

Instructions to Private Sector Participants: Volume 1 — Eligibility Documents

COMPETITIVE SELECTION FOR THE
JOINT VENTURE DEVELOPMENT OF THE
WATER AND WASTEWATER INFRASTRUCTURE PROJECT
NEW CLARK CITY

Introduction

The Instructions to Private Sector Participants (“**IPSP**”) describe the procedures that shall be followed in connection with the competitive selection by the Bases Conversion and Development Authority (“**BCDA**”) of its private partner in an incorporated joint venture (“**JV**”) for the financing, design and engineering, establishment, construction, development, operation and maintenance of the water and wastewater infrastructure for New Clark City (as defined below) over a proposed 30-year concession period, which may be extended for an additional period of 20 years subject to compliance with the conditions stipulated in the Concession Documentation (as defined below) (the “**Project**”).

The IPSP are issued in three parts: (i) IPSP: Volume 1 — Eligibility Documents; (ii) IPSP: Volume 1 – Forms and Annexures; and (iii) IPSP: Volume 2 — Competitive Selection Documents and IPSP: Volume 2 - Forms and Annexures.

This IPSP: Volume 1 - Eligibility Documents details the requirements for eligibility of interested PSPs to be found eligible to submit Proposals (as defined below) for the Project details the requirements for eligibility of interested PSPs to be found eligible to submit proposals for the Project. IPSP: Volume 1 - Forms and Annexures details the forms and technical annexures that are required for interested PSPs to submit the Eligibility Documents (as defined below). Interested PSPs shall be entitled to receive, upon submission of a letter of intent and purchase of the amount stipulated in Section 2.6, IPSP: Volume 1 - Forms and Annexures. IPSP: Volume 2 - Competitive Selection Documents details the requirements and procedures for the submission of Proposals and IPSP: Volume 2 - Forms and Annexures details the forms and annexures that are required for submission of Proposals, with the end-view of determining to whom the Project shall be awarded. IPSP: Volume 2 – Competitive Selection Documents and IPSP: Volume 2 – Forms and Annexures shall be made available free of charge to PSPs determined by the BCDA to be eligible pursuant to the requirements of this IPSP: Volume 1 – Eligibility Documents.

BCDA reserves the right to amend, revise, modify, clarify, or supplement this IPSP: Volume 1 - Eligibility Documents or IPSP: Volume 1 - Forms and Annexures at any time prior to the submission of the Eligibility Documents, provided that the BCDA shall provide updated versions of the IPSP: Volume 1 - Eligibility Documents and IPSP: Volume 1 - Forms and Annexures free of charge to any PSPs that have previously purchased the IPSP: Volume 1 - Forms and Annexures.

Based on projections for the development of New Clark City, the total Project cost over the duration of the Project concession is estimated to total approximately PhP 10,000,000,000 (Ten Billion Philippine Pesos).

Water supply for the Project will be sourced from deep wells within the vicinity and surface water which may include the Cutcut, O'Donnell and Bangut Rivers. Treatment of the surface water will be conventional coagulation-flocculation and filtration or other best practice water treatment processes as agreed in the Concession Documentation (as defined below) with post treatment to comply with current applicable Philippine National Standards for Drinking Water (“**PNSDW**”). The ground water from collector tanks and the treated surface water will be conveyed through transmission lines and distribution networks to residential, commercial, industrial, mixed use and institutional consumers. Based on projections for the development of New Clark City, the water demand is estimated to be approximately 200,000 m³/day by the end of the concession period.

The wastewater infrastructure for the Project will comprise of sewers, pumping stations and sewage treatment plants. The treatment method will be a multi stage biological process incorporating biological nutrient removal or other best practice wastewater treatment processes as agreed in the Concession Documentation (as defined below) to remove nitrogen, phosphorus and other impurities from the effluent. Based on projections for the development of New Clark City, the sewage treatment plant capacity is estimated to be approximately 150,000 m³/day by the end of the concession period.

It shall be the Winning PSP's obligation, with the assistance from the BCDA, to secure the water rights/permits from the National Water Resources Board necessary for the Project.

It is anticipated that the Project will involve the design, implementation, operation and maintenance of water utility infrastructure and equipment with embedded sensing technologies for near real-time data acquisition, analysis and decision making and approaches to water utility development and management that protect, restore, or mimic the natural water cycle in order to sustainably utilize water resources, which will be further detailed in IPSP: Volume 2 - Competitive Selection Documents ("**Smart/Green City Requirements**").

Pursuant to the 2017 Guidelines for the Privatization and Disposition of BCDA Properties - Procedures for Entering into Joint Venture (JV) Agreements with Private Entities (the "**BCDA Guidelines**"), which BCDA issued in connection with its authority to issue guidelines in the exercise of its primary mandate to dispose of government assets and properties, BCDA is issuing this IPSP: Volume 1 - Eligibility Documents to prospective PSPs in connection with the Project.

INSTRUCTIONS TO PRIVATE SECTOR PARTICIPANTS: VOLUME 1 — ELIGIBILITY DOCUMENTS

1. Governing Law and Definitions

1.1 Governing Law and Rules

The provisions of Republic Act No. 7227 (as amended), the BCDA Guidelines, and other applicable Philippine laws and rules shall govern all matters not specifically covered by this IPSP: Volume 1 — Eligibility Documents and the Invitation Documents.

1.2 Definitions

The following words or terms shall have the following meanings in this IPSP: Volume 1 — Eligibility Documents:

“ADB” means the Asian Development Bank.

“Affiliate” means with respect to a specified entity, an entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with the specified entity.

“BCDA” is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

“BCDA Advisers” means the ADB and such other advisers of BCDA in relation to the Project as notified to PSPs in writing by the BCDA.

“BCDA Board” means the Board of Directors of BCDA.

“BCDA Guidelines” is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

“BCDA Supplied Information” means the documents and/or information that BCDA will provide to PSPs solely to provide background information on the Project, including information, data, representation, statement, assumptions, assessment, figures or estimates contained in such documents.

“BIR” means the Bureau of Internal Revenue.

“Certificate of Project Completion” means a certificate attesting to completion of 100% of the works under a contract.

“Competitive Selection Process” or **“Competitive Selection”** means the process beginning from the publication of the IAESP until the signing of the JV Agreement and other relevant Concession Documentation.

“Concession Documentation” means the JV Agreement and its attachments.

“Conflict of Interest” is defined in Section 18.

“Consortium” means an incorporated or unincorporated association of Consortium Members bound by contract or law, solidarily undertaking by mutual written agreement a common enterprise which is to participate in the Competitive Selection Process for the Project.

“Consortium Member” means any natural or juridical persons or sole proprietorships, each having a definite interest 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.

“Contractor” means an entity guaranteed by the PSP or the Consortium Member (as applicable), which may be engaged by the JV Partner to undertake the Design and Construction in accordance with the Concession Documentation. 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 any policies of such corporation, partnership or other legal entity, whether through:

- (a) ownership, whether directly or indirectly, of at least fifty percent (50%) plus one share of the outstanding voting shares; or
- (b) ownership, whether directly or indirectly, of at least twenty percent (20%) of the outstanding voting shares and (i) possession of at least fifty percent (50%) plus one share of the voting rights through voting trust or other voting agreements; or (ii) the ability to elect a majority of the members of the Affiliate’s board of directors; or
- (c) 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 and Restrictive Practice” are each defined in Section 17.

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

“Design and Construction” means all aspects of design and construction work and activities relating to the Project, as provided in the Concession Documentation.

“Design and Construction Experience Requirement” means the Technical Capability Requirements consisting of the Design Experience Requirement and the Construction Experience Requirement that must be met by a PSP, as provided in Section 3.2.1.

“DTI” means the Department of Trade and Industry.

“Eligible PSP” means a PSP, which passed Pre-Selection and is, therefore, allowed to submit a Proposal for the Project.

“Eligibility Documents” means the documents required to be submitted by the PSP during the Pre-Selection stage as provided in Section 4.

“Eligibility Documents Submission Date” means the date for submission of the Eligibility Documents as indicated in Section 8.

“Eligibility Requirements” means the criteria that a PSP must meet in order to be eligible to submit a Proposal for the Project and includes Legal Capacity Requirements, Technical Capability Requirements, and Financial Capability Requirements, as provided in Section 3.

“**EPF**” means eligibility proposal form.

“**Financial Capability Requirement**” means the eligibility requirements that must be met by a PSP, as provided in Section 3.3.

“**GIS**” means the General Information Sheet.

