractual Implementation from the principal, or an entity authorized to issue such certificate on behalf of the principal, payment certificate or any other document from the principal, or an entity authorized to issue such certificate on behalf of the principal. A copy of the original Certificate of Successful Contractual Implementation or other certificate or document will be accepted, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner, authorized entity or the relevant officer of the Bidder that such copy is a true and faithful reproduction of the original Certificate of Successful Contractual Implementation. There is no specific format for the Notarized Certificate of Successful Contractual Implementation, but it shall, at the minimum, state that the service provider has met the stipulated service level agreements in Section 2.2.f (*Maintenance Experience Requirements*).

4.2.b(iv) If the project was undertaken by an Affiliate of the Bidder or Consortium Member, evidence of such affiliation, as in the document mentioned in Section 4.1.d(i)(1).

4.2.c Commercialization Experience Requirements (using the form in **Annex QD-10E**) to be submitted by the entity nominated to fulfill the Commercialization Experience Requirement(s) in Section 2.2.f (*Commercialization Experience Requirements*), as identified in the Business Structure, together with the following required attachments:

4.2.c(i) Notarized Certification of Absence of Unsatisfactory Performance Record.

4.2.c(ii) The following, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Commercialization Experience Requirements that such copy is a true and faithful reproduction of the original:

1. For client-facing experience, copy of at least one Wholesale Services Agreement with a 3rd party, which demonstrates the available services and pricing in a contract or Reference Offer (such documentation may be redacted, if necessary, in case other commercially sensitive information needs to be removed); or
2. For in-house experience, copies of OLA between business units, which demonstrate the available services and commercial arrangements (such documentation may be redacted, if

necessary, in case other commercially sensitive information needs to be removed).

4.2.c(iii) Notarized Certificate of Successful Commercialization from the principal, or an entity authorized to issue such certificate on behalf of the principal, payment certificate or any other document from the principal, or an entity authorized to issue such certificate on behalf of the principal. A copy of the original Certificate of Successful Commercialization or other certificate or document will be accepted, provided that it is accompanied by a notarized certification (using the form in **Annex QD-8**) issued by the relevant officer of the project owner, authorized entity or the relevant officer of the Bidder that such copy is a true and faithful reproduction of the original Certificate of Successful Commercialization. There is no specific format for the Notarized Certificate of Successful Commercialization, but it shall, at the minimum, state that the project was successfully commercialized.

4.2.c(iv) If the project was undertaken by an Affiliate of the Bidder or Consortium Member, evidence of such affiliation, as in the document mentioned in Section 4.1.d(i)(1).

4.2.d Statement of Willingness to Participate In, and Capacity to Undertake the (Design, Construction, Maintenance and Commercialization, Maintenance, or Commercialization) Technical Requirements, and Commitment to Enter into an Agreement with the JV to Undertake the Design, Construction, Maintenance and Commercialization, Maintenance, or Commercialization of the Project (using the form in **Annex QD-11**) to be submitted by each entity proposed by the Bidder to meet the Design, Maintenance, and/or Commercialization Experience Requirements.

4.3 Financial Capability Documents

4.3.a Notarized Statement of Financial Capability (using the form in **Annex QD-12**) to be submitted by each entity nominated to fulfill the Financial Qualification Requirements as identified in the Business Structure, together with the following required attachments:

4.3.a(i) Certified true copy of the latest audited financial statements which must be dated not earlier than 31 December 2024, stamped "Received" by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity. The certification (using the form in **Annex QD-8**) of the latest audited financial statements may be issued by the relevant officer of the entity that fulfills the Financial Qualification Requirements. However, such certified true copy must be stamped "received" by the BIR (or the equivalent agency in the case of the foreign entity).

In case the Financial Qualification Requirements will be fulfilled through debt, a notarized certification from potential lenders of the entity or entities proposed to meet the Financial Qualification Requirements (i) expressing their willingness to lend the entity or entities proposed to meet the Financial Qualification Requirements,; and (ii) attesting that the entity or entities proposed to meet the

Financial Qualification Requirements is or are banking with them, that the entity or entities proposed to meet the Financial Qualification Requirements is or are in good standing and/or are qualified to obtain credit accommodations from such lenders to finance the Project. Such letters should come from domestic universal/commercial bank or an international bank that is authorized by the *Bangko Sentral ng Pilipinas* to transact in the Philippines and licensed to lend money in the country where it is registered for creation or recognition of its juridical personality or capacity (for financial institutions incorporated in the Philippines, the license to lend must also come from the *Bangko Sentral ng Pilipinas*).

- 4.3.a(ii) Notarized statement/certification from a domestic universal/commercial bank or any international bank recognized by the *Bangko Sentral ng Pilipinas* attesting that the nominated entity/entities under Section 2.3.b is banking with them, is in good financial standing, and is qualified to obtain credit accommodations from such banks to finance the Project.
- 4.3.a(iii) If an Affiliate will be used to comply with the Financial Qualification Requirements, evidence of such affiliation, as in the document mentioned in Section 4.1.d(i)(1).

4.3.b Bid Security.

SECTION 5 BID PROPOSALS

5.1 TECHNICAL PROPOSAL (SECOND ENVELOPE)

The Technical Proposal of the Bidder must comply with all of the requirements provided in this Section 5.1 (*Technical Proposal*). The Technical Proposal of the Qualified Bidder shall be evaluated in accordance with Section 10.3 (*Technical and Financial Criteria for Evaluation*) and the evaluation parameters provided in **Schedule 4**. The Technical Proposal shall not include any financial information.

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 (*Technical Proposal*):

- 5.1.c a notarized *Compliance Statements for Proposals* (as prescribed, and using the form, in **Annex TP-1** and **Annex TP-1A** (*Technical Plan*), issued by either:
 - (i) if the Bidder is a corporation or partnership: such Bidder's authorized representative, or
 - (ii) if the Bidder is a Consortium: the Lead Member through the Consortium's authorized representative designated pursuant to the documents submitted pursuant to Section 5.1.a(ii).

The Technical Plan must: (i) include all of the elements set out in **Annex TP-1A** (*Technical Plan*) – which includes, among others, design documents and implementation plans – and (ii) be in compliance with the Minimum Performance Standards and Specifications as set forth in **Schedule 5**.

Bidders are encouraged to include an AVP showing an overview of their Technical Plan in the submission of their Technical Proposal. Non-submission of an AVP will not be a ground for disqualification.

By submitting the Technical Plan, the Bidder acknowledges and agrees that:

- (i) its Technical Plan is being submitted to show that such Bidder fully understands the requirements of the Minimum Performance Standards and Specifications as set forth in **Schedule 5**;
- (ii) the Technical Plan shall not constitute the definitive PED or DED or any part of the Performance Standards;
- (iii) BCDA retains the right to review the PED/DED in accordance with the terms of the JV Agreement whether or not the PED/DED is based on the Technical Plan; and
- (iv) It commits to submit the additional documents enumerated in **Schedule 6** in accordance with the timeline provided therein.

5.1.e As **Annex TP-2**, a copy of the latest income tax return filed through the BIR's Electronic Filing and Payment System, which must refer to the income tax return for the preceding tax year be it on a calendar or fiscal year, to be submitted by the Bidder, or in the case of a Consortium, to be submitted by each Consortium Member. For new establishments which, as of yet, have no annual income tax return, the most recent quarter's income tax return must be submitted. For establishments, which as of Bid Submission Date, have no quarterly income tax return, its BIR Certificate of Registration together with a sworn statement by the relevant officer of the said Bidder or Consortium Member attesting that it has not commenced business operations and has not filed any quarterly income tax return as of Bid Submission Date must be submitted, provided, that should it thereafter file an income tax return and the Bidder or the Consortium be the Winning Bidder, it shall submit the same, together with the Tax Clearance Certificate ("**TCC**"), as part of the Post-Award Requirements. Those Bidders or Consortium Members not subject to income taxes in the Philippines must submit in lieu of the income tax return, a sworn statement, signed by the relevant officer of the said Bidder or Consortium Member, attesting to this fact. The copy of the relevant income tax returns and/or statements must be attached as **Annex TP-2**.

