



**Republic of the Philippines
Bacolod City**

**BACOLOD SUPERCITY PROJECT
REQUEST FOR COMPARATIVE PROPOSALS**

**INSTRUCTIONS TO CHALLENGERS
PART 1
OCTOBER 2024**

DISCLAIMER

The information contained in these Instructions to Challengers and the other documents comprising the Request for Comparative Proposals (“RCP”) or those subsequently provided to all Challengers or Prospective Bidders, whether verbally or in documentary or any other form, by or on behalf of the City Government of Bacolod (the “CGB”) or any of its officers, employees or advisors, is provided to the Challenger or Prospective Bidder on the terms and conditions set out in the RCP and such other conditions subject to which such information is provided.

The RCP is not an agreement between or an offer to buy or sell an investment by the CGB to the Challengers or Prospective Bidders or any other person. The purpose of the RCP is to provide interested parties with information that may be useful to them in preparing and submitting their Comparative Proposals pursuant to the RCP. The RCP includes statements, which reflect various assumptions and assessments arrived at by the CGB in relation to the Bacolod Supercity Project, as defined herein. Such assumptions, assessments and statements do not purport to contain all the information that each Challenger or Prospective Bidder may require. The RCP may not be appropriate for all persons, and it is not possible for the CGB, its officers, employees or advisors to consider the investment objectives, financial condition, and particular requirements of each person who acquires, reads or uses the RCP. The assumptions, assessments, statements and information contained in the RCP and associated documents may not be complete, accurate, adequate or correct. Each Challenger or Prospective Bidder has the sole responsibility therefore to conduct its own due diligence investigation and analysis in order to check the accuracy, adequacy, correctness, reliability, feasibility and completeness of the assumptions, assessments, statements and information contained in the RCP, and to obtain competent, independent and professional advice from appropriate sources.

Information provided in the RCP to the Challenger or Prospective Bidder covers a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of legal requirements and should not be regarded as a complete or authoritative statement of law. The CGB accepts no responsibility for the accuracy or otherwise of any interpretation of or opinion on law expressed herein.

The CGB, its officers, and employees make no representation or warranty and shall have no liability to any person, including any Challenger or Prospective Bidder, under any law, statute, rules or regulations, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in the RCP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RCP and any assessment, assumption, statement or information contained therein or deemed to form part of the RCP or arising in any way for participation in the Comparative Challenge Process.

The CGB also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Challenger or Prospective Bidder upon the statements contained in the RCP.

The CGB may, in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessments or assumptions contained in the RCP.

Each interested party and the Challenger or Prospective Bidder concerned shall bear all costs associated with or relating to the preparation and submission of its Comparative Proposal including but not limited to preparation, reproduction, postage, delivery fees and expenses associated with any demonstrations or presentations which may be required by the CGB or any other costs incurred in connection with or relating to its Comparative Proposal including the posting of the Bid Security. All such costs and expenses shall be for the account of the Challenger or Prospective Bidder and the CGB or other persons acting on its behalf shall not be liable in any manner whatsoever for the same or for any other direct or indirect costs or other expenses incurred by a Prospective Bidder in the preparation or submission of the Comparative Proposal, regardless of the conduct or outcome of the Comparative Challenge Process.



**Republic of the Philippines
Bacolod City
PUBLIC-PRIVATE PARTNERSHIP
PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE**

INSTRUCTIONS TO CHALLENGERS

1. INTRODUCTION

The City Government of Bacolod (“CGB”) invites Challengers or Prospective Bidders to apply for pre-qualification and to submit Comparative Proposals for the development, financing, design, engineering, construction, operation, management and maintenance of the Bacolod Supercity Project (the “Project”).

The Project will be undertaken as a Build-Transfer-Maintain (“BTM”) between the CGB and the winning private sector proponent (the “Private Sector Proponent”). The Project involves the establishment of a Centralized Command Center, Intelligent Street Lamp Poles with Video Surveillance Analytic, Property and Tax Assessment System, and Geographical Information System.

A more detailed description of the Project and the specific terms and conditions of the BTM transaction are provided in the successfully negotiated Draft Public-Private Partnership Contract (“Draft PPP Contract”) and basic Minimum Performance Standards and Specifications (“MPSS”) for this Comparative Proposal Process.

The Project shall be developed and implemented in accordance with Republic Act No. 11966 or the Public-Private Partnership Code of the Philippines (PPP Code) and its Implementing Rules and Regulations (IRR) and all applicable laws, rules and regulations.

These Instructions to Challengers (“ITC”) provide the procedures and requirements of the Comparative Proposal Process as well as the basic information that Challengers or Prospective Bidders must be aware of and should follow in the preparation and submission of their respective pre-qualification applications and Comparative Proposals.

The Request for Comparative Proposals (“RCP”) consists of the following:

- (a) the Invitation to Pre-Qualify and Submit Comparative Proposals
- (b) the Project Information Memorandum

- (c) the ITC, including its annexes and Bid forms

References to the "RCP" shall mean these three (3) main documents collectively, including any supplemental notices and bid bulletins issued by the Public-Private Partnership Pre-qualification, Bids and Awards Committee of the CGB ("PPP-PBAC") from the date of the first publication of the Invitation to Pre-Qualify and Submit Comparative Proposals until the Comparative Proposal Submission Date. All defined terms shall have the meanings given to them in the RCP.

The purpose of the RCP is to invite qualified private sector proponents to submit Comparative Proposals to challenge the approved unsolicited proposal for the development of the Project (the "Unsolicited Proposal"). The original proponent of the Project, whose Unsolicited Proposal is the subject of this Comparative Proposal Process, is the HighData Infra Corp. (the "Original Proponent").

Only those who have purchased the RCP or paid the participation fee and have registered their interest can participate in the Comparative Proposal Process ("Challengers" or "Prospective Bidders"). For this purpose, the person who acquires the RCP must be: (1) the Challenger or Prospective Bidder itself, (2) an Affiliate of the Challenger or (3) an authorized representative or agent of the Challenger or Prospective Bidder.

The RCP is being issued to those firms as Challengers or Prospective Bidders that have: (1) expressed written interest after the publication of the Invitation to Pre-qualify and Submit Comparative Proposals; (2) executed the prescribed Non-Disclosure Agreement; (3) submitted a document appointing an authorized representative to execute a non-disclosure agreement; and (4) purchased the RCP/ paid the non-refundable participation fee.

2. ROLE OF THE PPP PRE-QUALIFICATION/ QUALIFICATION, BIDS AND AWARDS COMMITTEE (PPP-PBAC)

The PPP-PBAC was created pursuant to Republic Act No. 11966 or the PPP Code and its IRR. In accordance with the PPP Code and its IRR, the PPP-PBAC will be conducting and administering the solicitation of comparative proposals or the Comparative Challenge Process for the Project, and will be directly responsible for: (1) the preparation of the RCP and the publication of the Invitation to Pre-Qualify and Submit Comparative Proposals; (2) the holding of the Pre-Bid Conference; (3) the issuance of bid bulletins or notices; (4) the interpretation of the bidding rules; (5) the conduct of bidding; (6) the evaluation of pre-qualification applications and Comparative Proposals; and (7) the recommendation for the award of the Project.

3. DEFINITIONS

The following words or terms shall have the following meanings in this ITC and the RCP:

- (a) "*Affiliate*" means a corporation or entity effectively Controlled by or Controlling the Challenger or associated with the Challenger under common ownership and Control.
- (b) "*Bid*" or "*Offer*" or "*Proposal*" means a valid offer to undertake the Project to be submitted by a Challenger.
- (c) "*Bid Security*" means the amount or other financial instrument provided by the Challenger to guarantee that it would comply with all the rules of the Comparative Challenge Process and that if awarded the Project, it will enter into the PPP Contract with the CGB within the time prescribed.
- (d) "*Challenger*" or "*Prospective Bidder*" means any partnership, corporation, or Consortium, which purchases the RCP or pays the non-refundable participation fee and participates in the Comparative Challenge Process.
- (e) "*Comparative Proposal*" means the Legal Qualification Documents, Technical Proposal, and Financial Proposal (together with all their annexes, supporting documents, clarifications, explanations, and responses to queries of the CGB) to be submitted by the Challenger or Prospective Bidder pursuant to this ITC.
- (f) "*Comparative Proposal Submission Date*" means the day to be set by the CGB for the submission of the Comparative Proposals.
- (g) "*Comparative Challenge*" or "*Comparative Challenge Process*" or "*Swiss Challenge*" means the comparative selection, price test or procurement activity and procedures being undertaken by the CGB for the selection of the private sector partner of the CGB for the Project, beginning from the publication of the Invitation to Pre- Qualify and Submit Comparative Proposals until the award and signing of the PPP Contract, as described in this ITC.
- (h) "*Conflict of Interest*" is defined in Section 38.
- (i) "*Construction Contractor*" means an entity identified by a Challenger or Prospective Bidder to establish the required Development and

Construction Experience under this ITC and carry out the construction of the Project in accordance with the PPP Contract.