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

“**IAESP**” means the Invitation to Apply for Eligibility and Submit a Proposal published by the JVSC.

“**Invitation Documents**” means the IAESP, this IPSP: Volume 1 — Eligibility Documents, IPSP: Volume 1 - Forms and Annexures, and any supplemental notices and special bid bulletins issued by the JVSC from the date of first publication of the IAESP until the Eligibility Documents Submission Date.

“**IPSP**” is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

“**ISO**” means the International Organization for Standardization.

“**JV**” is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

“**JV Agreement**” means the joint venture agreement to be executed between BCDA and the JV Partner for the Project.

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

“**JVSC**” means the Joint Venture Selection Committee.

“**Lead Member**” means, for a PSP that is a Consortium, the Consortium Member having the highest percentage of interest in the Consortium, which should not be less than thirty-three and one-third percent ($33\frac{1}{3}\%$), and which should be designated in writing as such by the other Consortium Members.

“**Legal Capacity Requirements**” means the eligibility requirements that must be met by a PSP, as provided in Section 3.1.

“**Lock-Up Period**” is defined in Section 13.

“**Lock-Up Rules**” is defined in Section 13.

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

“**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" means New Clark City situated in Capas, Tarlac, the metes and bounds of which are stipulated in the map attached at **Annex A** of IPSP: Volume 1 - Forms and Annexures.

"Notice of Award" means the document issued by the BCDA to the Winning PSP instructing it to comply with conditions precedent for the execution of the JV Agreement and other relevant Concession Documentation and to submit compliance statements with regard thereto.

"Operation and Maintenance" or "O&M" means all aspects of operation and maintenance work and activities relating to the Project, as provided in the Concession Documentation.

"Operation and Maintenance Experience Requirement" means the Technical Capability Requirements that must be met by a PSP, as provided in Section 3.2.2.

"Outstanding Dispute with Government" is defined in Section 19.

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

"PNSDW" is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

"Pre-Eligibility Conference" is defined in Section 2.10.

"Pre-Selection" means the first stage of the Competitive Selection Process involving the submission, opening, and evaluation of the Eligibility Documents submitted by the prospective PSPs.

"Project" is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

"Proposal" means the technical proposal and the financial proposal to be submitted by the Eligible PSPs pursuant to IPSP: Volume 2 — Competitive Selection Documents.

"Proposals Submission Date" means the date set in IPSP: Volume 2 — Competitive Selection Documents as the date of the Eligible PSPs' submission of their Proposal.

"Provisionally-Eligible PSP" means any PSP that undertakes to submit notarized and/or authenticated documents no later than the Proposals Submission Date, if, based on the Eligibility Documents submitted on the Eligibility Documents Submission Date, it meets all of the Eligibility Requirements enumerated under Section 3 of this document.

"PSP" means a private sector participant which must be a partnership, corporation, other legal entity or Consortium that intends to submit an application to be determined as meeting the Eligibility Requirements for the Project pursuant to this IPSP: Volume 1 — Eligibility Documents.

"PSP Industry Affiliates" means all Affiliates of the PSP and Consortium Members engaged in the water and/or wastewater industries.

"SEC" means the Securities and Exchange Commission.

"Smart/Green City Requirements" is defined in the Introduction to this IPSP: Volume 1 - Eligibility Documents.

"SPC" means the special purpose company to be incorporated with the SEC by the Winning PSP that is a Consortium that will sign and/or accede to all the rights and obligations of the Winning PSP under the Concession Documentation.

"Substitution" is defined in Section 13.2.2.

"Technical Capability Requirements" means the eligibility requirements that must be met by a PSP, as provided in Section 3.2.

"Unsatisfactory Performance Record" means any of the following:

- a. Within the last five (5) years:
 - (i) failure to satisfactorily perform any of its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
 - (ii) expulsion from any project or contract;
 - (iii) termination or suspension of any of its projects or contracts due to breach of its obligations; or
 - (iv) 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 a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website (www.worldbank.org/debarr) or in the sanctions list of the Asian Development Bank (<https://lnadbq4.adb.org/oga0009p.nsf/alldocs/AANA-AAFBDE?OpenDocument>), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
- c. Involvement in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice or having Conflicts of Interest.

"Winning PSP" means the PSP whose bid is determined by the JVSC as the most advantageous Proposal and, thus, granted a Notice of Award for the Project.

"Withdrawal" is defined in Section 13.2.1.

2. The Competitive Selection Process

2.1 The JVSC

The JVSC for the Project created by BCDA pursuant to the BCDA Guidelines shall administer the Competitive Selection Process for the Project. It shall be responsible for the preparation of the Invitation Documents, publication of the IAESP, determination of eligibility of the PSPs, conduct of pre-eligibility and pre-selection conferences and issuance of supplemental notices, interpretation of rules regarding the Competitive Selection Process, conduct of the Competitive Selection Process, evaluation of Proposals, and resolution of disputes between PSPs.

2.2 Transaction Advisor

The ADB has been appointed by the BCDA to act as its transaction advisor for the Project.

2.3 Revisions and Clarifications to the Invitation Documents

The JVSC reserves the right to amend, revise, modify, supplement or clarify any section of the Invitation Documents at any stage of the Competitive Selection Process. Such amendments, revisions, modifications, supplements or clarifications, if any, shall be communicated, in writing, through special bid bulletins issued by the JVSC to all parties who purchased the IPSP: Volume 1 - Forms and Annexures. Upon notice or communication to PSPs regarding the issuance of a bid bulletin by the JVSC, the same shall automatically be incorporated into and made an integral part of the particular 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 PSPs.

2.4 Interpretation of IPSP

In case of ambiguities or discrepancies within the IPSP, the following rules of interpretation shall apply:

- (a) between two or more Sections of the IPSP, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;
- (b) between the Sections of the IPSP: Volume 1 - Eligibility Documents and IPSP: Volume 1 - Forms and Annexures, the Sections of this IPSP: Volume 1 - Eligibility Documents shall prevail;
- (c) between any two Annexes or Forms to IPSP: Volume 1 - Forms and Annexures, the Annex or Form relevant to the issue shall prevail; and
- (d) between any value written in numerals and that in words, the latter shall prevail.

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.

2.5 Responsibilities of PSPs

Notwithstanding any information and any additional communication given by the BCDA or its JVSC, including the Invitation Documents, supplemental notices and special bid bulletins, it is the sole responsibility of any interested party and PSP to:

- (a) be fully acquainted with the laws, requirements, terms, and conditions of the Competitive Selection Process;
- (b) examine all the Invitation Documents and other BCDA Supplied Information, including all instructions, forms, schedules, terms, specifications, and drawings;
- (c) familiarize itself with all existing laws, decrees, acts, rules, and ordinances of the Philippines, whether national or local, which may affect the Project; and
- (d) determine, investigate, and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions related to the Project; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; statutory requirements and risks and

contingencies that may affect the cost, duration, execution, completion and implementation of the Project.

PSPs (including any Consortium Members, their Affiliates or proposed Contractors) acknowledge that any BCDA Supplied Information is provided solely for background information on the Project, and therefore no reliance on such BCDA Supplied Information is being made for purposes of formulating its Proposal. PSPs (including any Consortium Members, their Affiliates or proposed Contractors) shall not be entitled to and shall not make any claim against 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 following grounds:

- (a) any misunderstanding or misapprehension in respect of the Project, the Invitation Documents, and the BCDA Supplied Information; or
- (b) that incorrect or insufficient information relating to the Project, the Invitation Documents, and the BCDA Supplied Information was given to them by BCDA, or any other associated party, or any person or entity employed or engaged by BCDA or any other associated party; or
- (c) any failure of the PSP (including any Consortium Members, their Affiliates or proposed Contractors) to obtain correct and sufficient information.

By submitting Eligibility Documents, a PSP acknowledges, and warrants that it has fully discharged its responsibilities above and contained elsewhere in the Invitation Documents and that it has examined and accepted all the terms and conditions in all of the Invitation Documents and other BCDA Supplied Information.

2.6 Costs and Expenses of Participation

PSPs shall bear all costs associated with their participation in the Competitive Selection Process including the preparation and submission of their Eligibility Documents, and all possible losses or damages resulting thereto. BCDA shall not be held responsible or liable in any way for such costs regardless of the results of the Competitive Selection Process.