5.1.f As **Annex TP-3**, a copy of the latest business tax returns filed through the BIR's Electronic Filing and Payment System, which will refer to the VAT or percentage tax returns covering the previous six (6) months prior to the Bid Submission Date, to be submitted by the Bidder, or in the case of a Consortium, to be submitted by each Consortium Member. For those with less than six (6) months of operations, this refers to the quarterly business tax returns filed to date. For establishments, which as of Bid Submission Date, have no quarterly business tax return, its BIR Certificate of Registration together with a sworn statement by the relevant officer of the said Bidder or Consortium Member attesting that it has not commenced business operations and has not filed any quarterly business tax return as of Bid Submission Date must be submitted, provided, that should it thereafter file a business tax return and the Bidder or the Consortium be declared the Winning Bidder, it shall submit the same, together with the TCC, as part of the Post-Award Requirements. Those Consortium Members not subject to business taxes in the Philippines must submit in lieu of the business

tax return a sworn statement, signed by the relevant officer of the said Bidder or Consortium Member, attesting to this fact. The copies of the relevant business tax returns and/or statements must be attached as **Annex TP-3**.

5.2 FINANCIAL PROPOSAL (THIRD ENVELOPE)

The Bidder must submit in the Third Envelope its notarized Financial Proposal consisting of the (a) “**Financial Proposal Amounts**”, which are the: (i) the Initial Reference Tariff Offer and (ii) Equity Premium Cap, as prescribed and using the form in **Annex FP-1**; (b) the “**Financial Model**” (as prescribed, and using the form, in **Annex FP-2**); and (c) the Project Financing Plan (as prescribe, and using the form, in **Annex FP-3**).

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 (*Financial Proposal*):

5.2.a Financial Proposal Amounts

5.2.a(i) Initial Reference Tariff Offer

The Initial Reference Tariff Offer shall comprise the Service Fee per Month and Service Activation Fee for each of the four (4) MCSR of the JV as provided in **Annex FP-1** where the tenor and weight of each MCSR are pre-determined for like-for-like comparison. To evaluate the Initial Reference Tariff Offer, a Weighted Average Initial Reference Tariff Offer shall be calculated using the Bidder offered Service Fee per Month and Service Activation Fee and the predetermined tenors and weights as provided in **Annex FP-1** and **Schedule 4**. The Service Fee per Month and Service Activation Fee submitted by the Qualified Bidder must not result in a Weighted Average Initial Reference Tariff Offer exceeding twenty thousand Philippine Pesos (PHP 20,000).

The Initial Reference Tariff Offer and the MCSR shall remain fixed and in effect for a period of ten (10) years from the First Service Date (the “**Initial Reference Tariff Offer Period**”), provided that any change or amendment of the Initial Reference Tariff Offer and the MCSR shall be subject to the mutual written agreement between the JV Partner and BCDA pursuant to the terms of the JV Agreement and subject to the BCDA Board approval. For the term of the JV Agreement after the Initial Reference Offer Tariff Offer Period, the products or service types included in the MCSR may be changed by mutual agreement between the JV Partner and BCDA.

The Initial Reference Tariff Offer shall be rebased at the end of the Initial Reference Tariff Offer Period in accordance with (the “**First Rebasing Period**”) in accordance with the provisions set out in **Schedule 7**. Subsequently, the Reference Tariff Offer shall be rebased every five (5) years from the First Rebasing Period.

No other fees than the Reference Tariff Offer and fees charged for Ancillary Services (as defined in JV Agreement) shall be imposed and collected from the Lessees for the provision of the passive infrastructure assets and facilities.

5.2.a(ii) Equity Premium Cap

The Equity Premium Cap is the maximum rate that the Qualified Bidder is permitted to apply in rebasing the Reference Offer during the 11th to 25th year of the JV term in accordance with the conditions set out under Schedule 6 of the draft JV Agreement.

The Equity Premium Cap shall be applied in rebasing the Reference Tariff Offer via the cost of equity (K_e) using the Capital Asset Pricing Model (CAPM) formula:

$$\text{Cost of Equity } (K_e) = R_f + EP$$

Where at each Rebasing Period:

- R_f = Risk-free rate = BVAL Reference Rate corresponding to the five (5)-year tenor
- EP : Equity Premium not exceeding the Equity Premium Cap as further described in the Schedule 6 of the draft JV Agreement.

Using **Annex FP-1A**, the Qualified Bidder must submit the Equity Premium Cap that shall not exceed 7.0000%.

5.2.b Financial Model

The Qualified Bidder must submit a Financial Model with contents in accordance with **Annex FP-2**. The Financial Model must be submitted only in electronic form and in two (2) versions with identical contents: one version in Microsoft Excel .xlsx or .xlsm formats (if macros are applied) and another version in pdf. The Financial Model in Excel must be editable, with no hidden cells or sheets and no links to external references, and with all formulas and functions intact and operational (including macro being enabled). The Financial Model should take into consideration that the Initial Reference Tariff Offer and the Reference Tariff Offer shall be rebased periodically in accordance with the following provisions and the detailed requirements set out in Schedule 6 of the draft JV Agreement.

The Financial Model must set out the inputs and assumptions clearly and must be capable of calculating and re-calculating and be verifiable by PBAC providing the following information in a stable and consistent manner:

- a. Initial Reference Tariff Offer as submitted in **Annex FP-1**;
- b. Equity Premium Cap as submitted in **Annex FP-1**, including the calculation used;
- c. Reference Tariff Offer after each Rebasing Period;
- d. Capital investments and operating costs;
- e. Debt and equity financing;
- f. Demand and revenue forecasts;
- g. Types of Ancillary Services and pricing;
- h. Ancillary Services revenue forecasts; and
- i. Discounted free cashflows and internal rates of return of the JV, the Bidder, and BCDA over the 25-year term of the JV.

5.2.c Project Financing Plan

The Qualified Bidder must submit a Project Financing Plan, using the form in **Annex FP-3**, which must show that the proposed financing plan can adequately fund the Works required for the Project and still enable the JV Partner to service its debt obligations, fulfill its covenants with its lenders, and realize a reasonable return on equity, with amounts stated in Philippine Pesos and expressed in 2025 prices. The Project Financing Plan must also demonstrate the Bidder's ability to satisfy the debt to equity ratio requirement under the JV Agreement.

SECTION 6 VALIDITY OF BIDS

6.1 VALIDITY OF BIDS

A Bid shall be valid from Bid Submission Date until the end of the Bidding Process ("**Bid Validity Period**")[, which shall not exceed one hundred eighty (180) days.

Notwithstanding the foregoing, and before the expiration of the validity of the Bids, BCDA may request the Bidders to extend the validity of their Bids. For this purpose, BCDA shall request the extension of the validity of the Bids in writing addressed to the Bidders. For avoidance of doubt, the Bidders shall not be allowed to modify or revise their Bids apart from extending the validity of their Bids.

A Bidder may refuse to grant an extension of its Bid, and in such case, its Bid Security shall not be forfeited. Should a Bidder agree to extend its Bid, such Bidder must correspondingly extend the validity of its Bid Security.

6.2 RIGHT TO REJECT BIDS, WAIVE MINOR DEFECTS AND TO TERMINATE BIDDING PROCESS

6.2.a Notwithstanding the eligibility or post-qualification of a Bidder or a Winning Bidder (as applicable), BCDA reserves the right to review its qualifications at any stage of the Bidding Process if it has reasonable grounds to believe that a misrepresentation has been made by the said Bidder or Winning Bidder, or that there has been a change in the Bidder or Winning Bidder's capability to undertake the Project from the time it submitted its Qualification Documents or its Proposal, or if the Bidder or Winning Bidder has any Outstanding Dispute with Government. Should such review uncover any misrepresentation made in the Qualification Documents or the Proposal, statements or documents, or any changes in the situation of the Bidder or Winning Bidder that will affect its capability to undertake the Project so that it fails the requirements under these Instruction to Bidders, BCDA shall consider such Bidder or Winning Bidder as ineligible and shall disqualify it from submitting a Proposal or from obtaining an award. Pursuant to the PPP Code and the PPP Code IRR, the BCDA reserves the right to reject any or all Bids, waive any minor defects therein and accept the offer it deems most advantageous to BCDA.

6.2.b Based on any of the following grounds, BCDA reserves the right to reject any and all Bids, declare a failure of Bidding Process at any time prior to the award of the Project, or not to award the Project, without thereby incurring any liability, and to make no assurance that a contract shall be entered into as a result of

the Bidding Process:

- (a) if there is *prima facie* evidence of collusion between relevant public officers or employees of BCDA or between the PBAC and any of the Bidders, or if the collusion is between or among the Bidders themselves, or between a Bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) if the PBAC is found to have failed in following the prescribed Bidding Process procedures; or
- (c) for any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the BCDA as follows:
 - (i) if the physical and economic conditions have significantly changed so as to render the Project no longer economically, financially or technically feasible as determined by the BCDA Board;
 - (ii) if the Project is no longer necessary as determined by the BCDA Board; and
 - (iii) if BCDA's contribution to the Project is increased through no fault of BCDA.