- (j) "*Construction Performance Security*" means a monetary or financial guarantee, to be furnished by the Winning Bidder, of its obligations after the signing of the PPP Contract until the acceptance of the facility as set forth in the PPP Contract.
- (k) "*Control*" means, for purposes of defining an Affiliate, the power to direct or cause the direction of the management policies of a body corporate whether through: (a) ownership of at least fifty percent (50%) plus one share of the outstanding voting shares, or (b) the ability to elect a majority of the members of the Affiliate's board of directors.
- (l) "*Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, and Restrictive Practice*" are each defined in Section 37.
- (m) "*day*" means a calendar day, unless otherwise specified.
- (n) "*ISO*" means the International Organization for Standardization.
- (o) "*Public-Private Partnership Contract*" or "*PPP Contract*" means the contract to be executed between the CGB and the Winning Bidder, which sets forth the terms for the development and implementation of the Project under a Build-Transfer-Maintain arrangement.
- (p) "*Lead Member*" means, for a Challenger which bids as a Consortium, the Consortium Member which should: (a) hold a significant equity interest in the Consortium; (b) be designated in writing to represent and act as such by the other Consortium Members; and (c) be a Philippine entity.
- (q) "*Legal Qualification Requirements*" refers to the legal qualification and eligibility requirements that must be met by a Challenger or Prospective Bidder, as set out in Section 14(a).
- (r) "*Minimum Performance Standards and Specifications*" or "*MPSS*" set of minimum performance or functional standards and specifications the Private Sector Proponent must comply with in undertaking the Design, Construction, Operation and Maintenance of the Project.
- (s) "*Original Proponent*" means the HighData Infra Corp. which submitted the Unsolicited Proposal for the Project.
- (t) "*CGB*" means the City Government of Bacolod.
- (u) "*Philippine Government*" means the Government of the Republic of the Philippines, as defined in the Revised Administrative Code of the

Philippines.

- (v) "*PPP Code*" means the Republic Act (RA) No. 11966, otherwise known as the "Public-Private Partnership Code of the Philippines" and its Implementing Rules and Regulations.
- (w) "*PPP-PBAC*" means the Public-Private Partnership Pre-qualification, Bids and Awards Committee of the CGB constituted pursuant to the PPP Code of the Philippines.
- (x) "*Pre-Bid Conference*" means the meeting between the PPP-PBAC and the Challengers or Prospective Bidders or other interested investors who have purchased the RCP, which is held prior to the Comparative Proposal Submission Date in order to answer queries regarding the Comparative Challenge Process, the RCP, and the Project.
- (y) "*Private Sector Proponent*" means the Winning Bidder selected by the CGB which will execute the PPP Contract and co-develop the Project according to its terms.
- (z) "*Project*" means the development, financing, design, engineering, construction, operation, management and maintenance of the City of SuperCity Project, as more specifically described in the RCP including the PPP Contract.
- (aa) "*Qualification Documents*" mean the documents required to be submitted by the Challenger during the eligibility or qualification stage, as provided for in Section 14.
- (bb) "*Qualification Requirements*" means the qualification criteria that a Challenger or Prospective Bidder must meet in order to pre-qualify or be eligible for consideration and selection as the Private Sector Proponent of the Project as described in Section 14, which includes the Legal Qualification Requirements, the Technical Proposals, and the Financial Proposals Requirements.
- (cc) "*Qualified Challenger*" means a Challenger or Prospective Bidder which passed the qualification stage.
- (dd) "*RCP*" or "*Request for Comparative Proposals*" means the Invitation to Pre-Qualify and Submit Comparative Proposals, the Instructions to Challengers including its Annexes and Bid forms, the

successfully negotiated Draft PPP Contract, the basic Minimum Performance Standards and Specifications, and any supplemental notices and bid bulletins issued by the PPP-PBAC from the date of first publication of the Invitation to Pre-Qualify and Submit Comparative Proposals until the Comparative Proposal Submission Date.

- (ee) "*Unsatisfactory Performance*" means any of the following:
- (a) Within the last five (5) years prior to the Comparative Proposal Submission Date, (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 government agency of the Philippines, or in the Debarred and Cross-Debarred Firms & Individuals list posted on the World Bank website (www.worldbank.org/debarr), or the Asian Development Bank Sanctions list, 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, and Restrictive Practice or having Conflicts of Interest.
- (ff) "*Unsolicited Proposal*" refers to the Project feasibility or business case study, eligibility documents, company credentials, and proposed JV terms and conditions submitted by the Original Proponent to the CGB constituting its offer to develop and undertake the Project, which was done on its own initiative and not in response to any open solicitation or Comparative public bidding conducted by the CGB.
- (gg) "*Virtual Data Room*" or "*VDR*" means the virtual data room to which Challengers were granted access and used to communicate and share information with the Challengers in accordance with the ITC.
- (hh) "*Winning Bidder*" means either: (a) the Highest Ranked Challenger determined by the PPP-PBAC and whose Financial Proposal was not matched by the Original Proponent; or (b) the Original Proponent (if there was no responsive Challenger or after validly matching the Financial Proposal of the Highest Ranked Challenger).

4. COMPARATIVE CHALLENGE

(a) **General Procedure**

The solicitation of Comparative Proposals or the Comparative Challenge Process for the Project will be conducted in accordance with the procurement rules and procedures for unsolicited proposals prescribed by the PPP Code and its IRR.

The Comparative Challenge Process will follow the Single Stage bidding process characterized by a simultaneous submission of qualification requirements and bid proposals by the challengers or prospective bidders.

Under the Single Stage Bidding Process, the Comparative Proposals or Bids of Challengers or Prospective Bidders for the Project shall consist of the: (1) Legal Qualification Documents; (2) Technical Proposal; and (3) Financial Proposal. These three requirements comprising the Comparative Proposal must be prepared and submitted on or before the deadline set by the PPP-PBAC as one package but placed in three (3) separately sealed envelopes.

The Qualification Documents, the Technical Proposals, and the Financial Proposals will be evaluated based on the evaluation criteria set forth in this ITC.

The general procedure for the Comparative Challenge will be as follows:

- 4.a.1. The Invitation to Pre-Qualify and Submit Comparative Proposals will be published online on the official websites of CGB and the Public-Private Partnership Center ("PPPC").
- 4.a.2. Prior to the Comparative Proposal Submission Date, the PPP-PBAC shall hold a Pre-Bid Conference and/or One-on-one meetings with the Challengers or Prospective Bidders who have purchased the RCP and registered their interest to participate in the Comparative Challenge. At the Pre-Bid Conference, the PPP-PBAC will answer queries from such Challengers or Prospective Bidders regarding the Project, the RCP, and all other matters concerning the Comparative Challenge Process.

The Legal Qualification Documents, the Technical Proposals and the Financial Proposals of Challengers or Prospective Bidders will be submitted as one bid package in three (3) separately sealed envelopes to the PPP-PBAC on the Comparative Proposal Submission Date. The envelope containing the Qualification Documents will be opened immediately after the submission of the documents. After evaluating the Qualification Documents, the PPP-PBAC will determine whether the Challenger or Prospective Bidder is pre-qualified to participate in the Comparative Challenge. Only Challengers or Prospective Bidders that pre-qualify shall have their Technical

and Financial Proposals opened and evaluated. The Technical and Financial Proposals of Challengers who fail to pass the pre-qualification stage shall be returned unopened upon the lapse of the period to file a motion for reconsideration of such disqualification or the final resolution of the protest regarding such disqualification, whichever is applicable.

- 4.a.3. The Technical Proposals of qualified Challengers will be opened and evaluated on a subsequent date. The PBAC shall check the submitted technical proposal of each bidder against the rules set forth herein. The PBAC shall complete the evaluation of the technical proposal within thirty (30) calendar days from the date the bids are opened.
- 4.a.4. Those who pass the technical evaluation will have their Financial Proposals opened and evaluated. The PBAC shall complete the evaluation of the financial proposal within fifteen (15) calendar days from the date the bids are opened. The Financial Proposals of Challengers who fail to pass the technical evaluation shall be returned unopened together with a letter from the PPP-PBAC stating the reasons for their disqualification from the bidding.
- 4.a.5. The Financial Proposals of technically compliant Challengers will be opened and evaluated on a later date pursuant to the PPP Code.
- 4.a.6. To be considered as the highest Ranked Challenger, the Challenger must propose a lowest Net Present Value (NPV) of LGU Payments compared to the NPV of LGU Payments proposed by the Original Proponent under the same Project terms and conditions. No enhancement or offer to pay any concession fee or other premium in favor of the CGB will be considered.
- 4.a.7. The Challenger offering the lowest NPV of LGU Payments under the same Project terms and conditions shall be considered the Highest Ranked Challenger. The Original Proponent will then have the right to match the offer of the Highest Ranked Challenger within thirty (30) days from receipt of notice. If the Original Proponent matches the offer of the Highest Ranked Challenger, the Original Proponent will be declared the Winning Bidder and will be awarded the Project. If the Original Proponent fails to match such offer, the Project will be awarded to the Highest Ranked Challenger who will be declared the Winning Bidder.
- 4.a.8. Bids/Comparative Proposals submitted after the deadline for submission shall be considered late and shall be returned

unopened.

- 4.a.9. Incomplete information on any of the proposals and/or non-compliance with the bid security requirements shall be a ground for automatic rejection of bids.
- 4.a.10. Modification and/or withdrawal of bids may be allowed upon written notice by the bidder/challenger concerned to the City before the deadline for the submission and receipt of bids as specified herein. No bids shall be modified or withdrawn after the time prescribed. Bid modifications received after the said period shall be considered late and will be returned unopened.

Withdrawal of bids after the bid opening date shall cause the forfeiture of the bidder’s bid security and shall not be permitted to submit another bid, directly or indirectly, for the same contract.

- 4.a.11. If there are no Challengers, the Project will be automatically and immediately awarded to the Original Proponent.
- 4.a.12. The Winning Bidder shall comply with all the requirements stated in the Notice of Award within twenty (20) days from receipt of such notice. Failure to submit the requirements within the prescribed 20-day period will result in the forfeiture of the Bid Security and the cancellation of the Notice of Award.