Prospective PSPs may download a copy of this IPSP: Volume 1 — Eligibility Documents, excluding the IPSP: Volume 1 – Forms and Annexures, free of charge from <http://www.bdda.gov.ph/bids>. The IPSP: Volume 1 – Forms and Annexures may be secured by Prospective PSPs upon submission of a letter of intent and payment of a fee in the amount of Php500,000.00 (Five Hundred Thousand Pesos), payable in cash or manager's check issued by a bank in the Philippines to BCDA, which payment shall be non-refundable. All Eligible PSPs shall be provided IPSP: Volume 2 — Competitive Selection Documents, which will contain the requirements in relation to the Proposals, without additional cost.

2.7 Queries and Supplemental Notices

All parties who purchase the Invitation Documents may send any queries on any aspect of the Invitation Documents in writing by personal delivery with a copy sent by electronic mail to BCDA at the following address and e-mail address:

Nena D. Radoc
Chairperson
JVSC for the Water Infrastructure Project - New Clark City
Bases Conversion and Development Authority

BCDA Corporate Center
2/F Bonifacio Technology Center
31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City
E-mail: twg_water@bcda.gov.ph
Telephone: (02) 575-1789

The JVSC will accept all reasonable queries, comments, and clarifications only in relation to the Invitation Documents not later than 12:00 p.m. on 4 June 2018. Responses to queries and any modifications to the Invitation Documents shall be communicated to PSPs in writing in accordance with Section 2.3.

2.8 Ownership of Documents

All documents submitted in response to the Invitation Documents, including Eligibility Documents and their attachments, shall become the property of BCDA, and any information obtained by BCDA from such documents may be reasonably used by BCDA subject to the confidentiality clause in Section 2.11.

2.9 Language and Foreign Documents

- (a) The Eligibility Documents and all submissions to JVSC 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.
- (b) All documents that are required to be submitted under oath, acknowledged, or sworn to must be complied with as follows:
 - i. if executed in the Philippines, it must be sworn to or acknowledged before a Philippine Notary Public; or
 - ii. if executed outside the Philippines, either:
 - 1. It is sworn to or acknowledged before a Philippine consular official authorized to administer oaths; or
 - 2. 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.
- (c) If the document was issued by a foreign authority, it shall be authenticated before a Philippine consular official authorized to authenticate documents at the Philippine consulate nearest the place of issue. The PSP must also submit a certified true copy of such document issued by the same authority, in addition to the authentication by the relevant Philippine consular official.
- (d) The JVSC will accept foreign documents that are not yet acknowledged and/or authenticated but shall be subject to compliance with the following conditions:
 - (1) the photocopy of the foreign document must be submitted to the JVSC, together with proof that such foreign document had been submitted to and

received by the relevant Philippine consulate for acknowledgement or authentication;

- (2) the acknowledged and/or authenticated foreign document must be submitted to the JVSC no later than the Proposals Submission Date;
 - (3) the acknowledged and/or authenticated foreign document submitted to the JVSC must be identical to the photocopy of the foreign document previously submitted by the PSP; and
 - (4) the foreign document must be listed in **Annex-EPF1** of IPSP: Volume 1 - Forms and Annexures.
- (e) If a PSP undertakes to submit acknowledged and/or authenticated documents no later than the Proposal Submission Date, it may be provisionally qualified if, based on the Eligibility Documents it submits on the Eligibility Documents Submission Date, it meets all of the Eligibility Requirements enumerated under Section 3 of this IPSP: Volume 1 — Eligibility Documents. As a Provisionally-Eligible PSP, it shall be allowed to apply for and receive the IPSP: Volume 2— Competitive Selection Documents. However, a Provisionally-Eligible PSP shall be automatically disqualified if:
- (1) it fails to submit the acknowledged and/or authenticated documents within the prescribed period in Section 2.9(d)(2); or
 - (2) there are differences between the contents of the documents submitted on the Eligibility Documents Submission Date and the subsequently acknowledged and/or authenticated documents submitted to the JVSC.

A Provisionally-Eligible PSP that is disqualified under the above circumstances shall not be entitled to a reimbursement of the purchase costs for the Invitation Documents.

- (f) In foreign countries where there is no Philippine embassy/consulate, the document issued or executed therein may 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, who must also state in the same document that there is no Philippine embassy/consulate in that foreign country.

2.10 Pre-Eligibility Conference

The JVSC will conduct a Pre-Eligibility Conference to further clarify the Invitation Documents and to answer any additional questions from interested parties and PSPs. The details of the Pre-Eligibility Conference are as follows:

Date:	29 May 2018
Time:	14:00
Location:	Bases Conversion and Development Authority, BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street, corner 2nd Avenue Bonifacio Global City, Taguig City

PSPs are encouraged to attend the Pre-Eligibility Conference to ensure that they fully

understand BCDA's requirements. Non-attendance at the Pre- Eligibility Conference will not prejudice a PSP's Eligibility Documents; however, the PSP is expected to know the changes and/or amendments to discussed during the Pre- Eligibility Conference.

Any statement made at the Pre- Eligibility Conference shall not modify the terms of the Invitation Documents unless such statement is specifically identified in writing as an amendment thereto and issued through a special bid bulletin issued by the JVSC pursuant to Section 2.3.

2.11 Confidentiality

The Invitation Documents and any BCDA Supplied Information are made available to PSPs only in connection with the Project and may not be disclosed or used other than for the purposes of the PSP preparing the Eligibility Documents. Information relating to the examination, clarification, evaluation, and comparison of Eligibility Documents shall not be disclosed to any of the PSPs or other persons not officially involved in the Competitive Selection Process; provided that the BCDA, through the JVSC, shall not have the obligation to keep any information submitted by a PSP confidential after award of the Project.

By accepting the Invitation Documents and other BCDA Supplied Information, each PSP warrants that:

- (i) it has not relied and will not rely upon any of 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 Competitive Selection Process or the Project until it has satisfied itself as to the accuracy, adequacy, suitability and completeness of the Information.

The PSP acknowledges that the BCDA may, in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the BCDA Supplied Information.

2.12 Acceptance of Criteria and Waiver of Rights to Enjoin Project

By submitting the Eligibility Documents, particularly the Acceptance of Criteria and Waiver of Rights to Enjoin Activity form in **Annex EPF-6** of IPSP: Volume 1 - Forms and Annexures, a PSP thereby unequivocally accepts the Eligibility Requirements established by the JVSC of the BCDA, and such PSP, including all Consortium Members, nominated Contractors and PSP 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 BCDA, its JVSC, its Affiliates, or any of the BCDA Advisers or any other entity as would prevent, suspend, restrain or in any manner forestall, hinder or render inconvenient any stage of the Competitive Selection Process, the award of the JV Agreement and other relevant Concession Documentation to the Winning PSP, or the carrying out of the awarded JV Agreement and other relevant Concession Documentation.

3. Eligibility Requirements

3.1 Legal Capacity Requirements

3.1.1 The following entities shall be eligible to participate in the Competitive Selection Process:

- (a) Partnerships;
- (b) Corporations; or
- (c) A Consortium.

The PSP must meet the nationality and ownership requirements under the Constitution and other applicable laws and issuances in relation to the Project.

3.1.2 If the PSP is a partnership, it must be registered with the SEC and at least sixty percent (60%) of the interest in the partnership must belong to citizens of the Philippines. If the PSP is a corporation, it must be registered with the SEC and at least sixty percent (60%) of the total number of outstanding shares of stock entitled to vote in the election of directors and the total number of outstanding capital stock belong to citizens of the Philippines. The PSP must certify that it, its Affiliates, and Contractors whose projects and experience are being submitted as evidence of fulfillment of the Technical Capability Requirements or Financial Capability Requirements have no Unsatisfactory Performance Record.

3.1.3 If the PSP is a Consortium:

- (a) its members who are partnerships or corporations or other legal persons must be registered with the SEC. If a foreign partnership or corporation or other legal person, 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; and
- (b) its members who are sole proprietorships must be registered with the DTI. If a foreign sole proprietorship, such member must be registered with the appropriate government agency equivalent to the DTI in the foreign country where the foreign sole proprietorship was registered for creation or recognition of its 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 Capability Requirements or Financial Capability Requirements have no Unsatisfactory Performance Record.

- 3.1.4 If the PSP that is a Consortium becomes the Winning PSP, it shall cause the incorporation of an SPC, which shall either sign and execute, or accede to the JV Agreement and other relevant Concession Documentation; provided that at least sixty percent (60%) of the total number of the SPC's outstanding shares of stock entitled to vote in the election of directors and the total number of the SPC's outstanding capital stock belong to citizens of the Philippines. 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 PSP that is a Consortium.
- 3.1.5 In all cases, the PSP must ensure that, at the time of the formation of the JV with the BCDA, and for the term of the Project, not less than sixty percent (60%) of the voting capital stock and of the total outstanding capital stock of the JV is owned by Philippine nationals, in compliance with applicable laws and issuances in relation to the Project.