SECTION 7 BID SECURITY

7.1 FORM OF BID SECURITY

The Bid Security issued in favor of BCDA shall be equivalent to Fifty Million Philippine Pesos (PhP 50,000,000.00). It shall be in the form of a: (a) bank manager's check issued by an Acceptable Bank or (b) letter of credit, or (c) cash. If the Bid Security is in the form of a bank manager's check, (a) the Bid Security can be provided through multiple checks and (b) BCDA (at its discretion) may encash the same and deposit into its bank account.

7.2 VALIDITY AND PURPOSE

The Bid Security shall guarantee that the Qualified Bidder complies with the conditions for its participation in the Bidding Process as provided in Section 7.3.

7.3 FORFEITURE OF BID SECURITY

The Bid Security shall be subject to forfeiture in its entirety in favor of the BCDA upon the occurrence of any of the following events:

- 7.3.a the Bidder withdraws its Bid at any time during the Bid Validity Period;
- 7.3.b the Bidder, any Consortium Member, any Contractor, or any Affiliates of any of these entities, or any of their respective officers, employees, agents, and advisers (i) commits any Prohibited Act, (ii) has a Conflict of Interest or (iii) violates the Lock-Up Rules, regardless of the stage of the Bidding Process when the violation existed or was committed, and regardless of whether the Bidder has already been designated as the Winning Bidder that is issued a Notice of Award, in which latter case the Construction and Operations Performance Security in place at the time of discovery shall be subject to forfeiture;

- 7.3.c the Bidder is disqualified due to a material misrepresentation in any statement made or document submitted as part of its Bid;
- 7.3.d the Winning Bidder that is issued a Notice of Award fails to comply with the requirements stated therein within the period stipulated therein or within any extension period granted by the PBAC;
- 7.3.e the Winning Bidder that is issued a Notice of Award fails to sign the JV Agreement within the period stipulated in the Notice of Award; or
- 7.3.f other events as described in the PPP Code and the PPP Code IRR that are causes for forfeiture of the Bid Security.

7.4 RETURN OF BID SECURITY

A Bidder that is not declared a Winning Bidder and is disqualified for reasons other than those that result in the forfeiture of the Bid Security as provided in Section 7.3 will have its Bid Security returned to it without interest (and, if the Bid Security is in the form of a bank manager's check or cashier's check, in the form of cash or a check issued by BCDA) within fifteen (15) days from the BCDA's written notice to it of its disqualification.

Within ten (10) days after the signing of the JV Agreement by the Winning Bidder that is issued a Notice of Award (*i.e.* the end of the Bid Validity Period), the Bid Security of all Bidders whose Bid Security have not been forfeited or returned will be returned without any interest (in the form of cash or a check issued by BCDA), except for that of a Winning Bidder that is issued a Notice of Award whose deadline for complying with the requirements under the Notice of Award has not yet expired.

If the Bid Security is in the form of bank manager's check and the Winning Bidder elects to provide the Construction and Operations Performance Security in the same form as the Bid Security, the Winning Bid shall deliver the balance of the Construction and Operations Performance Security in accordance with the Notice of Award. If the Winning Bid elects to provide the Construction and Operations Performance Security in a form other than bank manager's check or cashier's check, the Bid Security of the Winning Bidder shall be returned to the Winning Bidder upon BCDA's receipt of the Construction and Operations Performance Security in accordance with Section 12.2.b.

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 (First Envelope) in the following form:
 - 8.1.a(1) Each Bidder shall submit one (1) original and one (1) copy of its Qualification Documents.
 - 8.1.a(2) Bidders shall enclose their original Qualification Documents described in Section 4, in a sealed envelope marked as "ORIGINAL – QUALIFICATION DOCUMENTS" for the original set and "COPY – QUALIFICATION DOCUMENTS" for the copy set. The words "ORIGINAL – QUALIFICATION DOCUMENTS" and "COPY – QUALIFICATION DOCUMENTS" shall be typed or

written in indelible ink and shall be signed by the Bidder's duly authorized representative/s. The envelopes containing the original and the copies shall then be enclosed in one single envelope or box.

8.1.a(3) The Bidder shall also submit one (1) clear electronic or scan copies of the Qualification Documents in CDs/DVDs/USBs. The electronic copies of the Qualification Documents must be in Portable Document Format (PDF) files arranged in exactly the same sequence as those of the original set of Qualification Documents. Where practicable, the Bidder shall also provide searchable PDF copies of its Qualification Documents. The CDs/DVDs/USBs must be placed in a sealed envelope and marked "ELECTRONIC COPY – QUALIFICATION DOCUMENTS", and such envelope shall be placed in the envelope or box together with the original set.

8.1.a(4) All envelopes shall be labeled as follows:

(a) marked in accordance with Section 8.1.a(2) above;

(b) addressed to the BCDA – PBAC for ICT:

HEDDA Y. RULONA
Chairperson
PBAC for the NCC ICT Passive Infrastructure Project
Bases Conversion and Development Authority
2/F Bonifacio Technology Center, 31st Street, corner
2nd Avenue
Bonifacio Global City, Taguig City

(c) contain the name of the contract to be bid in capital letters and bear the specific identification of this Project:

NEW CLARK CITY INFORMATION AND
COMMUNICATIONS TECHNOLOGY PASSIVE
INFRASTRUCTURE PROJECT

(d) bear the name and address of the Bidder in capital letters;

(e) bear a warning "**DO NOT OPEN BEFORE 2:00PM 04 SEPTEMBER 2025**"

8.1.a(5) If the Qualification Documents are not sealed and marked as required, BCDA will assume no responsibility for its misplacement or premature opening, and the same may be a ground for disqualification.

8.1.b Each set of the Qualification Documents should contain a table of contents.

8.1.c Bidders shall submit their Qualification Documents (as a single package) through their duly authorized representative/s on or before the Bid Submission Date.

- 8.1.d The Qualification Documents must be printed 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 font size twelve (12). The requirements relating to paper and font size shall only apply to prescribed forms provided in these Instructions to Bidder and to any other documents, which may be reasonably made to comply with these requirements.
- 8.1.e Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.
- 8.1.f Each set of the Qualification Documents must be placed in an envelope. The one (1) CDs/DVDs/USBs should also be placed in an envelope. Each of the one (1) envelope containing the Qualification Documents and the envelope containing the one (1) CDs/DVDs/USBs must be sealed and appropriately addressed and marked as follows:

PRE-QUALIFICATION/QUALIFICATION BIDS AND AWARDS COMMITTEE BASES CONVERSION AND DEVELOPMENT AUTHORITY NEW CLARK CITY INFORMATION AND COMMUNICATIONS TECHNOLOGY PASSIVE INFRASTRUCTURE PROJECT QUALIFICATION DOCUMENTS – [ORIGINAL / COPY NO. () / ELECTRONIC COPY] [STATE NAME AND ADDRESS OF BIDDER] DO NOT OPEN UNTIL [insert date and time of opening of First Envelope]

- 8.1.g 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 (Second Envelope) in the following form:

- 8.2.a(1) Each Bidder shall submit one (1) original and one (1) copy of the Bid. The words “ORIGINAL – TECHNICAL PROPOSAL” and “COPY – TECHNICAL PROPOSAL” shall be typed or written in indelible ink and shall be signed by the Bidder’s duly authorized representative.
- 8.2.a(2) The original Technical Proposal shall be placed in one sealed envelope marked “ORIGINAL – TECHNICAL PROPOSAL”. The copy of the Technical Proposal shall be placed in one (1) sealed envelope marked “COPY— TECHNICAL PROPOSAL”. The envelopes containing the original and the copy shall then be enclosed in one single envelope or box.
- 8.2.a(3) Bidders shall also submit one (1) CD/DVD/USB containing clear electronic or scan copies of the Technical Proposal, together with one (1) CD/DVD/USB containing a soft copy of the AVP, placed in one sealed envelope marked “ELECTRONIC COPY –

TECHNICAL PROPOSAL". The electronic copy of the Technical Proposal must be in Portable Document Format (PDF) files arranged in exactly the same sequence as those of the original set of the Proposal. Where practicable, the Bidder shall also provide searchable PDF copies of its Proposal

- 8.2.a(4) All envelopes or boxes shall be marked and packaged in accordance with Sections 8.2.a(1) to 8.2.a(3) and labeled as follows:

- (a) addressed to the BCDA – PBAC for the Project:

HEDDA Y. RULONA
The Chairperson
PBAC for the Passive Infrastructure Project
Bases Conversion and Development Authority 2/F
Bonifacio Technology Center, 31st Street, corner 2nd
Avenue Bonifacio Global City, Taguig City

- (b) contain the name of the contract to be bid in capital letters and bear the specific identification of this Project:

NEW CLARK CITY INFORMATION AND
COMMUNICATIONS TECHNOLOGY PASSIVE
INFRASTRUCTURE PROJECT

- (c) bear the name and address of the Bidders in capital letters;

bear a warning **"DO NOT OPEN BEFORE 2:00PM 22**
SEPTEMBER 2025"

- 8.2.a(5) If the Technical Proposal is not sealed and marked as required, BCDA will assume no responsibility for its misplacement or premature opening.