Within five (5) calendar days from the receipt by the PPP-PBAC of all the requirements of the Notice of Award, the Head of the Implementing Agency shall determine and notify the Winning Bidder of its compliance. Immediately thereafter, the Winning Bidder shall enter into the PPP Contract with the CGB. Failure to execute the contract will result in the forfeiture of the Bid Security and the cancellation of the Notice of Award.

(b) Indicative Comparative Challenge Schedule

The indicative schedule for the Comparative Challenge Process is presented in the table below.

Milestone	Party Responsible	Date
Publication of Invitation to Pre-Qualify and Submit Comparative Proposals	CGB	September 18, 2024
Issuance of Comparative Challenge Documents	CGB	October 8, 2024
Pre-Bid Conference	CGB	To be determined

Milestone	Party Responsible	Date
Release of approved PPP Contract to Challengers	CGB	To be determined
Comparative Proposal Submission Date and last day of Registration of Challengers;	CGB, Challengers	January 8, 2025
Opening and Start of Evaluation of Qualification Documents	CGB	January 8, 2025
Opening and Evaluation of Technical Proposal	CGB	February 7, 2025
Opening and Evaluation of Financial Proposal	CGB	February 22, 2025

The foregoing schedule may be changed by the PPP-PBAC at any time without incurring any liability to the Challengers or Prospective Bidders. The parties concerned shall be notified by the PPP-PBAC of any changes in the indicative milestone dates through proper bid bulletins or notices.

5. RESPONSIBILITY OF CHALLENGERS

Notwithstanding any information given in the RCP and any additional communication from the CGB, the PPP-PBAC, or any other party, including supplemental notices and bid bulletins, it is the sole responsibility of any interested party, Challenger or Prospective Bidder to:

- be fully acquainted with the laws, requirements, terms, and conditions of the Comparative Challenge Process
- examine the RCP (including the ITC, Draft PPP Contract, and MPSS) including all instructions, forms, schedules or annexes, terms, specifications, and drawings
- familiarize itself with all existing laws, decrees, acts, rules, standards, guidelines, procedures, executive issuances, ordinances, decisions, international agreements, pending litigation, and the like, of the Philippines, whether national or local, which may affect the Project
- determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, subsea soil, meteorological, bathymetric and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the

requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; the Project's financial viability; and risks and contingencies that may affect the Project's cost, duration, execution and completion.

By submitting Comparative Proposals, Challengers or Prospective Bidders shall be presumed to have fully examined and accepted all the terms and conditions of the RCP including the Draft PPP Contract.

No Challenger or Prospective Bidder shall solicit any information from or shall have the right to be informed directly or indirectly by any official, employee or consultant of the CGB other than through official PPP-PBAC correspondences or bid bulletins addressed to all Challengers or Prospective Bidders. The CGB shall not be responsible for any unauthorized information or verbal instruction from sources other than the PPP-PBAC through its Chairman or his duly authorized representative. No inquiry on the Comparative Challenge Process shall be entertained unless coursed through the PPP-PBAC Chairman in writing.

6. COSTS AND EXPENSES OF PARTICIPATION

Interested parties and Challengers or Prospective Bidders shall bear all costs associated with their participation in the Comparative Challenge Process including the payment of Participation Fee in the amount of Two Hundred Thousand Pesos (Php 200,000.00), preparation and submission of their Comparative Proposals, the submission of the Bid Security, the costs of reproducing and notarizing the PPP Contract upon execution, and all possible losses or damages resulting from those acts. The CGB shall not be held responsible or liable in any way for such costs, losses or damages (whether incurred by it directly or by its advisors, Affiliates, or other persons) regardless of the results of the Comparative Challenge Process.

7. REGISTRATION OF CHALLENGERS AND PAYMENT OF PARTICIPATION FEE

The Draft PPP Contract and the required Minimum Performance and Specifications Standards are being issued only to Challengers or Prospective Bidders that have: (1) registered and expressed written interest on or after the publication of the first Invitation to Pre-qualify and to Submit Comparative Proposals; (2) executed the prescribed form of the Non-Disclosure Agreement and submitted a document indicating their authorized representative to sign the NDA; and (3) paid the non-refundable participation fee. This right is not transferrable to any person or any entity.

8. QUERIES AND SUPPLEMENTAL NOTICES

(a) **To Whom Addressed**

Only parties that have registered and purchased the RCP can send their written queries on any aspect of the Project and the Comparative Challenge Process either by personal delivery or email to the Chairman of the PPP-PBAC, as follows:

PPP-PBAC

Attention : Lucille Gelvolea, Ph.D.
Position : PPP-PBAC Chairman
City Administrator

Address : 3/F Office of the City Administrator
Bacolod City Government Center
Circumferential Road, Brgy.
Villamonte, City of Bacolod

Email : bacolodcityad@gmail.com, cmo_admin@bacolodcity.gov.ph

(b) **Form of Query**

Challengers or Prospective Bidders must use the form below for all of its submitted queries or comments:

Date:	[Insert Date of Submission]
Name of Challenger/ Prospective Bidder:	[Insert Prospective Bidder Name]

Subject	Name of RCP Document and Section Number	Query or Comment

(c) **PPP-PBAC Response**

While the PPP-PBAC will attempt to respond to all reasonable queries received at least thirty (30) days before the Comparative Proposal Submission Date, it is under no obligation to do so. Responses to queries and any modifications to the RCP will be done in writing through official supplemental notices or bid bulletins issued by the PPP-PBAC and sent to all Challengers that purchased the RCP. Such bid bulletins may also be found on the CGB website (bacolodcity.gov.ph).

9. OWNERSHIP OF DOCUMENTS

Except for the Bid Securities that shall be returned pursuant to this ITC and the PPP Code, all documents submitted in response to the Invitation to Pre-Qualify and Submit Comparative Proposals, including the Comparative Proposals and their attachments, shall become the property of the CGB. Any information obtained by the CGB from such documents may be reasonably used by the City of Bacolod; provided, however, that information relating to the examination, clarification, evaluation and comparison of Comparative Proposals shall not be disclosed to any of the Challengers or Prospective Bidders or other persons not officially involved in the Comparative Challenge Process; provided, further, that the CGB shall not have the obligation to keep any information submitted by a Challenger or Prospective Bidder confidential after the award of the Project, unless there is a claim of confidential business information.

10. LANGUAGE OF PROPOSAL AND FOREIGN DOCUMENTS

Comparative Proposals (comprising the Qualification Documents, the Technical Proposals, and the Financial Proposals) and all other submissions to the PPP-PBAC in relation to the Comparative Challenge Process shall be prepared and written in the English language. Any document written in a different language (except in Filipino) shall be accompanied by a certified and notarized English translation. In case of conflict, the English translation shall prevail.

Any document that is signed and notarized or sworn under oath outside the Philippines must be duly apostilled by competent authority in the country of origin or duly authenticated by the nearest Philippine Embassy or Consulate, whichever is legally applicable. Before the Comparative Proposal Submission Date, a Challenger or Prospective Bidder may apply to the PPP-PBAC for the submission of the originals of duly apostilled or authenticated documents as post-qualification requirements. If approved by the PPP-PBAC, copies of such documents can be submitted as part of the Comparative Proposal.

If a foreign authority issued the document, the Challenger or Prospective Bidder should also submit a certified true copy of such document in addition to the apostille or authentication done by the relevant official referred to above.

If the document is a foreign law or regulation, the Challenger or Prospective Bidder need only to submit a copy of the applicable excerpt of such law or its English translation with a citation of its source, without need of submitting a copy of the entire law, unless subsequently required by the PPP-PBAC. For this purpose, the Challenger should submit: (a) a certified true copy of such excerpt issued by the relevant foreign government authority, or (b) a certification from the embassy or the consular office of the relevant foreign country in the Philippines that such excerpt is an accurate copy of the foreign law.

For each instance in this ITC where authentication by a relevant consular official is required, the form, including language, of the authentication shall be subject to the forms and rules applicable in the relevant Philippine embassy or consular office.

11. PRE-BID CONFERENCE

A pre-bid conference will be conducted by the CGB at least forty-five (45) calendar days before the bid submission deadline. This conference aims to clarify any provisions, requirements, and/or terms and conditions of the tender documents, as well as address any other matters that Challengers may raise.

The PBAC of the CGB may adjust this period as may be appropriate based on the nature, scope, size, and complexity of the proposed PPP Project. However, it is stipulated that the principles of transparency, competition, and accountability must be observed. Furthermore, the overall period for the procurement process shall not exceed one year.

Nothing stated at the pre-bid conference shall modify any provisions or terms and conditions of the tender documents unless such modifications are formally made through written amendments by the PBAC of the CGB. These amendments will be issued through bid bulletins to all Challengers, providing them with sufficient time to consider the changes in the preparation of their bids. These amendments must be duly acknowledged by each Challenger prior to the submission of their bid and must be indicated in their bid submissions. Only Challengers that have paid the Participation Fee will be allowed to join the pre-bid conference.

12. CONSULTATION MEETING WITH THE CGB

By participating in the Comparative Challenge Process, a Challenger or Prospective Bidder agrees that the PPP-PBAC may arrange, at its sole discretion, individual or one-on-one consultation meetings with each of the Challengers. The consultation meetings shall be held after the Pre-Bid Conference on such dates to be announced by the PPP-PBAC.

Challengers who wish to schedule such meetings may send their requests to the PBAC Secretariat via the VDR. A Challenger scheduled for a consultation meeting must submit its questions and comments at least five (5) days prior to such meeting, following the same rules and procedures indicated in Section 8 above. Within five (5) days after the one-on-one meeting, each Challenger or Prospective Bidder must confirm in writing any questions and concerns which were raised during the meeting but had not been previously submitted to the PPP-PBAC.