3.2 Technical Capability Requirements

3.2.1. Design and Construction Experience

- (a) The Design and Construction Experience Requirements may be fulfilled by the relevant entit(y/ies) referred to in Section 3.2.1(e). The PSP may nominate one entity or separate entities to fulfill the Design Experience Requirement and Construction Experience Requirement, respectively, provided that only one entity shall be nominated to fulfill the Design Experience Requirement and only one entity shall be nominated to fulfill the Construction Experience Requirement.
- (b) The entity nominated to fulfill the Design Experience Requirement must have satisfactorily completed the design of all of the following eligible projects, whether locally or abroad, within the past ten (10) years from the date of this IPSP: Volume 1 — Eligibility Documents”:

Table 1-A: Design Experience Requirements

Category of Completed Similar Project	Minimum Requirement
a) Water well drilling and well development	20 no. wells to a depth of more than 100 m
b) Water treatment plant using surface water as source	1 no. WTP of minimum design capacity 25,000 m ³ /day
c) Sewage treatment plant with biological process	2 no. STP of minimum design capacity 10,000 m ³ /day

- (c) The entity nominated to fulfill the Construction Experience Requirement must have satisfactorily completed the construction of all of the following eligible projects, whether locally or abroad, within the past ten (10) years from the date of this IPSP: Volume 1 — Eligibility Documents:

Table 1-B: Construction Experience Requirements

Category of Completed Similar Project	Minimum Requirement
a) Water well drilling and well development	20 no. wells to a depth of more than 100 m
b) Water treatment plant using surface water as source	1 no. WTP of minimum design capacity 25,000 m ³ /day
c) Sewage treatment plant with biological process	2 no. STP of minimum design capacity 10,000 m ³ /day

- (d) The combined project cost of the completed projects submitted in compliance with the Design Experience Requirement must be in the amount of at least PhP 2,500,000,000 (Two Billion Five Hundred Million Philippine Pesos).

The combined project cost of the completed projects submitted in compliance with the Construction Experience Requirement must be in the amount of at least PhP 2,500,000,000 (Two Billion Five Hundred Million Philippine Pesos).

If a single entity fulfills the Design Experience Requirement and the Construction Experience Requirement, the same projects may be relied upon by such entity to satisfy such requirements.

The project cost shall be converted to their equivalent prices as at the Eligibility Documents Submission Date by applying the official historical annual inflation rates of the countries where the criteria projects are located using the indicator "inflation, consumer prices (annual %)" from the World Bank Databank (<http://databank.worldbank.org/data/home.aspx>) as the source and the foreign exchange rates prevailing as of the Eligibility Documents Submission Date. In submitting past project values to meet the above criteria, each PSP shall submit both the relevant original contract prices and its methodology for determining the equivalent prices as at the Eligibility Documents Submission Date.

- (e) The entit(y/ies) which fulfill(s) the Design Experience Requirement and the Construction Experience Requirement may be:

(1) if the PSP is a partnership or corporation:

- i. the PSP itself; and/or
- ii. a Contractor; and/or
- iii. an Affiliate of any of the foregoing entities;

(2) if the PSP is a Consortium:

- i. a Consortium Member; and/or
- ii. a Contractor; and/or
- iii. an Affiliate of any of the foregoing entities,

There shall be no aggregation of experience amongst the foregoing entities. The nominated entity must by itself comply with the relevant Design Experience Requirement and Construction Experience Requirement for which it is being nominated.

(f) Each entity whose completed projects are being submitted to fulfill the Design Experience Requirement and Construction Experience Requirement, whether the PSP or a Consortium Member:

(1) must certify that they have no Unsatisfactory Performance Record; and

(2) must possess the following:

- i. for an entity fulfilling the Construction Experience Requirement, a valid license issued by the Philippine Contractors Accreditation Board ("**PCAB**") for Large B Classification/License Category AAA, or in the case of a foreign entity; by an equivalent accreditation institution in the foreign entity's country of origin, provided that such foreign entity must secure a license and accreditation from the PCAB after the Winning PSP is awarded the Project;
- ii. A valid ISO 9001 certification, or an "equivalent" as set forth below; and
- iii. A valid ISO 14001 certification, or an "equivalent" as set forth below.

The certified true copies of the PCAB license (or its equivalent in the case of a foreign entity) and the ISO certifications (or their equivalent) must be issued by the relevant body issuing such license/certification. However, for purposes of determining the eligibility, the JVSC will accept copies of the PCAB license (or its equivalent) and the ISO certifications (or their equivalent), accompanied by a notarized certification issued by the relevant officer of the entity required to submit these documents that such copies are true and faithful reproductions of the original license/certifications. If the PSP is deemed eligible, such entity shall be required to submit the certified true copy of the PCAB license and ISO certifications issued by the relevant body issuing such license/certifications on the Proposals Submission Date. In the event that a PCAB license or ISO certification has expired and an application for its renewal has already been filed and is pending, the relevant entity may, for purposes of determining eligibility, submit a notarized certification which contains (a) a statement that it has applied for the renewal of the license/certification attaching a copy of the application filed as proof thereof, (b) an undertaking to submit to the JVSC certified true copies of such renewed license/certification within ten (10) days from receipt, and (c) a copy of the expired license/certification.

For purposes of determining eligibility, in lieu of the ISO certifications, the entity proposed to meet any of the Technical Capability Requirements may submit a document, which is an "equivalent" of the required ISO certifications. Such an equivalent could be a notarized certification from the competent regulatory authority stating that:

- (a) it is the regulatory authority in the country where the entity being proposed to meet a particular Technical Capability Requirements was registered for creation of recognition of its legal personality or capacity and it has jurisdiction over such entity;

- (b) the laws in such country do not require entities like the entity being proposed to meet a particular Technical Capability Requirements to secure ISO certifications;
 - (c) the entity proposed to meet a particular Technical Capability Requirements is in compliance with the relevant policies, procedures, and programs required by applicable laws, rules and regulations of such country; and
 - (d) the entity being proposed to meet a particular Technical Capability Requirements has in place internal procedures and processes equivalent to those required under the relevant ISO certification.
- (g) The entity or entities proposed to meet the Design Experience Requirement and Construction Experience Requirement which are declared eligible by the JVSC will be identified in the JV Agreement and other relevant Concession Documentation. The JV Partner shall use the entity or entities which are identified in the JV Agreement and other relevant Concession Documentation as having been declared eligible without need for further consent from BCDA, subject to compliance with applicable law. The use of any entity or Contractor other than those identified in the JV Agreement and other relevant Concession Documentation as having been declared eligible by the JVSC will require the prior written consent of BCDA, and will be subject to the JV Partner's demonstration to the BCDA's satisfaction that the proposed entity or Contractor meets the requirements in Section 3.2.1.

3.2.2. Operation and Maintenance Experience

- (a) The Operation and Maintenance Experience Requirement may be fulfilled by the relevant entity referred to in Section 3.2.2(b). The entity nominated to fulfill the Operation and Maintenance Experience Requirement must have completed at least 5 full years of operation and maintenance of the following facilities within the last 10 years from the date of this IPSP: Volume 1 — Eligibility Documents:

Table 2: Operation and Maintenance Experience Requirements

Category of Operation and Maintenance	Minimum Requirement
a) Water supply	1 no. concessions with water supplied in excess of 100,000 m ³ /day
b) Wastewater	1 no. concessions with wastewater treated in excess of 50,000 m ³ /day
Combined water and wastewater concessions can count towards the Operation and Maintenance Experience Requirements under a) and b) above if they exceed the respective minimum capacities.	

- (b) The entit(y/ies) which fulfill(s) the Operation and Maintenance Experience Requirements may be:
- (1) if the PSP is a partnership or corporation, the PSP itself.
 - (2) if the PSP is a Consortium, the Lead Member that is neither a natural person nor a sole proprietorship.

- (c) Each entity whose completed projects are being submitted to fulfill the Operation and Maintenance Experience Requirements, whether the PSP or the Lead Member must certify that it has no Unsatisfactory Performance Record.