- 8.2.b Each set of the Technical Proposal should contain a table of contents.

- 8.2.c The Bidders shall submit their Technical Proposal through their duly authorized representative on or before the Bid Submission Date.

- 8.2.d The Technical Proposal must be printed in standard A4 and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least font size twelve (12). The requirements relating to paper and font size shall only apply to prescribed forms provided in these Instructions to Bidders and to any other documents that may be reasonably made to comply with these requirements.

- 8.1.e Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

- 8.2.f Each set of the Technical Proposal must be placed in an envelope. The CD/DVD/USB for the Technical Proposal, together with one (1) CD/DVD/USB containing a soft copy of the AVP, should also be placed in an envelope. The envelope containing the Technical Proposal and the envelope containing the CD/DVD/USB for the Technical Proposal, together with one (1) CD/DVD/USB

containing a soft copy of the AVP, must be sealed and appropriately addressed and marked as follows:

PRE-QUALIFICATION/QUALIFICATION BIDS AND AWARDS COMMITTEE BASES CONVERSION AND DEVELOPMENT AUTHORITY NEW CLARK CITY INFORMATION AND COMMUNICATIONS TECHNOLOGY PASSIVE INFRASTRUCTURE PROJECT TECHNICAL PROPOSAL – [ORIGINAL / COPY NO. () / ELECTRONIC COPY] [STATE NAME AND ADDRESS OF BIDDER] DO NOT OPEN UNTIL [insert date and time of opening of Second Envelope]

8.2.g 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 (Third Envelope) in the following form:

- 8.3.a(1) one (1) original and one (1) copy of the Financial Proposal. The words “ORIGINAL – FINANCIAL PROPOSAL” and “COPY – FINANCIAL PROPOSAL” shall be typed or written in indelible ink and shall be signed by the Bidder’s duly authorized representative;
- 8.3.a(2) The original Financial Proposal shall be placed in one sealed envelope marked “ORIGINAL – FINANCIAL PROPOSAL”. The copy of the Financial Proposal shall be placed in one (1) sealed envelope marked “COPY— FINANCIAL PROPOSAL”. The envelopes containing the original and the copy shall then be enclosed in one single envelope or box.
- 8.3.a(3) Bidders shall also submit one (1) CD/DVD/USB containing clear electronic or scan copies of the Financial Proposal, together with one (1) CD/DVD/USB containing a soft copy of the AVP, placed in one sealed envelope marked “ELECTRONIC COPY – FINANCIAL PROPOSAL”. The electronic copy of the Financial Proposal must be in Portable Document Format (PDF) files arranged in exactly the same sequence as those of the original set of the Financial Proposal. Where practicable, the Bidder shall also provide searchable PDF copies of its Financial Proposal.
- 8.3.a(5) electronic copies of the Financial Model, in Microsoft Excel xlsx or .xlsm formats (if macros are applied) and another version in pdf, in a readable external drive, which should contain two (2) versions of the Financial Model: (i) a protected version and (ii) an editable version, and both versions should contain an electronic copy of **Annex FP-2** that should be signed with an electronic signature of the Bidder’s authorized representative; provided that

a signed hard copy of **Annex FP-2** should be included on the case or envelope containing the external drive; and provided further, that the external drive should also be signed by the authorized representative of the Bidder.

- 8.2.a(6) All envelopes or boxes shall be marked and packaged in accordance with Sections 8.3.a(1) to 8.3.a(5) and labeled as follows:

(a) addressed to the BCDA – PBAC for the Project:

HEDDA Y. RULONA
The Chairperson
PBAC for the NCC ICT Passive Infrastructure Project
Bases Conversion and Development Authority 2/F
Bonifacio Technology Center, 31st Street, corner 2nd
Avenue Bonifacio Global City, Taguig City

(b) contain the name of the contract to be bid in capital letters and bear the specific identification of this Project:

NEW CLARK CITY INFORMATION AND
COMMUNICATIONS TECHNOLOGY PASSIVE
INFRASTRUCTURE PROJECT

(d) bear the name and address of the Bidders in capital letters;

(e) bear a warning **“DO NOT OPEN BEFORE 2PM 20 OCTOBER 2025”**.

8.3.b Each set of the Financial Proposal should contain a table of contents.

8.3.c The Bidders shall submit their Financial Proposal through their duly authorized representative on or before the Bid Submission Date.

8.3.d The Financial Proposal must be printed in standard A4 and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least font size twelve (12). The requirements relating to paper and font size shall only apply to prescribed forms provided in these Instructions to Bidders and to any other documents that may be reasonably made to comply with these requirements.

8.1.e Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

8.3.f Each set of the Financial Proposal must be placed in an envelope. The one (1) CD/DVD/USB for the Financial Proposal should also be placed in an envelope. The envelope containing the Financial Proposal and the envelope containing the one (1) CD/DVD/USB for the Financial Proposal must be sealed and appropriately addressed and marked as follows:

PRE-QUALIFICATION/QUALIFICATION BIDS AND AWARDS COMMITTEE BASES CONVERSION AND DEVELOPMENT AUTHORITY

NEW CLARK CITY INFORMATION AND COMMUNICATIONS TECHNOLOGY PASSIVE
PROJECT

FINANCIAL PROPOSAL – [ORIGINAL / COPY NO. () / ELECTRONIC COPY]

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL [insert date and time of opening of Third Envelope]

- 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 (First Envelope), Technical Proposal (Second Envelope) and Financial Proposal (Third Envelope), and the external drives containing the electronic copies, in one outer sealed box marked as follows:

PRE-QUALIFICATION/QUALIFICATION BIDS AND AWARDS COMMITTEE
BASES CONVERSION AND DEVELOPMENT AUTHORITY
NEW CLARK CITY INFORMATION AND COMMUNICATIONS TECHNOLOGY PASSIVE
INFRASTRUCTURE PROJECT

BID – ORIGINAL

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL [insert Bid Submission Date]

- 8.4.b The Bidder shall place the photocopy set of the Qualification Documents (First Envelope), the Technical Proposal (Second Envelope) and the Project Financing Plan (Third Envelope) in one outer sealed box marked as follows:

PRE-QUALIFICATION/QUALIFICATION BIDS AND AWARDS COMMITTEE
BASES CONVERSION AND DEVELOPMENT AUTHORITY
NEW CLARK CITY INFORMATION AND COMMUNICATIONS TECHNOLOGY PASSIVE
INFRASTRUCTURE PROJECT

BID – COPY NO. ____

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL [insert Bid Submission Date]

- 8.4.c The box containing the original set and external drives and the boxes containing the sets of photocopies must be placed in one, or if necessary, more boxes marked as follows:

PRE-QUALIFICATION/QUALIFICATION BIDS AND AWARDS COMMITTEE
BASES CONVERSION AND DEVELOPMENT AUTHORITY
NEW CLARK CITY INFORMATION AND COMMUNICATIONS TECHNOLOGY PASSIVE
INFRASTRUCTURE PROJECT

BID – BOX NO. ____

[STATE NAME AND ADDRESS OF BIDDER]

DO NOT OPEN UNTIL [insert Bid Submission Date]

- 8.4.d 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 Bids must be physically submitted to and personally received by the PBAC on or before **04 SEPTEMBER 2025 at 1:00 p.m. at BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City.**
- 8.5.b For Bidders submitting their Bids on the Bid Submission Date, the Bids must be submitted between 8:00 a.m. and 1:00 p.m. on 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>.
- 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.
- 8.5.d Any Bid submitted after the Bid Submission Date shall be declared “Late” and shall be returned unopened by the BCDA.