No provision, term or condition of the RCP or the Comparative Challenge Process shall be modified by statements made during the Pre-Bid Conference and the one-on-one consultation meetings unless such statements are

confirmed in writing and contained in an official bid bulletin or notice issued by the PPP-PBAC.

13. CONFIDENTIALITY

- (a) Information relating to the examination, evaluation, clarification, and comparison of bids and recommendations concerning the award of the Project shall not be disclosed to any of the Challengers or other persons not officially concerned with the Tender Process; provided, that the CGB, and the PPP-PBAC shall not have the obligation to keep any information submitted by a Private Sector Proponent confidential after the signing of the PPP Contract by the Winning Proponent or the lapse of one hundred eighty (180) days after the Comparative Proposals Submission Date, whichever is come earlier.
- (b) The PBAC will not return either the original or the copies of any Comparative Proposal submitted by a Challenger, other than specified in Sections 14, 15, 16, and 17.

14. QUALIFICATION REQUIREMENTS

Challengers or Prospective Bidders must fulfill all of the Legal, Technical, and Financial Qualification Requirements described below.

In compliance with the PPP Code and its IRR, the eligibility criteria used by the CGB in determining and confirming the eligibility and qualification of the Original Proponent shall be the same as the criteria prescribed in this RCP and applied to all Challengers.

In case the Challenger or Prospective Bidder is a Consortium, any one of its members or any of their Affiliates, must meet the Technical and/or Financial Proposals specified below. To satisfy the Technical Qualification Requirements/Proposals, the Challenger or Prospective Bidder can also designate and appoint nominated contractors/entities having the necessary technical experience.

(a) Legal Qualification Requirements

The Challenger or Prospective Bidder must be:

- 14.a.1. a partnership, corporation or any other juridical entity, in good standing and validly doing business. In the case of Philippine partnerships or corporations, such partnerships or corporations must be registered in the Philippines with the Securities and Exchange Commission ("SEC"), or in case of a foreign partnership, corporation or other juridical entity, the appropriate government agency in the foreign country concerned where the foreign entity was registered or incorporated; or
- 14.a.2. a Consortium whose members are partnerships, corporations or

other juridical entities, in good standing and validly doing business. The Consortium may be either incorporated or unincorporated. For Consortium members that are Philippine partnerships or corporations, such partnerships or corporations must be registered in the Philippines with the SEC, or in the case of Consortium members which are foreign partnerships, corporations or other juridical entities, the appropriate government agency in the foreign country where the foreign entity was registered or incorporated. A Consortium must not have more than six (6) members, regardless of whether they are equity or non-equity members or nominated contractors/entities.

In case the prospective Private Partner is a consortium, the members or participants thereof shall be disclosed during the qualification/pre-qualification stage and shall undergo qualification/pre-qualification. Further, the members or participants thereof shall execute an undertaking in favor of the City of Bacolod that if awarded the PPP Contract, they shall bind themselves to be jointly and severally liable for the obligations of the Private Partner under the Contract.

- 14.a.3. However, if the members of the consortium organize themselves as a corporation registered under Philippine laws, such corporation shall execute an undertaking binding itself to the rights and obligations of the Private Partner under the Contract, which shall substitute or be in lieu of the undertaking submitted by the members or participants of the consortium.
- 14.a.4. The Challenger or Prospective Bidder (either on its own if a single entity or as a Consortium) must be Philippine majority-owned-and-controlled. If the Challenger is a Consortium, it will be deemed "*Philippine majority-owned-and-controlled*" if one or more corporations with at least 60% of the outstanding capital stock of each such corporation being owned and held by Philippine nationals, control not less than 60% of the voting rights and equity interests in such Consortium. Such majority control gives them the power to direct or cause the direction of the management policies and actions of the Consortium including the ability to elect a majority of the board of directors or management committee of such Consortium. For the purpose of determining an entity's compliance with the applicable nationality requirements in case of doubt on its true nationality or equity ownership, the appropriate legal tests shall be applied in line with applicable laws including relevant Philippine Supreme Court decisions.
- 14.a.5. The Challenger or Prospective Bidder are required to submit the following documents as indicated in Annex QD-2.

The Challenger or each Consortium Member must certify that it (including any Affiliate whose projects and/or experience are being submitted in order to comply with any of the Qualification Requirements under this Section 14) has no Unsatisfactory Performance Record, by executing the prescribed form provided for in Annex QD-3.

If the Challenger or Prospective Bidder (or a Consortium Member) submits the company credentials or track record of an Affiliate to meet any of the Qualification Requirements, such Affiliate must remain an Affiliate of such Challenger or Consortium Member until the end of the Lock-Up Period.

(b) **Technical Qualification Requirements**

To qualify to bid and submit a Comparative Proposal for the Project, the Challenger or Prospective Bidder must have achieved within the last ten (10) years immediately preceding the date of the issuance of the invitation for comparative proposals, the following Technical Qualification Requirements.

The Challenger is allowed, but not required, to nominate the same entity to fulfill the Construction Experience Requirements and Operations & Maintenance Experience Requirements, subject to the qualifications under Section 2214.b.1 and Section 14.b.2, respectively. If the Challenger nominates the same entity to fulfill the Construction Experience Requirements and Operations & Maintenance Experience Requirements, such entity may cite the same project to fulfill the qualification requirements for both the Construction Experience Requirements and Operations & Maintenance Experience Requirements. Nothing in this ITC shall preclude the Challenger from citing the same project as reference to fulfill the Construction Experience Requirements and Operations & Maintenance Experience Requirements, so long as it is able to comply with the documentation requirements under Sections 14, 15, 16, and 17(Qualification Documents).

14.b.1. Construction Experience.

The Challenger or Prospective Bidder must have satisfactorily undertaken master development of eligible project/s in terms of overall responsibility for planning, designing, engineering and construction, as evidenced by a certification of [capital costs incurred/payments received] for such eligible project/s during the eligible period, such that the sum of total of the [capital costs incurred/payments received] for the eligible project/s is at least Two Hundred Million Pesos (Php 200,000,000.00).

To satisfactorily establish its claim, the entity whose Construction Experience is being submitted to fulfill this requirement – whether the Challenger or a Consortium Member or any of their Affiliates should submit:

- (a) A valid license issued by the Philippine Contractors Accreditation Board (PCAB) for Classification: Specialty – Communication Facilities, Category AAA; at least Small B, or by an equivalent accreditation institution, in the case of a foreign entity, provided that such foreign entity must secure a license and accreditation from the PCAB after the Winning Proponent is awarded the Project;

The legally sworn and 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 or by the Corporate Secretary (or equivalent officer) of the entity meeting the Construction Experience requirement or by the Authorized Representative in case of a Consortium. At least one (1) entity fulfilling the Construction Experience requirement should possess, under its own name, the necessary licenses and certifications indicated above.

14.b.2. Operations and Maintenance Experience

- (a) Have at least ten (10) years of operation and maintenance of information technology infrastructure and system projects that are comparable in scope and specification to the Project indicated in the attached draft PPP Contract and MPSS.
- (b) Have completed similar projects with the Philippine Government or any of its agencies or instrumentalities with a total awarded contract value of at least One Billion Pesos (Php 1,000,000,000.00).

14.b.3. Qualified Key Personnel

The Challenger and/or the Consortium Members must have, among them and their Affiliates’ collective personnel, the required qualifications and experience described below:

	Experience Required	Minimum Years of Experience
1	At least one (1) Project Manager, having had responsibility for the development	8

	Experience Required	Minimum Years of Experience
	(i.e. planning, coordination, integration, and/or implementation of the designing, operation, and maintaining of at least five (5) Eligible Projects	
2	At least two (2) Project Coordinators, having had responsibility in supporting development of at least five (5) Eligible Projects	2
3	At least one (1) AWS Cloud Operations Engineer, having had responsibility for deployment of cloud infrastructure and implementation of Web Applications and is an AWS Cloud Operations certified.	3

- (a) In order to meet the qualifications and experience required above, a Proponent may propose persons who are or will be employed or engaged, including external personnel, by the Proponent itself, a Consortium Member, or any of their Affiliates. The Proponent must propose at least the number of personnel indicated in Section 14.b.3 for each of the key personnel positions. Each of the key personnel qualifications must be met by different individuals.
- (b) Any person nominated by a Challenger to fulfill any of the required qualifications as a Key Personnel may not be nominated by another Challenger for the same or a different Qualified Key Personnel position.
- (c) In the event that it is selected as the Winning Challenger, the Challenger must undertake to assign these key personnel to implement the Project.
- (d) In case any of these key personnel is no longer available or no longer connected with the Challenger at the time of implementation by the Winning Challenger of the Project, they may be replaced as provided in the PPP Contract.
- (e) The person whose experience is being submitted in fulfillment of this requirement must certify that s/he has no Unsatisfactory Performance Record.

The entity, which should fulfill the Technical Qualification requirements, must be:

- If the Challenger or Prospective Bidder is a partnership, corporation or any other juridical entity, the Challenger/Prospective Bidder itself or its

Affiliate; or

- If the Challenger or Prospective Bidder is a Consortium, a Consortium Member or its Affiliate.

The Challenger or Prospective Bidder must provide supporting documents, such as Certificates of Substantial/Final Completion, Certificate or Operation and Maintenance Contract, as evidence for meeting the technical requirements.

The entity whose Construction Experience is being submitted in fulfillment of this requirement should submit a certified list of completed projects in the prescribed format provided in Annex QD-4. The same entity/ies must also certify that it has no Unsatisfactory Performance Record, following the prescribed form provided in Annex QD-3.

If the entity/ies nominated to meet the Technical Qualification Requirements above is/are qualified, the Challenger or Prospective Bidder shall be deemed to have met that particular requirement.