3.2.2. Qualified Key Personnel

- (a) The PSP (or its Affiliates), the Consortium Members (or their Affiliates) or a Contractor must have among their personnel, individuals with the following required qualifications and experience:

Table 3: Minimum Qualifications and Experience of Key Personnel

Position	Minimum Qualifications and Type of Experience Required	Years of Experience Required
Design Manager	Bachelor's degree from a recognized institution and (if applicable) recognized professional qualification or license in civil engineering with individual design management experience on at least two (2) projects involving urban infrastructure and water and sewage process treatment, each with a project cost of at least PhP 1,250,000,000.	15
Construction Manager	Bachelor's degree from a recognized institution and (if applicable) recognized professional qualification or license in civil engineering or construction management with individual project management experience on at least two (2) water and wastewater utility projects, each with a project cost of at least PhP 1,250,000,000.	15
Operations Manager	Bachelor's degree from a recognized institution and (if applicable) recognized professional qualification or license in a relevant process or engineering discipline with individual operational	15

	management experience on at least one (1) project involving water and wastewater utilities, with a project cost of at least PhP 2,500,000,000.	
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Personnel may be designated by PSPs as satisfying one or more of the personnel requirements identified in Table 3. The personnel identified in Table 3 may be employed or engaged by the PSP (or its Affiliates), a Consortium Member (or any of their Affiliates) or a Contractor, provided that the Operations Manager shall be engaged by the Winning PSP.

IPSP: Volume 2 – Competitive Selection Documents shall provide for the specific Smart/Green City Requirements for the Concession Documentation. The PSP shall ensure that personnel identified in its Proposal (to be submitted under IPSP: Volume 2 - Competitive Selection Documents) have experience with such Smart/Green City Requirements in design, construction and operations, as the case may be.

3.3 Financial Capability Requirements

- 3.3.1 The Financial Capability Requirement may be fulfilled by the relevant entity referred to in Section 3.3.1(b). The entity nominated to fulfill the Financial Capability Requirement shall have the capability to provide the minimum amount of equity to be used in financing the completion of the entire Project. The PSP may secure debt to fund its contributions to the JV, provided that: (a) there shall be no debt secured by the JV for such contributions without BCDA's consent; (b) there shall be no BCDA or government guarantee for any such loan; (c) the maximum proportion of the PSP's equity in, or contributions to, the JV that may be financed by debt shall be 70% at any time; and (d) no security interest or other encumbrance shall be granted over the Concession Documentation, the PSP's shares or interests in the JV or any other assets of the JV without BCDA's prior written consent, other than certain limited security interests which are expressly permitted under the Concession Documentation.
- (a) To be eligible to bid for the Project, the PSP or a related entity as described in Section 3.3.1(b) below, must be able to demonstrate the minimum amount of equity for the Project through:
- (1) A minimum Net Worth equivalent to at least PhP 2,500,000,000 (Two Billion Five Hundred Million Philippine Pesos) or its equivalent as of its audited financial statements for the previous three (3) financial years, the latest of which must be dated not earlier than 31 December 2017.
 - (2) In case of natural person or sole proprietorship: certified true copy of the latest income tax returns for the previous three (3) financial years, the latest of which must be dated not earlier than 31 December 2017, stamped "received" by the BIR.
 - (3) In addition:
 - a. If the entity proposed to comply with the Financial Capability Requirements has made a deposit equivalent to the minimum equity

required to be set aside or earmarked for the Project, a certification from the relevant bank that such a deposit has been made.

- b. If the entity proposed to comply with the Financial Capability requirements through debt, notarized statement/certification from the domestic universal/commercial bank or any international bank recognized by the *Bangko Sentral ng Pilipinas* attesting that the nominated entity is banking with them, is in good financial standing, and is qualified to obtain credit accommodations from such banks to finance the Project.
- (b) The entity which fulfills the Financial Capability Requirement may be:
- (1) If the PSP is a partnership or corporation:
 - i. The PSP itself; or
 - ii. An Affiliate of the PSP that will guarantee the obligations of the PSP under the Concession Documentation in relation to the Project.
 - (2) If the PSP is a Consortium:
 - i. Any of the Consortium Members; or
 - ii. An Affiliate of any Consortium Member that will guarantee the obligations of a Consortium Member under the Concession Documentation in relation to the Project.

For the purpose of computing the minimum Net Worth of the PSP that is a Consortium, the minimum Net Worth of any Consortium Member or any Affiliate of a Consortium Member that will guarantee the obligations of a Consortium Member (as applicable) may be aggregated.

- (c) Except as provided in Section 3.3.1(b), the PSP shall be allowed to nominate only a single entity to meet the Financial Capability Requirement, which entity must meet both the requirements in Section 3.3.1(a) alone.
- (d) The entity being submitted to fulfill the Financial Capability Requirement must certify that it has no Unsatisfactory Performance Record.

4. Eligibility Documents

On or before the Eligibility Documents Submission Date, the PSP must submit its application to be declared as an Eligible PSP. It shall consist of the following Eligibility Documents (to be submitted as a single package) enumerated in this Section 4, using the relevant forms in IPSP: Volume 1 - Forms and Annexures or such other form acceptable to BCDA.

4.1 Legal Capacity Documents

- 4.1.1 Notarized Application to be Declared Eligible and Bid (using the form in **Annex EPF-1** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the PSP.
- 4.1.2 For a PSP that is a partnership or corporations, Notarized Authority to Apply to be Declared Eligible and Bid and Designation of Authorized Representative (using the form prescribed in **Annex EPF-2A** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the PSP.

For Consortia, each Consortium Member's Notarized Authority to Participate in the Consortium and Apply to be Declared Eligible and Bid, and Designation of Lead Member and Authorized Representative of Consortium (using the form prescribed in **Annex EPF-2B** of IPSP: Volume 1 - Forms and Annexures).

- 4.1.3 Business Structure (using the form in **Annex EPF-3A** of IPSP: Volume 1 - Forms and Annexures for a PSP that is a partnership or corporation, or in **Annex EPF-3B** of IPSP: Volume 1 - Forms and Annexures for a PSP that is a Consortium). The Business Structure must also indicate the entities that fulfill the Technical Capability and Financial Capability Requirements in Sections 3.2 and 3.3; and any Contractors or Affiliates of these entities whose projects, experiences, or financial qualifications are being submitted to comply with the Eligibility Requirements.

If the PSP 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%). It must also submit a Consortium Agreement (pursuant to which the Consortium Members jointly and severally bind themselves for all of the obligations of the Consortium under the JV Agreement and other relevant Concession Documentation) using the form in **Annex EPF-3C** of IPSP: Volume 1 - Forms and Annexures.

- 4.1.4 Basic Information Sheet (using the form in **Annex EPF-4** of IPSP: Volume 1 - Forms and Annexures) to be submitted by all persons / entities listed in all sections of the Business Structure.

(a) Required attachments, as applicable:

- (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, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

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.

- (2) Certified true copy of SEC Certificate of Incorporation (for corporations) or Certificate of Recording (for partnerships) or certified true copy of DTI Business Name Registration (for sole proprietorships), or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC/DTI 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, the DTI, or their equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue. If in a particular foreign jurisdiction, the Certificate of Incorporation is issued by the registrar of the corporation, then the JVSC will accept a certified true copy of the Certificate of Incorporation issued by the registrar of the corporation.

- (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, or the entity's corporate secretary, or any officer of the entity duly-authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.
- (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, or the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

If an officer other than the Corporate Secretary certifies any of the foregoing documents, a notarized certification authorizing such officer to certify the aforementioned documents must be submitted.

- 4.1.5 Notarized Certification of Absence of Unsatisfactory Performance Record (using the form in **Annex EPF-5** of IPSP: Volume 1 - Forms and Annexures) to be submitted by all persons / entities listed in all sections of the Business Structure.
- 4.1.6 A Notarized Acceptance of Criteria and Waiver of Rights to Enjoin Activity (using the form in **Annex EPF-6A** of IPSP: Volume 1 - Forms and Annexures for a PSP which is a partnership or corporation, **Annex EPF-6B** of IPSP: Volume 1 - Forms and Annexures for a PSP which is a Consortia, **Annex EPF-6C** of IPSP: Volume 1 - Forms and Annexures for all PSP Industry Affiliates).
- 4.1.7 An Authorization Letter (using the form in **Annex EPF-7A** of IPSP: Volume 1 - Forms and Annexures for a PSP which is a partnership or corporation, or in **Annex EPF-7B** of IPSP: Volume 1 - Forms and Annexures for a PSP which is a Consortium).
- 4.1.8 A Notarized Certification Relating to Eligibility Documents (using the form in **Annex EPF-8** of IPSP: Volume 1 - Forms and Annexures).