8.6 MODIFICATION AND WITHDRAWAL OF BIDS

- 8.6.a A Bidder may modify its Bid after it has been submitted; *provided*, that the modification is received by the PBAC on or before the Bid Submission Date. A Bidder shall not be allowed to retrieve its original Qualification Documents, Technical Proposal, or Financial Proposal but shall be allowed to submit another Qualification Documents, Technical Proposal or Financial Proposal equally sealed, properly identified, linked to its original Proposal, marked as “QUALIFICATION DOCUMENT MODIFICATION” or “TECHNICAL MODIFICATION” or “FINANCIAL MODIFICATION” and complying with the other labelling requirements stipulated in Section 8.1.a(4) and stamped “received” by the PBAC. The modified Qualification Documents, Technical Proposal, or Financial Proposal supersede the original Qualification Documents, Technical Proposal, or Financial Proposal. Proposal modifications received after Bid Submission Date shall not be considered and shall be returned to the Bidder unopened.
- 8.6.b A Bidder may, through a letter of withdrawal, withdraw its Bid after it has been submitted, provided that the withdrawal of a Bid after the Bid Submission Date shall result in the forfeiture of the Bid Security. Bids requested to be withdrawn before the Bid Submission Date shall be returned unopened to the Bidder.

- 8.6.c A Bidder that withdraws its Bid shall not be permitted to submit another Bid, directly or indirectly, for the same Project.

SECTION 9 OPENING AND EVALUATION OF QUALIFICATION DOCUMENTS

9.1 OPENING OF FIRST ENVELOPE

- 9.1.a The PBAC will open the envelopes containing the Qualification Documents in the presence of the Bidder's representatives who choose to attend the opening of Qualification Documents at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City on 04 September 2025 at 2:00 pm. The Bidder's representatives who are present shall sign a register evidencing their 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.
- 9.1.b The envelopes containing the Qualification Documents, as well as their modifications, if any, shall be opened one at a time, and the following read out and recorded:
- (a) the name of the Bidder;
 - (b) whether there is a modification or substitution; and
 - (c) the presence or absence of each document comprising the Qualification Documents vis-à-vis a checklist of the required documents.
- 9.1.c 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*). 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.
- 9.1.d Letters of withdrawal shall be read out and recorded during the opening of Qualification Documents, and the envelope containing the corresponding withdrawn Qualification Documents shall be returned unopened to the withdrawing Bidder. If the withdrawing Bidder's representative is present during the opening, the original Qualification Documents and all copies thereof shall be returned to the representative during the opening of Qualification Documents. If no representative is present, the Qualification Documents shall be returned unopened by registered mail.

9.2 EVALUATION OF QUALIFICATION DOCUMENTS

- 9.2.a The PBAC shall evaluate the Qualification Documents over a period of no longer than twenty (20) 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 Qualification Requirements for the Project shall be based solely upon the Qualification Documents submitted.
- 9.2.b 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 (including any Affiliate of these entities), or proposed contractor, for the purpose of clarifying any matter included in its Qualification Documents. The PBAC shall make all requests for clarification in writing.

- 9.2.c 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 or not in the proper form. If a Bidder is rated “failed” in any of the Qualification Requirements, the PBAC shall mark the set of qualification documents of the Bidder concerned as “disqualified.” In either case, the PBAC chairperson or his duly designated authority shall countersign the markings.
- 9.2.d A Bidder may also be disqualified for any of the following reasons.
 - (a) late submission of the Qualification Documents or any part thereof;
 - (b) material or willful misrepresentation in the Bidding Process;
 - (c) any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice as each described in Section 13.2.b;
 - (d) any form of political or other lobbying with respect to the Bidding Process;
 - (e) illegal conduct or attempt to influence the PBAC’s evaluation of the Qualification Documents or the Bidding Process;
 - (f) any Conflict of Interest that would give it any unfair advantage in the Bidding Process as described in Section 13.3 (*Conflict of Interest*);
 - (g) any Outstanding Dispute with Government; and/or
 - (h) Failure to comply with any of the terms, conditions and instructions of the Invitation Documents.

9.3 NOTIFICATION OF RESULTS OF EVALUATION

- 9.3.a Within twenty (20) days from the Bid Submission Date, 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**.”
- 9.3.b Qualified Bidders shall be informed of the date, time and venue of the Second Envelope Opening Date and Third Envelope Opening Date and invited to witness the same. Such Bidders may send a representative to observe the opening of the Second Envelope and Third Envelope. Qualified Bidders who do not send a representative are deemed to have waived the opportunity to witness the opening of the Second Envelope and Third Envelope.
- 9.3.c Disqualified Bidders shall be informed of the reason/s for their disqualification.

- 9.3.d 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.
- 9.3.e From receipt of the "Notice of Disqualification," a disqualified Bidder may appeal its disqualification in accordance with the grounds and the procedure for protests laid down in the PPP Code IRR. Bidders may also protest any resolution of the PBAC based on the grounds and the procedure for protests laid down in the PPP Code IRR. For this purpose, the Appeal Fee, where payable under the PPP Code IRR, shall be equivalent to Five Million Pesos (Php5,000,000.000).
- 9.3.f Appeals made by any Bidder during any other stage of the Bidding Process shall be in accordance with the grounds and the procedure for protests laid down in the PPP Code IRR. For such appeals, the same Appeal Fee under Section 9.3.e shall be applicable.

SECTION 10 OPENING AND EVALUATION OF BID PROPOSALS

10.1 OPENING OF SECOND ENVELOPE

- 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 Each Qualified Bidder may send one or more representatives to witness the opening of the Technical Proposals. Such representatives shall sign the register confirming their attendance. Qualified Bidders that do not send a representative to witness the opening of the Technical Proposals shall be deemed to have waived the opportunity to witness the same.
- 10.1.c The PBAC will begin the opening of the Technical Proposals at the BCDA office on the Second Envelope Opening Date on 22 September 2025 at 2:00 p.m. by announcing the names of the Qualified Bidders that have submitted Proposals and other matters as the PBAC may consider appropriate. Letters of withdrawal shall be read out and recorded, and the envelope/box containing the corresponding withdrawn Proposals shall be returned unopened to the withdrawing Qualified Bidder. If the withdrawing Qualified Bidder's representative is present during the opening, the original Technical Proposals and all copies thereof shall be returned to the representative during the Second Envelope Opening Date. The PBAC shall then proceed to open the Second Envelope of each remaining Qualified Bidder in a public session and in the presence of the remaining Qualified Bidders' representatives that choose to attend the opening of the Technical Proposals.
- 10.1.d 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.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*).
- 10.1.d The evaluation and scoring of the Technical Proposals of Qualified Bidders shall be in accordance with the evaluation process provided in Section 10.3 (*Technical and Financial Criteria for Evaluation*) and **Schedule 4**. If the PBAC determines after its detailed evaluation of the Technical Proposal that the Qualified Bidder has complied with all the requirements for the Technical Proposal in Section 5.1 (*Technical Proposal*) and has reached the threshold score for complying proposals in accordance with the evaluation and scoring system provided in Section 10.3 (*Technical and Financial Criteria for Evaluation*) and **Schedule 4**, the Qualified Bidder shall be rated “**Complying**”, otherwise, it shall rate the Qualified Bidder as “**Non-Complying**.”
- 10.1.e During the examination and evaluation of the contents of a Qualified Bidder’s Technical Proposal, the PBAC may 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, but shall not include the submission of additional elements to the Technical Proposal, nor its modification in any way.
- 10.1.f Within seven (7) 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.g Qualified Bidders with Complying Technical Proposals shall be informed of the date, time and venue of the Third Envelope Opening Date. The Third Envelope Opening Date shall be scheduled within fifteen (15) days from the completion of the evaluation of the Technical Proposal. Only Qualified Bidders with Complying Technical Proposals shall be invited to 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 Unless the ground for the disqualification is any of the events listed in Section 7.3 (*Forfeiture of Bid Security*), in which case the Bid Security shall be forfeited, the PBAC shall return to the disqualified Bidders their unopened Financial Proposals and Bid Security; *provided*, that in case all of the Qualified Bidders are rated “Non-Complying”, their Financial Proposals will be retained by the PBAC un-scored or un-evaluated together with their Bid Security and the PBAC shall undertake the following procedure:
 - 10.1.j(1) The PBAC shall require the Qualified Bidders with “Non-Complying” Technical Proposals to correct their Technical

Proposal and resubmit their Second Envelope within fifteen (15) days from the date they were informed that their Technical Proposals were found “Non-Complying”. The relevant schedule in Section 1.4 (*Indicative Bidding Schedule*) shall be updated accordingly by the PBAC through a bid bulletin.