Since the structure of the bidding is a Comparative Challenge Process, no application for the substitution of an entity meeting any Legal, Technical or Financial Qualification Requirement will be received or approved by the PPP-PBAC after the Comparative Proposal Submission Date.

(c) **Financial Qualification Requirements**

To qualify to bid and submit a Comparative Proposal for the Project, the Challenger or Prospective Bidder must meet the following Financial Qualification Requirements:

14.c.1. Net Worth

The Challenger or Prospective Bidder, in case of a single entity, or the Consortium Members (except any non-equity member), in case of a Consortium, must have a total or combined Net Worth of at least thirty percent (2.8%) of the Total Project Cost which is equivalent to Sixty Million Six Hundred Thousand Pesos (PHP 60,600,000.00) or its equivalent in foreign currency, based on the latest audited financial statements which must be or the financial year ending not earlier than 2024.

In case of a Consortium, the entity who will fulfill the financial qualification requirements must have adequate Net Worth to invest at least 51% equity share in the Consortium.

14.c.2. Bank Testimonial Letter

The Challenger or Prospective Bidder must provide at least one (1)

testimonial letter from a domestic universal or commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the *Bangko Sentral ng Pilipinas*, certifying that the Challenger and/or members of the Consortium are banking with them and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the Project in an amount of at least seventy (70%) of the Total Project Cost equivalent to One Billion Four Hundred Seventy Million Pesos (PHP 1,470,000,000), which amount can be reduced to the extent of its excess minimum Net Worth indicated in Section 14.c.1 .

The entity which fulfills the Financial Qualification Requirements described above must be:

- (a) If the Challenger or Prospective Bidder is a partnership, corporation or other juridical person, the Challenger or Prospective Bidder itself, or its Affiliate
- (b) If the Challenger or Prospective Bidder is a Consortium, a Consortium Member with at least fifty percent plus one (50%+1) equity interest in the Consortium, or such Consortium Member's Affiliate.

"Affiliate" means, a corporation or entity that, directly or indirectly, Controls the Challenger or is associated with the Challenger under common ownership and Control.

"Control" means the power to direct or cause the direction of the management policies of a body corporate whether through:

- (a) ownership of at least fifty percent (50%) plus one (1) share of the outstanding voting shares; or
- (b) ownership of at least twenty percent (20%) of the outstanding voting shares and either:
 - (i) possession of the voting rights through voting trusts or other voting agreements over a certain number of shares, such that the total number of shares owned or over which it has voting rights is equivalent to fifty percent (50%) plus one (1) share of the outstanding voting shares; or
 - (ii) the ability to elect a majority of the members of the board of directors.

Each entity fulfilling the Financial Qualification Requirements must certify that it has no Unsatisfactory Performance Record, as prescribed in the form attached as Annex QD-3.

15. QUALIFICATION DOCUMENTS (FIRST ENVELOPE)

On the Comparative Proposal Submission Date, the Challenger must submit its Comparative Proposal comprising its Qualification Documents, as discussed in Section 14, consisting of the Legal, Technical, and Financial Qualification Requirements.

The Qualification Documents shall consist of the following documents:

- (a) In case of a Consortium, this document must show the Lead Member and all Consortium Members, with an undertaking or confirmation that the Consortium is Philippine majority-owned and-controlled.
- (b) The Challenger Composition must also indicate the entities which fulfill the Qualification Requirements in Section 14 above and any Affiliates of these entities whose projects, experience, or financial capability are being submitted to comply with such Qualification Requirements. For each entity using an Affiliate in order to fulfill a specific Qualification Requirement, evidence of such affiliation should be attached to the Bidder Composition (such as the General Information Sheet, certified list of shareholders, sworn certification of affiliation from the independent/external auditor, or similar proof).
- (c) To be submitted by all entities that are identified and listed on the Challenger Composition.
- (d) Required Attachments: For all entities submitting this form:
 - (i) A certified true copy of its latest General Information Sheet ("GIS"), stamped "Received" by the SEC or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.

The certification may come from either the SEC or its equivalent in a foreign country, or the entity's corporate secretary, or the Consortium's Authorized Representative. If it comes from the entity's corporate secretary or the Authorized Representative, the certification must be under oath or notarized. If the certification is issued and notarized outside the Philippines, it must be duly apostilled or authenticated before a Philippine consular official at the Philippine embassy or consulate nearest the place of issue.

If in a particular foreign jurisdiction there is no document equivalent to the GIS, the corporate secretary 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.

- (ii) Certified true copy of the SEC Certificate of Incorporation, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The SEC Certificate of Incorporation or the equivalent document for a foreign entity must be certified by the SEC or its equivalent in a foreign country, or the entity's corporate secretary, or the Consortium's Authorized Representative. If the certification is issued outside the Philippines, it must be apostilled or authenticated before a Philippine consular official at the Philippine embassy or 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 PPP-PBAC will accept a certified true copy of the Certificate of Incorporation issued by the registrar of the corporation.
- (iii) Certified true copies of the Articles of Incorporation and By-laws or for a foreign entity, the equivalent company constitutional documents 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 juridical personality or capacity. The Articles of Incorporation and By-laws may be certified either by the SEC or its equivalent in a foreign country, or by the entity's corporate secretary or the Authorized Representative. All certifications by the entity's corporate secretary or Authorized Representative must be under oath and notarized. If the certification is issued and notarized outside the Philippines, it must be apostilled or authenticated before a Philippine consular official at the Philippine embassy or consulate nearest the place of issue.
- (iv) Board of Director's Resolution authorizing the participation of the Corporation in the Comparative Challenge Process for the Project. In case of a Consortium, each of the

members' Board of Director's Resolution authorizing the participation of the Corporation as a Consortium indicating the names of each of the members, designation of the lead member and the entity satisfying the qualification requirements.

- (v) Certified true copy of the valid Business/Mayor's Permit or Operating License from the relevant local government unit or its equivalent document in the case of foreign entities
 - (vi) Certified true copy of the Bureau of Internal Revenue (BIR) Tax Clearance pursuant to Executive Order No. 398, series of 2005 (NOTE: To be submitted by the Challenger or Prospective Bidder and each Consortium Member)
 - (vii) Certified True Copies of its last three (3) years Audited Financial Statement as stamped received by the Bureau of Internal Revenue or with corresponding proof of confirmation receipt by the Bureau of Internal Revenue.
- (e) To be submitted by the entity or entities which fulfill Construction Experience requirement in Section 14.b.1 or Section 14.b.2 above, as identified in the Bidder Composition.

Required attachments for each entity submitting this form:

- (i) Certified List of Completed and Ongoing Projects—A certified list of completed and ongoing projects demonstrating the prescribed Design and Engineering Experience indicating the project name, location, name of project owner, contact details of project owner, scope of work, size of the project, contract cost, start date, and completion date. The List of Completed and Ongoing Projects must be signed and certified correct by the Challenger or Prospective Bidder (NOTE: To be submitted by the Consortium Member, or Affiliate that meets the relevant Technical Qualification Requirement.)
- (ii) If the project was completed by an Affiliate of the entity which fulfills the Construction Experience Requirement, evidence of such affiliation must be attached to the Bidder Composition in accordance with Section 15 (b) above.
- (iii) Certified true copy of the valid construction license issued by the PCAB for Category "AAA", in the case of a Philippine-based entity or, in the case of a foreign entity, an equivalent license issued by the proper 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 Bidder 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. A certified 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 or by the Authorized Representative of the Consortium that such copy is a true and faithful reproduction of the original license.

Operations and Maintenance Experience (Using the prescribed form in Annex QD-5)

- (a) To be submitted by the entity or entities which will fulfill the O&M Services Experience requirement in Section 14.b.2 above, as identified in the Bidder Composition.
- (b) Required attachments for each entity submitting this form:
 - (i) Certified List of Completed and Ongoing Projects—A certified list of completed and ongoing projects demonstrating the prescribed O&M Services Experience indicating the project name, location, name of project owner, contact details of project owner, scope of work, size of the project, contract cost, start date, completion date. The List of Completed and Ongoing Projects must be signed and certified by the Challenger. (NOTE: To be submitted by the Consortium Member, Affiliate, or nominated O&M Services Contractor that meets the relevant Technical Qualification Requirement.)
 - (ii) If the project was completed by an Affiliate of the entity which fulfills the O&M Services Experience requirement, evidence of such affiliation to be attached to the Bidder Composition.

Key Personnel—List of qualified key personnel who fulfill the requirements of Section 14.b.3 above (using the form prescribed in Annex QD-6)

- (a) To be submitted by the Challenger or any Consortium Member.
- (b) The latest curriculum vitae (showing the recent photo, company affiliation and position, relevant work experience and completed projects, professional license, and educational attainment) of each nominated key personnel must be attached.

Statement of Financial Capability (Using the form prescribed in Annex

QD-7).

- (a) To be submitted by the entity or entities which fulfill the Financial Qualification Requirements in Section 14(c) above, as identified in the Bidder Composition.
- (b) Required attachments:
 - (i) Certified true copy of the last two (2) years audited financial statements which are acknowledged or stamped "Received" by the Bureau of Internal Revenue ("BIR") or for foreign entities, the appropriate government tax agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality. The certified true copy of the latest audited financial statements may be issued by the relevant officer of the entity which fulfils the Financial Qualification Requirement or by the Authorized Representative of the Consortium.
 - (ii) At least one (1) bank testimonial letter from a domestic universal or commercial bank or an international bank duly licensed or recognized by the BSP, certifying that the Challenger or the Lead Member of the Consortium is banking with them and is in good standing.
 - (iii) If the Challenger or Consortium Member will use an Affiliate to comply with the Financial Qualification Requirements in Section 14 above, attach evidence of such affiliation in the Bidder Composition.