- 4.1.9 A Notarized Confidentiality Undertaking in favor of the BCDA to be submitted by the PSP; for a PSP which is a Consortium, it is to be executed by all Consortium Members (using the form in **Annex EPF-9**).

4.2 Technical Capability Documents

- 4.2.1 Design and Construction Experience Requirements (using the form in **Annex EPF-10A** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the entity or entities that fulfill the Design and Construction Experience Requirements in Section 3.2.1, as identified in the Business Structure, together with the following required attachments:
- (1) Notarized Certification of Absence of Unsatisfactory Performance Record.
 - (2) Notarized copy of the original signed contract agreement for the project(s) satisfying the specified Design Experience Requirement and/or Construction Experience Requirement under Section 3.2.1.
 - (3) Notarized Certificate of Project Completion from the project's owner. A copy of the original Certificate of Project Completion will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design Experience Requirement and/or Construction Experience Requirement that such copy is a true and faithful reproduction of the original Certificate of Project Completion.
 - (4) If the project was completed by an Affiliate of the PSP or Consortium Member, evidence of such affiliation.
 - (5) [For the entity nominated to fulfill the Construction Experience Requirement], certified true copy of a valid license issued by the PCAB for Large B Classification/License Category AAA, in the case of a Filipino entity or, in the case of a foreign entity, an equivalent license issued by an equivalent accreditation institution in the foreign entity's country of origin, provided that such foreign entity must secure a license and accreditation from the PCAB after the Winning PSP is awarded the Project. The certified true copy of the PCAB license (or its equivalent in the case of a foreign entity) must be issued by the relevant body issuing such license/certification. However, for the purpose of determining eligibility, a copy of the PCAB license (or its equivalent) will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original license. If the PSP is deemed eligible, such entity shall be required to submit the certified true copy of the license issued by the relevant body issuing such license on the Proposals Submission Date. In the event that a PCAB license has expired and an application for its renewal has already been filed and is pending, the relevant entity may, for purposes of determining eligibility, submit a notarized certification which contains (a) a statement that it has applied for the renewal of the license, (b) an undertaking to submit to the JVSC certified true copies of such renewed license within ten (10) days from receipt, and (c) a copy of the expired license.
 - (6) Certified true copy of a valid ISO 9001 or an "equivalent" as set forth below.
 - (7) Certified true copy of a valid ISO 14001 or an "equivalent" as set forth below.

The certified true copies of the ISO certifications (or their equivalent) must be issued by the relevant body issuing such certification. However, for the purpose of determining eligibility, a copy of the ISO certifications (or its equivalent) will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original ISO certifications. If the PSP is deemed eligible, such entity shall be required to submit the certified true copy of the ISO certifications issued by the relevant body issuing such ISO certifications on the Proposals Submission Date. In the event that an ISO certification has expired and an application for its renewal has already been filed and is pending, the relevant entity may, for purposes of determining eligibility, submit a notarized certification which contains (a) a statement that it has applied for the renewal of the certification, (b) an undertaking to submit to the JVSC certified true copies of such renewed certification within ten (10) days from receipt, and (c) a copy of the expired certification.

In lieu of the ISO certifications, the relevant entity may submit a document that is an “equivalent” of the required ISO certifications. Such an equivalent may be a notarized certification from the competent regulatory authority stating that:

- (a) it is the regulatory authority in the country where the entity being proposed to meet a particular Technical Capability Requirements was registered for creation of recognition of its legal personality or capacity and it has jurisdiction over such entity;
 - (b) the laws in such country do not require entities like the entity being proposed to meet a particular Technical Capability Requirements to secure ISO certifications;
 - (c) the entity proposed to meet a particular Technical Capability Requirements is in compliance with the relevant policies, procedures and programs required by applicable laws, rules and regulations of such country; and
 - (d) the entity being proposed to meet a particular Technical Capability Requirements has in place internal procedures and processes equivalent to those required under the relevant ISO certification.
- (8) Statement of Willingness to Participate In, and Capacity to Undertake the [Design/Construction], [Design], [Construction] Technical Requirements, and Commitment to Enter into an Agreement with the JV to Undertake the [Design/Construction], [Design], [Construction] Technical Requirements (using the form in **Annex EPF-11A** of IPSP: Volume 1 - Forms and Annexures) to be submitted by each entity proposed by the PSP or Consortium to meet the Design/ Construction Experience Requirement.

4.2.2 Operation and Maintenance Experience Requirements (using the form in **Annex EPF-10B** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the entity that fulfills the Operation and Maintenance Experience Requirement(s) in Section 3.2.2, as identified in the Business Structure, together with the following required attachments:

- (1) Notarized Certification of Absence of Unsatisfactory Performance Record.

- (2) Notarized copy of the original signed contract agreement for the project(s) satisfying the specified Operation and Maintenance Experience Requirements under Section 3.2.2.
 - (3) Notarized Certificate of Project Completion from the project's owner, or an entity authorized to issue such certificate on behalf of the project's owner, payment certificate or any other document from the project's owner, or an entity authorized to issue such certificate on behalf of the project's owner. A copy of the original Certificate of Project Completion or other certificate or document will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the project owner, authorized entity or the relevant officer of the PSP that such copy is a true and faithful reproduction of the original Certificate of Project Completion.
- 4.2.3 Statement of Willingness to Participate In, and Capacity to Undertake the Operation and Maintenance, and Commitment to Enter into an Agreement with the JV to Undertake the Operation and Maintenance (using the form in **Annex EPF-11B** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the entity proposed by the PSP to meet the Operation and Maintenance Experience Requirement.
- 4.2.4 List of Key Personnel (using the form in **Annex EPF-12** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the PSP. More than one name can be submitted for each position.

4.3 Financial Capability Documents

Notarized Statement of Financial Capability (using the form in **Annex EPF-13** of IPSP: Volume 1 - Forms and Annexures) to be submitted by the entity that fulfills the Financial Capability Requirement as identified in the Business Structure, together with the following required attachments:

- (1) Certified true copy of the latest audited financial statements for the previous three financial years, the latest of which must be dated not earlier than 31 December 2017, 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 certified true copy of the latest audited financial statements may be issued by the relevant officer of the entity that fulfills the Financial Capability Requirements. However, such certified true copy must be stamped "received" by the BIR (or the equivalent agency in the case of the foreign entity).
- (2) In case of natural person or sole proprietorship: certified true copy of the latest income tax returns for the previous three (3) financial years, the latest of which must be dated not earlier than 31 December 2017, stamped "received" by the BIR.
- (3) In case the Financial Capability Requirement will be fulfilled through a set-aside deposit, a notarized certification from the relevant bank as proof of set-aside deposit indicating the name of the account holder, and the amount of the set-aside deposit; or
- (4) 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 3.3.1(b) is banking

with them, is in good financial standing, and is qualified to obtain credit accommodations from such banks to finance the Project.

5. One PSP, One Submission

Each PSP may submit only one application to be declared as an Eligible PSP. A PSP may not be a member of another Consortium, nor have an Affiliate that is a member of another Consortium. No Consortium Member may 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 a Competitive Selection Process, there are restrictions on the extent of affiliation and ownership between PSPs and members of different Consortia. These are described in greater detail in Section 18.

These restrictions, however, do not cover or limit the participation of proposed Contractors, which may be proposed by more than one PSP provided that such Contractors (1) are not themselves (or through their Affiliates) (i) PSPs, (ii) Consortium Members or (iii) Affiliates of any of the PSPs or Consortium Members and (2) comply with the applicable requirements set forth in Section 18 with regard to Contractors. If a Contractor complies with the requirements of this Section 5, it shall not be considered a Conflict of Interest for the purposes of this IPSP: Volume 1 - Eligibility Documents.

6. Format and Signing of Eligibility Documents

- 6.1 PSPs shall submit their Eligibility Documents (as a single package) through their duly authorized representative on or before the Eligibility Documents Submission Date.
- 6.2 The Eligibility Documents shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative/s of the PSP.
- 6.3 The Eligibility 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 this IPSP: Volume 1 — Eligibility Documents and to any other documents, which may be reasonably made to comply with these requirements.
- 6.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the PSP.