- 10.1.j(2) The “Non-Complying” Qualified Bidders who submitted their corrected Second Envelope shall be informed of the date, time and venue for the opening of their corrected Second Envelope. The Financial Proposals of “Non-Complying” Qualified Bidders who opt not to resubmit a corrected Second Envelope within the prescribed deadline will be returned by the PBAC un-scored or un-evaluated together with their Bid Security.
- 10.1.j(3) The PBAC shall then proceed to evaluate the resubmitted Technical Proposal of each Qualified Bidder in accordance with Section 5.1 (*Technical Proposal*). The PBAC shall determine which of the Technical Proposals meet the evaluation criteria. The Qualified Bidders whose resubmitted Technical Proposals meet the Minimum Scoring Threshold based on the evaluation criteria are rated as “Complying”. Qualified Bidders with “Non-Complying” Technical Proposals as resubmitted shall be informed why their Technical Proposals remained to be “Non-Complying”, and their Financial Proposals will be returned by the PBAC un-scored or un-evaluated together with their Bid Security.

10.2 OPENING OF THIRD ENVELOPE

- 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 Each Qualified Bidder may send one or more representatives to witness the opening of the Financial Proposals. Such representatives shall sign the register confirming their attendance. Qualified Bidder with Complying Technical Proposals that do not send a representative to witness the opening of the Financial Proposals shall be deemed to have waived the opportunity to witness the same.
- 10.2.c The PBAC shall proceed to open the Third Envelope of each Qualified Bidders with Complying Technical Proposals in a public session and in the presence of their representatives that choose to attend the opening of the Financial Proposals. The PBAC will examine the contents of the Third Envelope over a period of no longer than twenty (20) days from the opening of the Financial Proposals. The Financial Proposals shall be evaluated and scored by the PBAC based on the Financial Proposal Amounts and other criteria in accordance with the evaluation process provided in Section 10.3 (*Technical and Financial Criteria for Evaluation*) and **Schedule 4**.

- 10.2.d The Qualified Bidder that submitted the Technical Proposal and Financial Proposal that garnered the highest score in accordance with the evaluation process provided in Section 10.3 (*Technical and Financial Criteria for Evaluation*) and **Schedule 4** shall determine the best complying Bid ("**Best Bid**").
- 10.2.e In the event of a tie, the PBAC shall break the tie through selection of Qualified Bidder with a higher Technical Proposal score.
- 10.2.f In case there is only one Qualified Bidder with Complying Technical Proposal and it is not able to comply with the requirements provided in Section 5.2 (*Financial Proposal*), BCDA, subject to PPP Code and the PPP Code IRR, and other applicable laws, may conduct negotiations on the financial terms or on the Financial Proposal and shall conclude said negotiation within thirty (30) days. Such Qualified Bidder with Complying Technical Proposal's Technical Proposal shall remain valid and binding during such negotiation.
- 10.2.g Prior to the PBAC's completion of the evaluation, a post-qualification of the Best Bid may be conducted by the PBAC as may be required by the Approving Body (as defined under the PPP Code). The post-qualification may involve, among others, a verification of the information, representations, and statements made by such Bidder in its Qualification Documents, Technical Proposal, Financial Proposal, and submission of a valid Tax Clearance Certificate ("**TCC**"). Such verification may include (any or all of) a desktop review, physical inspection, interview of the relevant officers of such Qualified Bidder, review of documents, or verification with third parties including governing agencies. If the Best Bid is deemed to have passed these requirements, the Best Bid shall be declared the Winning Bid and the PBAC shall recommend to the BCDA Board the issuance of the Notice of Award to such Bidder.
- 10.2.h The Winning Bidder shall, upon notice in accordance with Section 12.1, immediately submit to the PBAC: a copy of its valid TCC issued by the appropriate office of the Bureau of Internal Revenue ("**BIR**") pursuant to Executive Order No. 398 (series of 2005), certified by the Winning Bidder's Authorized Officer as a true copy of the original, together with a sworn statement issued by the Winning Bidder's Authorized Officer attesting to the fact that the original is in the possession of the Winning Bidder. In the case of a Consortium, these shall be submitted by each Consortium Member. For Consortium Members that are non-resident entities not doing business in the Philippines and not able to obtain a TCC, the Winning Bidder must submit, in lieu of a TCC, a Delinquency Verification Certificate issued by the appropriate office in the BIR, certified by such Consortium Member's Authorized Officer as a true copy of the original, together with a sworn statement issued by such Consortium Member's Authorized Officer attesting to the fact that the original is in the possession of the Consortium Member and that the Consortium Member is neither doing business nor subject to any form of tax in the Philippines.
- 10.2.g If the PBAC determines any non-compliance or is unable to determine compliance to its satisfaction, the PBAC may disqualify the Qualified Bidder that garnered the highest score and, in such case, the PBAC shall conduct the same detailed verification of the Qualified Bidder that submitted the next highest score. Such verification process shall be repeated until the PBAC determines compliance to its satisfaction (in which case, such complying Qualified Bidder's proposal shall be the Best Bid) or until no other Bid remains.

10.3 TECHNICAL AND FINANCIAL CRITERIA FOR EVALUATION

The Technical Proposals and Financial Proposals submitted by the Qualified Bidders will be evaluated following the process and criteria below. The process and criteria are set out in more detail in **Schedule 4**.

- (a) The Qualified Bidders shall be evaluated using a Quality and Cost Based Selection Method with the Technical Proposal weighing 60% and the Financial Proposal weighing 40%.
- (b) The summary of the Technical and Financial Evaluation Criteria and assigned weightings are provided in Table 5 below. The maximum score for each of the Technical and Financial Proposals will be 1,000 points. Weights of 60% and 40% will be subsequently applied to the respective scores of the Technical and Financial Proposals.

Table 5. Technical and Financial Evaluation Criteria and Weighting

Proposal	Weight	Evaluation Category	Max Score
Technical Proposal	60%	A. Conceptual Design and Construction Methodology	250
		B. Repair and Maintenance	100
		C. Commercialization	200
		D. Organization and Implementation	200
		E1. Monthly Service Availability	100
		E2. Monthly Service Credits	100
		E3. Monthly Developer Service Credits	50
		Technical Proposal Score	1,000
Financial Proposal	40%	Initial Reference Tariff Offer (for the first 10 years)	300
		Equity Premium Cap (for Year 11 to Year 25)	400
		Financial Model	300
		Financial Proposal Score	1,000

- (c) The Technical Proposal will first be opened and evaluated against the technical evaluation criteria. Only those Qualified Bidders whose Technical Proposals achieve a Minimum Scoring Threshold as provided below will progress to the opening of the Financial Proposal. Qualified Bidders with Technical Proposals that fail to meet the Minimum Scoring Threshold will be disqualified.

“Minimum Scoring Threshold” in the evaluation of the Technical Proposal means a minimum Technical Proposal Score of an aggregated 600 out of 1,000 to progress to the opening of the Financial Proposal.

- (d) For Qualified Bidders with Technical Proposals that meet the Minimum Scoring Threshold, their respective Financial Proposals will then be opened and evaluated against the financial evaluation criteria, with cross referencing to the Technical Proposal to ensure alignment.

10.5 BID EVALUATION

- 10.5.a Members of the PBAC, including its staff and personnel, are prohibited from making or accepting any kind of communication with any Qualified Bidders or any other third party (other than consultations with BCDA's advisers and other advisers engaged in connection with the Bidding Process) regarding the evaluation of the Bids until the issuance of the Notice of Award.
- 10.5.b Any effort by a Qualified Bidder to influence the PBAC or BCDA or their advisers in its decision in respect of proposal evaluation or contract award will result in the rejection of the Qualified Bidder's Bid and forfeiture of its Bid Security.
- 10.5.c All Qualified Bidders shall be furnished the results of the evaluation after the approval by the BCDA Board of Directors ("**Board**"). Said results shall also be posted on the website of BCDA.