Omnibus Sworn Statement and Notarized Application to Pre-Qualify and Submit a Comparative Proposal (Using the form prescribed in Annex QD-8).

- (a) To be submitted by the Challenger or the Lead Member of the Consortium on its behalf.

16. TECHNICAL PROPOSAL (SECOND ENVELOPE)

The Technical Proposal shall be prepared by each Challenger and must contain the following information and documents:

- (a) SUPERCITY Project Study
 - (a) Technical Soundness and/or Preliminary Engineering Design including the proposed timeline in accordance with the proposed SUPERCITY Project Study and consistent with the MPSS of the Project.

(b) Acceptance and Compliance Statement (Using the form provided in Annex TP-2)

- (a) Sworn statement unconditionally accepting all the terms and conditions of the Comparative Challenge Process, the RCP including the Draft PPP Contract, and the MPSS, and any revisions duly approved by the PPP-PBAC.
- (b) In line with applicable government rules and guidelines on unsolicited proposals, the successfully negotiated and approved Draft PPP Contract will be considered final and non-negotiable on the part of the Challengers.

(c) Bid Security

- (a) Prescribed Bid Security in the form and amount set forth below. The Bid Security required to be submitted as part of the Comparative Bid Proposal may be in cash, certified check, manager's check, letter of credit, or bank draft/guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the GSIS or an entity duly registered and recognized by the Office of the Insurance Commission acceptable to the CGB or in any combination thereof, in the amount of Forty-Two Million Pesos (Php 42,000,000.00) or two percent (2%) of the Project cost.
- (b) In case the bid security shall be issued by an international bank, said security must be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP.
- (c) The Bid Security shall guarantee that the Challenger will abide by all the rules of the Comparative Challenge and that if selected as the Winning Bidder, it shall: comply with all the conditions and requirements specified in the Notice of Award and other Post-Award Requirements; post the required performance security; and enter into the final PPP Contract with the CGB, all within the prescribed periods.
- (d) The Bid Security shall be valid for a reasonable period but in no case beyond one hundred eighty (180) calendar days from the bid submission date. The Bid Security may also be extended subject to the rules set forth by Section 106 of the PPP Code IRR.
- (e) The list of universal and commercial banks duly licensed by the BSP may be viewed and verified at its official website (<https://www.bsp.gov.ph>).

- (f) The list of accredited insurance companies authorized to act as sureties may be viewed and verified at the Insurance Commission's official website (<https://www.insurance.gov.ph>).
- (g) Interest earned on the Bid Security, if any, shall accrue in favor of the CGB. Any cost incurred in the posting and submission of the Bid Security shall be assumed by the Challenger and shall not be reimbursed by the CGB.
- (h) The Bid Security may be issued for the account of the Challenger or its Affiliate satisfying the financial qualification requirements, or in case of a Consortium, for the account of the entity satisfying the financial qualification requirements or any Consortium Member, provided that the total amount of the Bid Security shall be covered by a single certified check, manager's check, letter of credit, bank draft/guarantee, or a surety bond.
- (i) The original Bid Security shall be enclosed in a separately sealed envelope and marked "*BID SECURITY OF (Name of Bidder)*." The Bid Security must be placed in the envelope containing the original Technical Proposal. Failure to post the Bid Security as instructed shall be a ground for rejection of the Comparative Proposal.
- (j) Unless otherwise agreed between the Challenger and the CGB, the Bid Security of an unsuccessful Challenger shall be returned and released upon submission by the Winning Bidder of its performance security or upon expiration of the validity period of the Bid Security, whichever is later.
- (k) The Bid Security shall be forfeited in its entirety in favor of the CGB upon the occurrence of any of the following events, regardless of whether these events are performed directly or indirectly by or for the Challenger (or in the case of a Consortium, a Consortium Member), any Affiliate or any Contractor, due to any of the following reasons:
 - i. if the Challenger or, in case of Consortium, any of its Consortium Members withdraw/s its Comparative Proposal or Bid after the Comparative Proposal Submission Date;
 - ii. if the Proponent, any Consortium Member, any proposed Contractor or Affiliate of the Proponent, the Winning Proponent (or the Project Special Purpose Company it shall form), or any of these entities (i) commits any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice, (ii) has a conflict of interest or (iii)

violates the Lock-Up Rules, regardless of the stage of the Bidding Process when the violation existed, was committed, or discovered;

- iii. material or willful misrepresentation in the Comparative Challenge Process;
- iv. if the Winning Bidder fails to furnish the documents or complete the requirements stated in the Notice of Award or other Post-Award Requirements within the prescribed period;
- v. if the Winning Bidder fails to sign the PPP Contract within the prescribed period upon receipt of notification by the CGB; or
- vi. other valid grounds provided for by applicable laws, rules and regulations.

17. FINANCIAL PROPOSAL (THIRD ENVELOPE)

The Financial Proposal shall be prepared following the requirements and containing the information indicated below.

- (a) Financial Proposal Letter (Using the form prescribed in Annex FP-1)
 - (a) Financial Proposal letter duly signed by the Authorized Representative of the Challenger or the Consortium stating its unconditional offer for the City Revenue Share in favor of the CGB compared to the City Revenue share offered by the Original Proponent under the same Project terms and conditions.
 - (b) No enhancement or offer to pay any sum, concession fee or other premium to the CGB will be considered in the evaluation of Financial Proposals.
- (b) Financial Model (Using the form prescribed in Annex FP-2)

To be submitted both in hard copy and in electronic form stored in an external USB drive, in Microsoft Excel format, showing all relevant assumptions, formulas, calculations and supporting work sheets, including the Challenger's offered City Revenue Share, with amounts stated in Philippine Pesos and expressed in 2024 prices. The external USB drive should contain an editable and traceable version of the Financial Model. The hard copy should be signed by the Authorized Representative of the Challenger or Consortium.

- (c) Project Financing Plan (Using the form prescribed in Annex FP-3)

which must show that the proposed financing plan can adequately meet the construction cost, right-of-way acquisition cost, as well as the operation and maintenance costs required for the Project and still enable the Concessionaire to service its debt obligations and fulfil its covenants with its lenders, and meet equity investors' return requirements.

- (d) Compliance Statements

Sworn compliance statement with regard to the financial parameters.

18. ORIGINAL PROPONENT'S FINANCIAL PROPOSAL

For purposes of the Challenger's Financial Proposal, it should be noted that the Original Proponent's Financial Proposal provides that the Net Present Value of LGU Payment amounts to Ninety-Eight Million Two Hundred Two Thousand One Hundred Eighty-One and Forty-Two Cents (Php 98,202,181.42)

19. CONSORTIUM MEMBERS AND NOMINATED CONTRACTORS/ENTITIES

The number of Consortium Members can be a maximum of six (6). Each entity can be an equity or non-equity member of the Consortium.

The Comparative Proposal should contain the company information required for each Consortium Member.

A Lead Member must be designated to act as the Consortium's authorized company representative. The Lead Member must be a Philippine entity and holds the highest equity interest of at least 33.3% in the Consortium. The Lead Member shall represent and shall be the point of contact of the Consortium throughout the Comparative Challenge Process.

The Lead Member, along with the other Consortium Members, their Affiliates, and/or nominated contractors/entities, should collectively and fully meet the Legal, Technical and Financial Qualification Requirements prescribed in Section 14 above.

The equity members of the Consortium will be required to contribute equity to the Project and fulfill all shareholding commitments according to the PPP Contract.

Unless a special purpose company is formed by the Consortium Members for the purpose of submitting a Comparative Proposal and entering into the PPP

Contract(if selected), each member shall be jointly and severally liable for the obligations of the Private Sector Proponent or Private Partner in accordance with the terms of this RCP and the PPP Contract.

Changes in the composition of the Consortium shall be governed by and shall only be allowed according to the terms of the PPP Contract. If such change occurs but does not strictly conform to the terms of the PPP Contract, it would be deemed a material breach thereof and the PPP Contract may be terminated (unless special circumstances exist that warrant its continuation) without the CGB being liable in any manner whatsoever to the Private Partner. The CGB shall be free to appoint a substitute firm or consortium to assume the obligations of the Private Partner under the PPP Contract.

No change in nominated contractors/entities shall be allowed after the submission of Comparative Proposals except for valid reasons (such as but not limited to default, material misrepresentation except those affecting the qualification requirements, or bankruptcy/financial distress of the nominated contractor/entities) and subject to the express written approval of the CGB. Any substitute or replacement contractor will have to undergo the same eligibility screening and must have the same or better qualifications than the original contractor. Any violation of this rule shall be a ground for cancellation of the award or termination of the PPP Contract, if the Consortium is selected. The nominated contractor/entities may appoint subcontractors/sub entities to perform any of the services provided that such nominated contractor/entities will continue to be directly liable for the provision of such services and the performance of all works.

20. ONE CHALLENGER, ONE SUBMISSION

Each Challenger may submit only one pre-qualification application and Comparative Proposal. A Challenger, Consortium Member, Affiliate, or nominated contractor/entity cannot be a member or nominated contractor/entity of another Consortium or bidder.

To ensure a level playing field and a truly Comparative bidding process, the restrictions above govern the extent of affiliation and ownership between Challengers and members of another Consortium.

21. FORMAT OF SUBMISSION OF COMPARATIVE PROPOSALS

The Qualification Documents, Technical Proposals, and Financial Proposals (original and 3 copies) must be presented in the order, content and form indicated in this ITC, and must be enclosed in separately sealed envelopes or

boxes.