7. Sealing and Marking of Eligibility Documents

- 7.1 Each PSP shall submit one (1) original and one (1) copy of its Eligibility Documents.
- 7.2 PSPs shall enclose their original Eligibility Documents described in Section 4, in a sealed envelope marked as “ORIGINAL — ELIGIBILITY DOCUMENTS” for the original set and “COPY — ELIGIBILITY DOCUMENTS” for the copy set. The words “ORIGINAL — ELIGIBILITY DOCUMENTS” and “COPY — ELIGIBILITY DOCUMENTS” shall be typed or written in indelible ink and shall be signed by the PSP’s duly authorized representative. The envelopes containing the original and the copies shall then be enclosed in one single envelope or box.

7.3 The PSP shall also submit five (5) clear electronic or scan copies of the Eligibility Documents in CDs/DVDs/USBs. The electronic copies of the Eligibility Documents must be in Portable Document Format (PDF) files arranged in exactly the same sequence as those of the original set of Eligibility Documents. Where practicable, the PSP shall also provide searchable PDF copies of its Eligibility Documents. The CDs/DVDs/USBs must be placed in a sealed envelope and marked "ELECTRONIC COPY – ELIGIBILITY DOCUMENTS", and such envelope shall be placed in the envelope or box together with the original set.

7.4 All envelopes shall be labeled as follows:

(a) marked in accordance with 7.2 above;

(b) addressed to the BCDA – JVSC for the Project:

Nena D. Radoc
Chairperson
JVSC for the Water Infrastructure Project – New Clark City
Bases Conversion and Development Authority
BCDA Corporate Center
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
WATER INFRASTRUCTURE PROJECT

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

(e) bear a warning "**DO NOT OPEN BEFORE 2:00 P.M., 18 JUNE 2018**" the time and date for the opening of Eligibility Documents.

7.5 If the Eligibility 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. Eligibility Documents Submission Date

Eligibility Documents must be received by the BCDA's JVSC on or before 12:00 p.m. on 18 June 2018.

9. Late Submission of Eligibility Documents

Any Eligibility Documents submitted after the Eligibility Documents Submission Date shall be declared "Late" and shall be returned unopened by the BCDA.

10. Modification and Withdrawal of Eligibility Documents

10.1. The PSP may modify its Eligibility Documents after it has been submitted; provided that the modification is received by JVSC prior to the deadline specified in Section 8. The PSP shall not be allowed to retrieve its original Eligibility Documents, but shall be allowed to submit another set equally sealed,

properly identified, linked to its original bid marked as “ELIGIBILITY MODIFICATION” and complying with the other labelling requirements stipulated in Section 7.4(b) to (e) (inclusive) and stamped “received” by the JVSC. The PSP’s modified Eligibility Documents supersede the original Eligibility Documents. Modifications received after the Eligibility Documents Submission Date shall not be considered and shall be returned to the PSP unopened.

- 10.2. A PSP may, through a letter of withdrawal, withdraw its Eligibility Documents after they have been submitted, for valid and justifiable reasons; provided that the letter of withdrawal is received by BCDA prior to the Eligibility Documents Submission Date.
- 10.3. Eligibility Documents requested to be withdrawn in accordance with this Section 10 shall be returned unopened to the PSP concerned. A PSP that withdraws its Eligibility Documents shall not be permitted to submit another set, directly or indirectly, for the same Project.

11. Opening and Preliminary Examination of Eligibility Documents

- 11.1 The JVSC will open the envelopes containing the Eligibility Documents in the presence of the PSP’s representatives who choose to attend the opening of Eligibility Documents at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City on 18 June 2018 at 2:00 p.m. The PSPs’ representatives who are present shall sign a register evidencing their attendance.
- 11.2 Letters of withdrawal shall be read out and recorded during the opening of Eligibility Documents, and the envelope containing the corresponding withdrawn Eligibility Documents shall be returned unopened to the withdrawing PSP. If the withdrawing PSP’s representative is present during the opening, the original Eligibility Documents and all copies thereof shall be returned to the representative during the opening of Eligibility Documents. If no representative is present, the Eligibility Documents shall be returned unopened by registered mail.
- 11.3 BCDA, through its JVSC, shall within fifteen (15) calendar days after the deadline set for the submission of the Eligibility Documents, complete the evaluation of the Eligibility Documents of the PSPs, and determine which among them are “eligible” and “ineligible.” Accordingly, the JVSC shall duly inform the Eligible PSP within seven (7) calendar days after the approval of their Eligibility Documents. Ineligible PSPs shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.
- 11.4 A PSP determined as “ineligible” shall have three (3) days from the JVSC’s delivery of the notice of ineligibility to file, in accordance with the notice delivery requirements under Section 2.7, a motion for reconsideration with the JVSC. The JVSC shall act on the motion for reconsideration within seven (7) days. If the motion for reconsideration is not resolved within said period, the motion is deemed denied.

If the motion for reconsideration is denied (or deemed denied) by the JVSC, the PSP shall have seven (7) days from the JVSC’s delivery of its decision (or lapse of the 7-day period, if deemed denied by the JVSC) to file a written appeal

to the BCDA Board in accordance with the requirements under the appeals mechanism in Section 6.15 of the BCDA JV Guidelines. The BCDA Board shall act on the appeal within thirty (30) days from receipt of the appeal. The decision of the BCDA Board shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.

- 11.5 The envelopes containing the Eligibility 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 PSP;
 - (b) whether there is a modification or substitution; and
 - (c) the presence or absence of each document comprising the Eligibility Documents vis-à-vis a checklist of the required documents.
- 11.6 The eligibility of each PSP shall be determined by examining each of its eligibility requirements or statements against a checklist of requirements, using a non-discretionary “pass/fail” criterion, as stated in this IPSP: Volume 1 — Eligibility Documents, shall be determined as either “eligible” or “ineligible.” If a PSP submits the specific Eligibility Document required, it shall be rated “passed” for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered “failed” for the particular eligibility requirement concerned. If a PSP is rated “passed” for all the eligibility requirements, it shall be considered eligible to participate in the Competitive Selection Process, and the JVSC shall mark the set of Eligibility Documents of the PSP concerned as “eligible.” If a PSP is rated “failed” in any of the eligibility requirements, he shall be considered ineligible to participate in the Competitive Selection Process, and the JVSC shall mark the set of eligibility documents of the PSP concerned as “ineligible.” In either case, the JVSC chairperson or his duly designated authority shall countersign the markings.
- 11.7 A PSP may also be disqualified for any of the following reasons:
- a. late submission of the Eligibility Documents or any part thereof;
 - b. material or willful misrepresentation in the pre-selection process;
 - c. any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice as described in Section 17;
 - d. any form of political or other lobbying with respect to the pre-selection process;
 - e. illegal conduct or attempt to influence the JVSC’s evaluation of the Eligibility Documents or the pre-selection process;
 - f. any Conflict of Interest that would give it any unfair advantage in the pre-selection process as described in Section 18;
 - g. any Outstanding Dispute with Government as described in Section 19;
 - h. any violation of the Lock-Up Rules as described in Section 13.5; or
 - i. failure to comply with any of the terms, conditions and instructions of the Invitation Documents; or
- 11.8 Only Eligible PSPs may apply for and receive the IPSP: Volume 2 — Competitive Selection Documents for the preparation of Proposals.

12. Notification of Results of Evaluation of Eligibility Documents

It is anticipated that the JVSC will notify all PSPs as to whether they passed the eligibility stage not later than seven (7) days after the JVSC determines which PSPs are eligible or disqualified. All PSPs that pass the eligibility stage shall be known as Eligible PSPs.

If the PSP proposed more than one Contractor to fulfill the Design and Construction Experience Requirements and/or Operation and Maintenance Experience Requirement, the JVSC shall also notify said PSP as to which of the Contractors it proposed were passed.

13. Lock-Up Rules during the Competitive Selection Process

The following rules (“**Lock-Up Rules**”) shall apply from the Eligibility Documents Submission Date until the Proposals Submission Date (“**Lock-Up Period**”):

13.1 Corporation and Partnership

13.1.1 For a PSP that is a corporation, partnership or other legal entity, no restrictions shall be imposed on the ownership structure of such a PSP; Provided that, the PSP shall ensure its continued eligibility with respect to the Technical Capability Requirements and the Financial Capability Requirements.

13.2.1 However, if a PSP which is a corporation, partnership or other legal entity proposes an Affiliate to meet any of the Eligibility Requirements, the proposed Affiliate must remain as such in accordance with the criteria for Affiliates as provided in Section 1.2.