SECTION 11 CONFIDENTIALITY

11.1 CONFIDENTIALITY DURING BIDDING PROCESS

- 11.1.a Without limiting or negating the terms of the Confidentiality Undertaking submitted by a Bidder as part of its Qualification Documents, the Bidder acknowledges that the Bidding Documents and any BCDA-Supplied Information are made available to Bidder only in connection with the Project and may not be disclosed or used other than for the purposes of the preparation of its Bid. Information relating to the examination, clarification, evaluation, and comparison of Bids shall not be disclosed to any of the Bidders or other persons not officially involved in the Bidding Process; *provided*, that the BCDA, through the PBAC, shall not have the obligation to keep any information submitted by a Bidder confidential after award of the Project.
- 11.1.b By accepting the Bidding Documents and other BCDA-Supplied Information, each Bidder warrants that:
 - (i) it has not relied and will not rely upon any BCDA-Supplied Information as being proper, accurate, adequate, suitable, or complete for any purpose;
 - (ii) it will make its own independent evaluation, inspection, and investigation of all BCDA-Supplied Information and will fully satisfy itself as to any matter or thing disclosed by any BCDA-Supplied Information in connection with the Project, including (but not limited to) the accuracy, adequacy, suitability, or completeness of any reports, data, test results, samples, geotechnical investigations, opinions, recommendations, findings, summaries, design, or other information; and
 - (iii) it will not rely upon (or allow any other person assisting or advising it to rely upon) the BCDA-Supplied Information in connection with any aspect of the Bidding Process or the Project until it has satisfied itself as to the accuracy, adequacy, suitability and completeness of the BCDA-Supplied Information.
- 11.1.d The Bidder acknowledges that the BCDA and the PBAC may, in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the BCDA-Supplied Information.

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 JV AGREEMENT

12.1 ISSUANCE OF NOTICE OF AWARD

AVP

Within three (3) calendar days from the submission by the PBAC of its recommendation to award, the BCDA Board shall decide on the award. Within three (3) calendar days from the approval of the award by the BCDA Board, the BCDA Board shall issue the Notice of Award to the Qualified Bidder with a Complying Technical Proposal who submitted the Best Bid, who 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 JV Agreement (**"Post-Award Requirements"**):

- 12.2.a Notice of Award countersigned by the authorized representative of the Winning Bidder;
- 12.2.b Sworn certification issued by the Winning Bidder's Authorized Officer (or of each Consortium Member, if the Winning Bidder is a Consortium) attesting to the resolutions adopted by its board of directors/partners (and, if necessary, its shareholders/partners) authorizing the execution, delivery and performance of the JV Agreement, to the extent not previously provided.
- 12.2.c Construction and Operations Performance Security, which shall guarantee the faithful performance by the Winning Bidder of its obligations under the JV Agreement.

The Construction and Operations Performance Security, which shall cover the obligations of the JV Partner relating to design, construction, repair, maintenance, and commercialization in the JV Agreement, shall be:

- (a) in the amount of Forty-Four Million Pesos (PhP44,000,000.00), if the Construction and Operations Performance Security is in the form of (i) cash, or (ii) manager's check, an irrevocable on demand letter of credit (using the form attached to the JV Agreement), or bank draft, issued by an Acceptable Bank; or
- (b) in the amount of One Hundred Ten Million Pesos (PhP110,000,000.00), if the Construction and Operations Performance Security is in the form of a bank guarantee issued by an Acceptable Bank; or
- (c) in the amount of Two Hundred Twenty Million Pesos (PhP220,000,000.00), if the Construction and Operations Performance Security is in the form of a surety bond callable on demand issued by: (i) the Government Service Insurance System, or (ii) a surety or insurance

company duly accredited by the Insurance Commission and acceptable to BCDA.

If the Construction and Operations Performance Security is subject to an expiration date, it shall be initially effective for at least a period of one (1) year from the date of issue, to be replaced prior to expiration in accordance with the terms of the JV Agreement.

- 12.2.d If the Winning Bidder is a Consortium, evidence of the formation of the SPC, consisting of certified true copies issued by the SEC of the certificate of incorporation, articles of incorporation and by-laws of the JV Partner (collectively, the “**SPC Constitutional Documents**”); the shareholders of the JV Partner and the respective percentage shareholdings of its members should be the same as those shown in the Winning Bidder’s Annex QD-2B. In the event that the Winning Bidder is unable to incorporate the JV Partner within the twenty (20)-day period for reasons beyond its control, the Winning Bidder shall submit: (i) proof that it has caused the incorporation of a domestic corporation and that the papers relating to said incorporation have been duly filed with the SEC; or (ii) in the event that such papers have yet to be filed for reasons beyond the control of the Bidder, an affidavit stating that all actions for formation of the corporation have been done but cannot be filed for reasons beyond the control of the Bidder together with an attached proof of the reason for the delay (e.g., screen capture showing that the website of the SEC is not functioning). Once incorporated, the Winning Bidder shall submit the SPC Constitutional Documents and the JV Partner shall sign an accession or similar agreement to be bound by the Concession Agreement;
- 12.2.e. If the Winning Bidder is a Consortium, an agreement, using the form in **Annex CP-1**, indicating that the Consortium Members are jointly and severally liable for the obligations of the JV Partner under the JV Agreement; the joint and several liability under Annex CP-1 shall cease upon the submission of the SPC Constitutional Documents;
- 12.2.f If the Winning Bidder is a Consortium, submission of (i) an undertaking of the Consortium Members thereof to infuse the required equity contribution to the JV Partner; and (ii) equity subscription agreement, shareholders’ agreement, and subordinated loan agreements, duly authorized and validly executed and which are in full force and effect and delivered by the parties to them, evidencing the arrangements necessary to comply with the Equity Interest provisions in the JV Agreement;
- 12.2.g If the Winning Bidder is a corporation, proof that all of the equity of the JV Partner will be owned by the Winning Bidder, as shown by (i) a treasurer’s affidavit attesting to the actual paid-up capital of the Winning Bidder and (ii) subscription agreement between the Winning Bidder and its shareholders covering the equity contribution or shareholders’ agreement between and among the shareholders of the Winning Bidder undertaking to contribute or subscribe the required equity contribution;
- 12.2.h Letters from reputable financial institutions expressing their willingness to provide sufficient credit facilities as required in the Winning Bidder’s Financial Proposal, and also indicating the terms and conditions for such facilities, using the form in **Annex CP-2**;

- 12.2.i Payment to the Asian Development Bank (ADB) of the amount of Six Hundred Fifty Thousand United States Dollars (USD 650,000.00) as reimbursement for costs and expenses associated with the Bidding Process, the mechanics for payment of which shall be set out in the Notice of Award.

12.3 NOTIFICATION OF COMPLIANCE WITH POST-AWARD REQUIREMENTS

Within five (5) days from the BCDA's receipt of the Post-Award Requirements from the Winning Bidder, the BCDA Board 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 without reasonable justification acceptable to the BCDA or any finding by the PBAC that the requirements submitted are false, 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

If at any time after the issuance of the Notice of Award and prior to the signing of the JV Agreement, the Winning Bidder (and/or the JV Partner) is found to have (i) engaged in any Prohibited Act, (ii) a Conflict of Interest or (iii) violated Section 14.1 (*Lock-Up Rules*), it will be disqualified, its Notice of Award shall be withdrawn, and its Bid Security shall be forfeited.

12.6 EXECUTION OF JV AGREEMENT

Within five (5) days from the receipt by the Winning Bidder of notice from the BCDA Board that all of the Post-Award Requirements have been complied with, the Winning Bidder shall execute the JV Agreement with the BCDA. The failure by the Winning Bidder to execute the JV 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.

12.6.a The Financial Proposal Amounts shall be incorporated into the JV Agreement.

12.6.b The authorized signatory of the Winning Bidder and BCDA shall execute and sign the JV Agreement five (5) days from the receipt by the Winning Bidder of notice from the BCDA Board that all of the Post-Award Requirements and/or the conditions precedent to the execution of the JV Agreement as described under the Notice of Award required of the Winning Bidder have been complied with and duly received by BCDA.

12.6.c The refusal, inability, or failure of the Winning Bidder to enter into the JV Agreement with BCDA within the time provided therefore shall constitute sufficient ground for the forfeiture of the Winning Bidder's Bid Security and the withdrawal of the Notice of Award.