Each set of the Qualification Documents, Technical Proposals and Financial Proposals should be preceded by a Title Page, a Table of Contents, and, for the Technical Proposal, an Executive Summary.

(a) **Labels and Marks**

The three envelopes must be separately sealed and appropriately addressed and marked as follows:

<p>REPUBLIC OF THE PHILIPPINES CITY OF BACOLOD</p> <p>CITY OF BACOLOD SUPERCITY PROJECT COMPARATIVE CHALLENGE</p> <p><i>[QUALIFICATION DOCUMENTS/ TECHNICAL PROPOSAL/ FINANCIAL PROPOSAL]</i></p> <p><i>[NAME AND ADDRESS OF CHALLENGER]</i></p> <p><i>[DATE OF SUBMISSION]</i></p>

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

(b) **Document Size and Binding**

The Comparative Proposal must be printed either in standard A4 and bound together in book or ring binders of adequate size, if necessary. The Comparative Proposal must be paginated and written at a minimum 12-sized font. Spacing between lines must be at least single to double space.

(c) **Original and Number of Copies**

All Challengers must prepare and submit sufficient number of copies of their Comparative Proposals, as follows:

21.c.1. One (1) complete original and printed set of the Qualification Documents, Technical Proposal, and Financial Proposal, clearly marked or identified as the "ORIGINAL"

21.c.2. Three (3) printed copies each of the Qualification Documents, Technical Proposal, and Financial Proposal, clearly

marked or identified as "COPY NO. 1, 2 or 3" and enclosed in the same envelopes as the originals

21.c.3. Two (2) external USB drives each containing electronic copies of the complete Qualification Documents

21.c.4. Two (2) external USB drives each containing electronic files of the complete Technical Proposal

21.c.5. Two (2) external USB drives each containing electronic files of the Financial Proposal including the Financial Model

21.c.6. One (1) original of the Bid Security in a separately sealed envelope attached to or contained in the original Technical Proposal and marked "Bid Security of *(name of Challenger)*."

All electronic files, including all attachments and supporting documents, shall be in Portable Document Format (.pdf). In the case of the Financial Model, it should be a Microsoft Excel working file.

Each electronic copy of the Qualification Documents, Technical Proposal and Financial Proposal shall be scanned as separate documents and should have file names that correctly reflect the title of the document. For easier checking, Challengers should not scan and store the documents as one continuous electronic file or document.

The envelope containing each set of USB drives shall be marked and labeled as instructed in Section 21 above. The pertinent USB drives must be submitted and enclosed in the proper envelope or box for the Qualification Documents, Technical Proposal, or Financial Proposal.

In the event the same document is used in compliance with multiple requirements under this ITC, the submission of one original document that is certified, notarized, apostilled or authenticated (whenever required) and which serves as the equivalent of two or more documents required under this ITC, shall be considered sufficiently compliant with all such requirements. The use of photocopies of this same document in other parts of the original set is acceptable. Apart from this exception, the original set must consist of the original versions of the Qualification Documents, Technical Proposal and Financial Proposal.

In case of any doubt, inconsistency, deficiency, or missing information or documents, the original version of the Comparative Proposal shall be binding.

In the event of any conflict between the printed (paper) copies and the electronic copies, the printed (paper) original set shall prevail.

(d) **Signatures and Initials**

The Comparative Proposal must be signed in the name of the Challenger followed by the signature, name and title of the Authorized Representative who is authorized to bind the Challenger or the Consortium to the Comparative Proposal, as identified in Annex QD-8.

The Financial Proposal Letter must be signed on the signature page and initialed by such Authorized Representative in each page.

22. PROCEDURES FOR SUBMISSION AND OPENING OF QUALIFICATION DOCUMENTS

On the Comparative Proposal Submission Date, Challengers are required to submit their Comparative Proposals to the Chairman, PPP-PBAC for the SUPERCITY Project, City of Bacolod.

All Comparative Proposals must be submitted before 12:00 P.M. on the Comparative Proposal Submission Date. The date and time of submission shall be recorded through the use of the official clock set at Philippine Standard Time (PST) as publicly displayed at <https://oras.pagasa.dost.gov.ph>. The Challengers shall be responsible for synchronizing their timepieces with the official clock.

Every Comparative Proposal submitted shall be numbered in the order received and stamped with the time of receipt. In addition, the receipt of each set of Comparative Proposals will be recorded in a register in the order of receipt specifying the date, time and name of the Challenger submitting the same.

Comparative Proposals submitted after 12:00 P.M. on the Comparative Proposal Submission Date shall not be accepted and any late Challenger shall be disqualified. Thereafter, the same shall be returned unopened.

After 12:00 P.M. of the same date, the PPP-PBAC will announce the names of the Challengers that submitted Comparative Proposals and other details that the PPP-PBAC may consider appropriate. On the scheduled date after the submission date, the PPP-PBAC will then proceed with the opening of envelopes containing the Qualification Documents (First Envelope) of each Challenger, one at a time, in the order in which the Comparative Proposals were received.

Each Challenger shall name a designated representative who shall have written authorization from the Challenger or Lead Member to officially participate in the proceedings and to respond to the PPP-PBAC should it have any queries regarding the submission of the Comparative Proposal. The representatives for each Challenger who attend the opening proceedings shall sign the register confirming their attendance.

At the opening proceedings, the PPP-PBAC will conduct an initial completeness check of the Comparative Proposal. The PPP-PBAC reserves the right to conduct a virtual submission and opening of Comparative Proposals.

Withdrawal and/or modification of Comparative Proposals shall not be allowed after the Comparative Proposal Submission Date. Comparative Proposals requested to be withdrawn prior to the deadline shall be returned unopened to the Challenger. A Challenger that withdraws its Comparative Proposal shall not be permitted to resubmit it or submit another proposal, directly or indirectly, for the Project. The withdrawal by a Challenger of its Comparative Proposal at any time after the Comparative Proposal Submission Date shall be a ground for the forfeiture of the Bid Security.

23. EVALUATION OF QUALIFICATION DOCUMENTS

After the Comparative Proposal Submission Date, the PPP-PBAC shall first examine in detail the Qualification Documents. The detailed evaluation of the Challenger's eligibility and compliance with the Legal, Technical and Financial Qualification Requirements for the Project shall be based solely upon the Qualification Documents submitted.

The PPP-PBAC reserves the right to seek clarification from Challengers on the form and contents of their Qualification Documents. The PPP-PBAC also reserves the right to make inquiries with any person, government authority, officer, director, employee, advisor or other agent of any Challenger, Consortium Member, nominated contractor/entity, bank, client, and project owner for the purpose of clarifying any matter included in the Qualification Documents.

All submitted information and any clarifications requested by the PPP-PBAC shall be evaluated against the criteria for qualification set out in Section 14 above and the documents required in Section 15, 16, and 17. Evaluation of the Qualification Documents shall be done on a "Pass-or-Fail" basis. The Challenger and its overall rating for the evaluation will be "Qualified" if each qualification or eligibility criterion is rated "Passed" and each required Qualification Document and its attachments have been submitted and are complete. The Challenger and its overall rating will be "Disqualified" if any criterion is rated "Failed" and/or if any required Qualification Document or attachment is missing.

The PPP-PBAC will notify all Challengers as to whether they passed the qualification stage or not ("Notice of Qualification"). All Challengers which pass the qualification stage shall be known as the Qualified Challengers.

24. OPENING OF TECHNICAL PROPOSALS

Thereafter, the PPP-PBAC shall open the Technical Proposals of the Challengers whose Qualification Documents were not rejected and initially determine whether each Technical Proposal is complete. Thereafter, detailed evaluation of the Technical Proposals will be done applying the technical evaluation criteria set forth below.

Technical Proposals that are determined to have incomplete submissions or information, or are not accompanied by the Bid Security in the required form, amount and period of validity, shall be automatically rejected.

Qualified Challengers who do not pass the technical evaluation shall not be considered further and the PPP-PBAC shall return their Financial Proposals unopened together with a letter stating the reasons for their failure and disqualification from the Comparative Challenge.

25. EVALUATION OF TECHNICAL PROPOSALS

(a) Technical Presentation and Clarification

The PPP-PBAC may request that a technical presentation by each Qualified Challenger be provided during the Technical Proposal evaluation period. The PPP-PBAC reserves the right to make inquiries with any person, government agency, client organization, Consortium Member, officer, employee, advisor or other agent of any Challenger for the purpose of clarifying any matter included in its Technical Proposal.

During the examination and evaluation of the contents of a Qualified Challenger's Technical Proposal, the PPP-PBAC may also request such Challenger to clarify certain portions of its Technical Proposal. Clarifications shall be limited to providing explanations to documentation, information or analysis provided in the Technical Proposal, but shall not involve the submission of missing requirements, additional elements, enhancements or modifications to the Technical Proposal.

(b) Evaluation Method and Criteria

The PPP-PBAC will evaluate the Technical Proposal of each Qualified Challenger strictly on a "Pass-or-Fail" basis. A Technical Proposal will be rated "Passed" if:

- (a) It is complete and contains the Bid Security in sufficient form, value and substance;
- (b) Technical soundness- the basic engineering design of the project should conform to the minimum performance standards and specifications and/or PTCs;

(c) Operational feasibility- the proposed organization, methods, and procedures for operating and maintaining the completed facility are well defined, conformed with the PPP contract. prescribed MPSS, and should be shown to be workable; and

(d) Environmental and social standards and impact mitigation measures- the proposed design and technology of the project to be used must be in accordance with the environmental standards set forth by the Department of Environment and Natural Resources (DENR), and social standards provided in applicable laws.