13.2 Consortium

13.2.1 A Consortium Member, except for the Lead Member, may leave the Consortium and not be replaced by any other entity (“**Withdrawal**”), subject to the following conditions and compliance with the requirements of Section 13.2.4:

(a) A Consortium Member proposed to meet the Technical Capability Requirements cannot Withdraw from the Consortium, except in the event of a Substitution as provided in Section 13.2.2 below.

(b) Withdrawing Consortium Members cannot join any other PSP that has been determined to be eligible to bid for the Project.

13.2.2 A Consortium Member, except for the Lead Member, may be replaced by another entity not previously identified in the Consortium’s Business Structure under **Annex EPF-3B** of IPSP: Volume 1 - Forms and Annexures (“**Substitution**”), subject to the following conditions and compliance with the requirements of Section 13.2.4:

(a) If the Consortium Member leaving the Consortium is the only entity that is proposed to meet a particular Technical Capability Requirement, then the substitute should meet the particular Technical Capability Requirement that such Consortium Member was proposed to meet and the Legal Capacity Requirements.

(b) The substitute should not be a Consortium Member (or an Affiliate of such entities) identified in the Business Structure of another Eligible PSP.

- 13.2.3 Subject to Sections 13.2.4(a) and (b), any Consortium Member can increase or reduce its committed percentage equity interest in the Consortium as specified in Business Structure.
- 13.2.4 In the event of a Withdrawal, Substitution, or change in equity interest in a Consortium, the following requirements must be met:
- (a) The Lead Member must always own the highest percentage interest in the Consortium.
 - (b) No Consortium Member, on its own or together with its Affiliates, shall own a greater percentage interest in the Consortium than the Lead Member, on its own or together with its Affiliates.
 - (c) Any change in the composition of the Consortium or its ownership structure must be approved by the JVSC.
 - (d) An application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date. Together with its application, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements, and if such change does not delay the submission of Proposals on the Proposals Submission Date.
 - (e) In the event of a Withdrawal, the PSP must inform the JVSC in writing, and in accordance with Section 2.7, on or prior to the Proposals Submission Date.
 - (f) If the proposed Consortium composition change is not approved by the JVSC in the JVSC's discretion, the applying PSP may revert to the original Consortium composition or proposed Consortium ownership structure, as provided in its Eligibility Documents.
- 13.2.5 No change in Control of the PSP or change in the Lead Member of a Consortium shall be permitted without the prior written approval of the JVSC.

13.3 Contractors

- 13.3.1 None of the nominated Contractors fulfilling the Technical Capability Requirement may withdraw from a PSP during the Lock-Up Period, unless:
- (a) If the Contractor withdrawing from the PSP is the only entity which is proposed to meet a particular Technical Capability Requirement, then the PSP shall nominate a replacement Contractor that meets or exceeds the particular Technical Capability Requirements, which such withdrawing Contractor was proposed to meet.
 - (b) If the Contractor withdrawing from the PSP is not the only entity which is proposed to meet a particular Technical Capability Requirement, then the other Contractors proposed by the PSP to meet the applicable Technical Capability Requirement shall confirm in writing that they remain willing to participate in the Project with the applicable PSP.
 - (c) An application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date, the PSP

should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements and the other terms and conditions in this IPSP: Volume 1 — Eligibility Documents, and if such change does not delay the submission of Proposals on the Proposals Submission Date.

13.4 Additional Consortium Members and Contractors

13.4.1 Other than in connection with a Withdrawal or Substitution as provided in Section 13.2 above or the withdrawal of a Contractor as provided in Section 13.3 above, in the event that any PSP adds a Contractor, or any Consortium adds additional Consortium Members, an application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date. Together with its application, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements and the other terms and conditions in this IPSP: Volume 1 — Eligibility Documents, and if such change does not delay the submission of the Proposals on the Proposals Submission Date.

13.5 Consequence of Violation of Lock-Up Rules

Any violation of the Lock-Up Rules shall be a ground for disqualification.

14. Failure of Pre-Selection Process

If only one PSP submits its Eligibility Documents or if there is only one Eligible PSP, after the evaluation of Eligibility Documents, the JVSC may, in its sole discretion, declare the Pre-Selection Process a failure, and the Competitive Selection Process may be cancelled, suspended, or re-launched, at the JVSC's discretion.

15. Right to Reject Eligibility Documents, Waive Minor Defects, and Not Proceed with the Competitive Selection Process

The BCDA reserves the right to accept or reject all or any Application to be Declared Eligible and Bid without assigning any reason whatsoever.

The BCDA reserves the right to waive any minor defects in the Eligibility Documents of any PSP.

At any time, the BCDA reserves the right not to proceed with the Pre-Selection Process and the execution of the JV Agreement and other relevant Concession Documentation without prior notice or liability, and without any obligation to give any reason not to proceed.

16. General Conditions and Prohibitions

By submitting Eligibility Documents and participating in the Pre-Selection process, the PSP acknowledges and agrees that:

- a. it, including all Consortium Members, proposed Contractors, their Affiliates, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the entirety of the Competitive Selection Process;

- b. it, including all Consortium Members, proposed Contractors, their Affiliates, and their respective officers, employees, agents, and advisers will not engage in any form of political or lobbying with respect to the Project or attempt to influence the outcome of the Project;
- c. it accepts all the terms and conditions of the Eligibility Documents; and
- d. the JVSC has the right to amend, revise, modify or clarify any of the Eligibility Documents at any time.

17. Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice

The following terms shall have the meaning hereinafter respectively assigned to them:

- a. **“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 Competitive Selection Process or in contract execution; this also includes similar acts punishable under the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019);
- b. **“Fraud”** means a misrepresentation of facts in order to influence the Competitive Selection Process to the detriment of the government, and includes collusive practices among PSPs (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;
- c. **“Collusion”** means a scheme or arrangement between two or more PSPs, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-competitive levels;
- d. **“Coercion”** means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Competitive Selection Process, or affect the execution of the JV Agreement and other relevant Concession Documentation;
- e. **“Undesirable Practice”** means (i) establishing contact with any person connected with, employed or engaged by BCDA or any member of the JVSC with the objective of canvassing, lobbying or (ii) in any manner influencing or attempting to influence the Competitive Selection Process, the evaluation of Eligibility Documents or Proposals, or the implementation of the Concession Documentation; and
- f. **“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 PSPs, Consortium Members, or Contractors with the objective of restricting, subverting or manipulating a full and fair competition in the Competitive Selection Process.

Aside from being disqualified from the Competitive Selection Process, any person found to be engaging in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice shall incur civil and criminal liability under the applicable laws and regulations and shall be prohibited from participating in any bidding conducted by BCDA.

18. Conflict of Interest

PSPs, Consortium Members, including their Contractors, and Affiliates in the Project, must not have any Conflicts of Interest. Subject to the specific carve-out for Contractors stipulated in Section 5, any of the following will be considered a “**Conflict of Interest**”:

- a. A PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) is a member of another Consortium, or an Affiliate of a member of another Consortium.
- b. A PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) is proposed/nominated as a Contractor of another PSP.
- c. A PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates (of either a PSP or of the Consortium Member) has ownership interest in any other PSP, any Consortium Member of any other PSP, or any of its Affiliates that is nominated to fulfill any of the Eligibility Requirements.
- d. A member of the board of directors, partner, officer, employee, or agent of a PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates, who is directly involved in any capacity related to the Competitive Selection Process of such PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates is also directly involved in any capacity related to the Competitive Selection Process for the Project for another PSP, any Consortium Member of another PSP, 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 Competitive Selection Process of the PSP 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 PSP, including the act of voting on any matter related to the Competitive Selection Process of two or more PSPs, such as but not limited to the approval of the relevant entity’s participation in the Competitive Selection 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 PSP in any capacity related to the Competitive Selection Process, unless said Contractor, or professional advisor discloses such fact in writing to each relevant PSP, submits a Conflict Management Plan to such PSPs and submits to BCDA a written consent from each such PSP stating that such PSP has been notified of the potential conflict of interest, has reviewed and approved the Conflict Management Plan prepared by such Contractor or professional adviser and the parties consent to such Contractor or professional adviser’s engagement by the other relevant PSP.

- e. Any of the following shall be considered a Conflict of Interest on account of engagement by the BCDA or ADB for the Project:
 - (1) a PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP 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 Competitive Selection Process.

(2) a PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP 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 PSP, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities.

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

19. Outstanding Dispute with Government

An “**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 PSP, any Consortium Member, and Contractor proposed by the PSP, 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.