12.7 NEXT HIGHEST COMPLYING BIDS

12.7.a If the Winning Bidder (or the JV Partner) does not fulfill the Post-Award Requirements or execute the JV Agreement within the prescribed periods; or the Winning Bidder (or the JV Partner), any of the Winning Bidder's Consortium Members, proposed contractors, or Affiliates, or the officers, employees, agents, and advisers of any of these entities is found to have (i) engaged in any

Prohibited Act, (ii) a Conflict of Interest, or (iii) violated Section 14.1 (*Lock-Up Rules*), then the Bidder with next Best Bid shall be notified in writing by the PBAC of its selection and issued a Notice of Award. Such Bidder 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 the next Best Bid 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 Section 12 (*Notice of Award, Post-Award Requirements and Execution of JV Agreement*), until one hundred eighty (180) days after the Bid Submission Date.

- 12.7.b The BCDA reserves the right, at its sole discretion, to cancel the Bidding, reject any or all of the Bids, or not to award the Project to any Bidder.

12.8 SINGLE BIDDER

If only one (1) Bidder submits a Bid Proposal, or there is only one (1) Qualified Bidder, or only one (1) Qualified Bidder submits a Technical Proposal, subject to the procedure under Section 10.1, and a Financial Proposal that is complete and responsive, the PBAC shall have the right to proceed with the Bidding Process or to consider all options available under the PPP Code and the PPP Code IRR.

SECTION 13 GENERAL CONDITIONS AND PROHIBITIONS

13.1 GENERAL CONDITIONS

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

- 13.1.a it, including all Consortium Members, proposed contractors, and Affiliates, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process;
- 13.1.b it, including all Consortium Members, proposed contractors, and Affiliates, and their respective officers, employees, agents and advisers shall not commit any Prohibited Act;
- 13.1.c it, including all Consortium Members, proposed contractors, and Affiliates, and their respective officers, employees, agents and advisers, 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;
- 13.1.d it accepts all the terms and conditions of the Bidding Documents; and
- 13.1.e the PBAC has the right to amend, revise, modify or clarify any of the Bidding Documents at any time.

13.2 PROHIBITED ACTS

- 13.2.a If a Bidder, any Consortium Member, any proposed contractor, or Affiliate, the Winning Bidder or the JV Partner, as the case may be, is found to have, directly or indirectly, engaged in any Prohibited Act during the Bidding Process, or after the issuance of the Notice of Award or the execution of the JV Agreement, the PBAC/BCDA shall –

- 13.2.a(1) 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;
- 13.2.a(2) forfeit and appropriate the Bid Security of such Bidder, without prejudice to any other right or remedy that may be available to the BCDA;
- 13.2.a(3) 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
- 13.2.a(4) permanently prohibit or disqualify individuals and/or entities involved in such practices from participating in any bidding of the BCDA 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:

- 13.2.b(1) **“Corrupt Practice”** means any behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the Bidding Process or in contract execution; this also includes similar acts punishable under the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019);
- 13.2.b(2) **“Fraud”** means a misrepresentation of facts in order to influence the Bidding Process to the detriment of the government, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish financial offers or prices at artificial, non-competitive levels and to deprive the government of the benefits of a free, transparent and open competition;
- 13.2.b(3) **“Collusion”** means a scheme or arrangement between two or more Bidders, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-competitive levels;
- 13.2.b(4) **“Coercion”** means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Bidding Process, or affect the execution of the JV Agreement and other relevant JV Documents;
- 13.2.b(5) **“Undesirable Practice”** means (i) establishing contact with any person connected with, employed or engaged by BCDA or any member of the PBAC with the objective of canvassing, lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process, the evaluation of Qualification Documents or Bid Proposals, or the implementation of the JV Documents;
- 13.2.b(6) **“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 Contractors with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process; and

- 13.2.b.(7) **“Anti-Competitive Behavior”** means any anti-competitive act, scheme, plan or agreement in connection with the Project, including any act of manipulation of the free use of access to the existing and additional facilities, land and project rights, and other in-kind contribution by BCDA to the JV.

13.3 CONFLICT OF INTEREST

13.3.a Bidders, Consortium Members, their Contractors, and Affiliates, must not have any Conflicts of Interest. Without limiting the generality of what would constitute a Conflict of Interest, any of the following will be considered a **“Conflict of Interest”**:

- a. 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.
- b. A Bidder, any of its Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) is proposed/nominated as a Contractor of another Bidder.
- c. A Bidder, any of its Consortium Members (if the Bidder is a Consortium), or any of their Affiliates (of either a Bidder or of the Consortium Member) has ownership interest 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.
- d. A member of the board of directors, 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 related 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.

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 thereto, that would give the director, partner, officer, employee, or agent knowledge or 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 Process.

The same conflict of interest arises for consulting firms acting as professional advisors, Contractors, in each case, to the extent such entities are engaged by more than one Bidder in any capacity related to the Bidding Process, unless said Contractor or professional advisor discloses such fact in writing to each relevant Bidder, submits a conflict

management plan (“**Conflict Management Plan**”) to such Bidders and submits to BCDA written consent from each such Bidders stating that such Bidder has been notified of the potential conflict of interest, has reviewed and approved the Conflict Management Plan prepared by the Contractor or professional adviser and the parties consent to such Contractor or professional adviser’s engagement by the other relevant Bidder.

Each affected Bidder must secure the written consent of BCDA stating that the Conflict Management Plan is sufficient prior to proposing or nominating such Contractor in its Qualification Documents or seeking professional advisory services from said professional advisor.

- e. Any of the following shall be considered a Conflict of Interest on account of engagement by the BCDA or Asian Development Bank (“**ADB**”) for the Project:
 - (1) a Bidder, any of its Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) or any of its proposed Contractors has been directly engaged as a consultant by the BCDA or ADB in the preparation of any Invitation Documents or the design, or technical specifications of the Project or in connection with the Bidding Process.
 - (2) a Bidder, any of its Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) or any of its proposed Contractors of any of these entities, engages any legal, financial, or technical advisor of the BCDA or ADB in relation to the Project, or anyone who is or was an employee of the BCDA or ADB less than one (1) year before his or her engagement in relation to the Project by the Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities.

Each affected Bidder must secure the written consent of BCDA stating that the Conflict Management Plan is sufficient prior to proposing or nominating such Contractor in its Qualification Documents or seeking professional advisory services from said professional advisor.

- 13.3.b If at any time prior to the signing of the JV Agreement, any Bidder, Consortium Member (or any Affiliate of any of these entities), or proposed contractor, is found to have a Conflict of Interest as defined in this Section 13.3 (*Conflict of Interest*), it shall be disqualified from further participating in the Bidding Process. If the Conflict of Interest involves 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) material or willful misrepresentation in the Bidding Process;
- b) any form of political or other lobbying with respect to the Bidding Process;
- c) illegal conduct or attempt to influence the PBAC’s evaluation of the Qualification Documents or the Bid Proposal;

- d) failure to comply with any of the terms, conditions and instructions of these Instructions to Bidders;
- e) any Outstanding Dispute as defined under Section 1.2.g of the Instructions to Bidders; or
- f) other grounds for rejection or disqualification of Bidders under the PPP Code and the PPP Code IRR, and other applicable laws.

The grounds for disqualification in this Section 13 (*General Conditions and Prohibitions*) shall also apply to all Consortium Members (in case the Bidder is a Consortium), and any Affiliates or contractors proposed by the Bidder to meet any of the Qualification Requirements.

SECTION 14 LOCK-UP RULES

14.1 LOCK-UP RULES

Pursuant to the PPP Code IRR, the following rules ("**Lock-Up Rules**") shall apply during the lock-up period, which is defined as the period from the Bid Submission Date until the execution of the JV Agreement ("**Lock-up Period**"):

- 14.1.a For a Bidder who is a corporation or a partnership, no changes shall be made in the equity or ownership structure of such Bidder, as provided in the Bidder's Business Plan (**Annex QD-2A**).
- 14.1.b For a Bidder who is a Consortium, no changes shall be made in the composition of the Consortium and in the minimum committed percentage equity interest of each qualifying Consortium Member in the Consortium, as provided in the Bidder's Business Plan (**Annex QD-2B**), or the SPC as may be formed in accordance with Section 12.1.2.d, as applicable.

14.2 CONSEQUENCE OF VIOLATION OF LOCK-UP RULES

Any violation of Section 14.1 (*Lock-Up Rules*) shall be a ground for disqualification from the Bidding or the cancellation of the JV Agreement.

SECTION 15 GOVERNING LAW AND RULES

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