26. OPENING OF FINANCIAL PROPOSALS

The Financial Proposals of Qualified Challengers that pass the technical evaluation shall thereafter be opened by the PPP-PBAC. The representative of each Challenger will be invited to attend and witness the opening (either in person or virtually). The Financial Proposals of the eligible and technically complying Challengers shall be evaluated based on the financial evaluation criteria prescribed below.

Those who pass the technical evaluation will have their Financial Proposals opened and evaluated. To be responsive and considered for evaluation, the Challenger must propose a lowest Net Present Value of LGU Payments in favor of the CGB compared to what was offered by the Original Proponent.

27. EVALUATION OF FINANCIAL PROPOSALS

The Financial Proposals of technically compliant Challengers will be opened and evaluated on the date and time set for their opening.

Its evaluation shall involve the assessment and comparison of the financial proposals of the bidders/challengers, based on the following parameters:

- (a) Consistency and responsiveness with the requirements of the Agreement;
- (b) Consistency with the submitted technical proposal; and
- (c) Reasonableness of assumptions.

The Challenger proposing the lowest NPV of LGU Payments in favor of the CGB, which must be lower than the NPV of LGU Payments offered by the Original Proponent, shall be considered the Highest Ranked Challenger. No enhancement or offer to pay any sum, concession fee or other premium to the CGB will be considered or evaluated.

The PPP-PBAC shall declare the highest, responsive Comparative Bid submitted by a Qualified Proponent that is better than the Offer of the Original Proponent. If no other Comparative Bid is determined to be better than the offer of the Original Proponent, the Project shall immediately be awarded to the Original Proponent.

If no Comparative Bids are received by the PPP-PBAC after the time and date of the Comparative Bid Submission, the Project shall immediately be awarded to the Original Proponent.

The Winning Bidder's Financial Proposal will be incorporated in the relevant clauses and schedules of the PPP Contract.

28. OTHER GROUNDS FOR DISQUALIFICATION AND APPEALS

A Challenger or Prospective Bidder may also be disqualified from the Comparative Challenge Process for any of the following reasons:

- (a) material or willful misrepresentation in the Comparative Challenge Process;
- (b) Corrupt Practice, Fraud, Collusion, Coercion, Undesirable or Restrictive Practice in the Comparative Challenge Process as described in Section 37;
- (c) any form of political or other lobbying with respect to the Comparative Challenge Process;
- (d) illegal conduct or attempt to influence the PPP-PBAC's evaluation of the Comparative Proposals;
- (e) any Conflict of Interest that would give it any unfair advantage in the Comparative Challenge Process as described in Section 38;
- (f) any Outstanding Dispute with the CGB and/or Philippine Government as described in Section 39;
- (g) failure to comply with any of the terms, conditions and instructions of the RCP; or
- (h) other grounds for rejection or disqualification of Challengers or bidders under the PPP Code, its IRR, and other relevant rules and regulations.

The grounds for disqualification above shall also apply to all Consortium Members (in case the Challenger or Prospective Bidder is a Consortium), and

any nominated contractor/entity of the Challenger or Prospective Bidder.

26.1 Filing for Motion for Reconsideration to PPP PBAC

Within five (5) calendar days upon receipt of the written notice of the PBAC Resolution, the aggrieved Private Proponent may file a Motion for Reconsideration of such PBAC Resolution with the PBAC, or its equivalent. The PBAC shall render a decision within ten (10) calendar days upon receipt of the Motion for Reconsideration.

No party shall be allowed a second motion for reconsideration for the decision of the PBAC.

26.2 Filing for Appeal to the Local Chief Executive

In the event that the request for reconsideration is denied, the Challenger may appeal the disqualification by filing a verified protest or appeal to the Local Chief Executive and pay an appeal fee in an amount of One Million Pesos (Php 1,000,000.00) within ten (10) days upon receipt of the decision by the PBAC. The Mayor shall act on the appeal and render its decision within twenty (20) calendar days upon receipt of the appeal and payment of the appeal fee. Appeal fees set forth herein, from appeals that are found meritorious, are reimbursable, subject to guidelines to be issued by the PPP Governing Board.

Unless otherwise provided in the PPP Code, in no case shall a motion for reconsideration or an appeal from any decision by the PBAC or the Local Chief Executive stay or delay the bidding process. No award shall however be made until a decision on any pending appeal is rendered.

29. VALIDITY OF COMPARATIVE PROPOSALS

(a) Validity Period

The execution of the PPP Contract shall be made within the period of the validity of the bid security. The required bid security shall be valid for a reasonable period but in no case beyond one hundred eighty (180) calendar days from the bid submission date. Bid securities shall be returned to the winning bidder and unsuccessful bidders as soon as the PPP Contract is signed by the winning bidder.

(b) Extension of Proposal Validity

When an extension of validity of bids is considered necessary by the Head of the Implementing Agency, those who submitted bids shall be requested in writing to extend the validity of their bids before the expiration date of the same. However, the bidders shall not be allowed to modify or revise their bids apart from the validity of their bids.

Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security. As a condition of the extension of the validity of their bids, bidders must correspondingly extend the validity of their bid securities.

30. RIGHT TO MATCH

The Original Proponent shall be required at the date of the first day of the publication of the "Invitation for Comparative Proposals" to submit a bid bond equal to the amount and in the form required of the Comparative Proponents, as stated in Section 16.

The Challenger offering the lowest NPV of LGU Payments under the same Project terms and conditions will be considered the Highest Ranked Challenger.

Under the right-to-match mechanism, the Original Proponent shall have the right to match the proposal submitted by the challenger during the comparative challenge: *Provided*, that the Original Proponent shall have thirty

(30) calendar days to match the said proposal put forth by the challenger. The Original Proponent shall match or better the financial proposal of the Highest Ranked Challenger.

If the Original Proponent matches the offer of the highest ranked Challenger, the Original Proponent will be declared the Winning Bidder and will be awarded the Project. If the Original Proponent fails to match the offer of the highest ranked Challenger, the Project will be awarded to the highest ranked Challenger which will be declared the Winning Bidder.

If tie proposals occur between the original proponent and challenger/s. the PPP Contract shall be awarded to the Original Proponent.

31. AWARD

(a) Recommendation of the PBAC to Award the PPP Contract

Within seven (7) calendar days from the date of completion of the final evaluation of the Most Responsive Bid or the comparative challenge period or the right-to-match, whichever is applicable, the PBAC shall submit the Head of the Implementing Agency a recommendation to award.

The PBAC shall prepare and submit a detailed evaluation or assessment report on its decision regarding the evaluation of the bids, where both form and

substance of the bids is given due consideration, and explain in clear terms the basis of its recommendations.

The PBAC shall ensure that the PPP Contract be awarded to the bidder who has satisfied all qualification/pre-qualification and eligibility requirements and has submitted the most responsive bid to the bid parameters as stated herein.

(b) **Decision to Award**

Within seven (7) calendar days from the submission by the PBAC of the recommendation to award, the Head of the Implementing Agency shall render a decision on the recommendation to award. If the recommendation to award is approved, the Head of the Implementing Agency shall sign and issue the Notice of Award to the winning Private Proponent not later than three (3) calendar days from approval thereof.

All unsuccessful bidders shall be informed in writing of the decision of the Implementing Agency to award the PPP Contract to the winning Private Proponent on the same day that the Notice of Award is issued.

(c) **Notice of Award**

The Notice of Award to be issued by the Governor shall clearly indicate the PPP Project, the Project Cost, and the list of documents to be submitted by the winning Private Proponent within twenty (20) calendar days from official receipt of the Notice of Award. Such documents, shall include, but not limited to, the following:

The Notice of Award shall inform the Winning Bidder of the CGB's decision to award the Project in its favor and shall require the Winning Bidder to submit or perform the following:

- a. Prescribed performance security;
- b. Proof of commitment of the required equity contribution;
 - in cases where the winning Private Proponent is a corporation - a treasurer's affidavit attesting to actual paid-up capital, subscription agreement between shareholders of the winning Private Proponent and the winning Private Proponent itself covering said equity contribution, or shareholders agreement between and amongst two (2) or more shareholders of the winning Private Proponent undertaking to contribute or subscribe the required equity contribution; or
 - in the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium.

- c. Proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the Project Cost to be shouldered by the winning Private Proponent;
- d. In case an SPC or a JVC has already been formed for purposes of undertaking the PPP Project, proof of registration in accordance with Philippine laws;
- e. Authority of the authorized signatory of the Private Proponent to sign the agreement; and

- f. Such other conditions imposed by the City of Bacolod.

The Winning Bidder shall comply with all the requirements stated in the Notice of Award within twenty (20) days from receipt of the Notice of Award.

Failure to submit the requirements within the prescribed 20-day period will result in the forfeiture of the Bid Security and the cancellation of the Notice of Award.

Within five (5) calendar days from the receipt by the PPP-PBAC of all the requirements of the Notice of Award, the Head of the Implementing Agency shall determine and notify the Winning Bidder of its compliance with all the requirements of the Notice of Award. Within five (5) days from receipt of such notice of compliance with the requirements, the Winning Bidder shall then enter into the PPP Contract with the CGB. Failure to enter into the PPP Contract will result in the forfeiture of the Winning Bidder's Bid Security and the cancellation of the Notice of Award.

The Winning Proponent will be disqualified, its Notice of Award will be withdrawn, and its Bid Security will be forfeited if, at any time after the issuance of the Notice of Award and prior to the signing and execution by the City of Bacolod of the pre-signed PPP Contract, the Winning Proponent is found to have violated the provisions of these Instructions to Comparative Proponents. The PPP-PBAC shall thereafter be free to consider the next highest qualifying Comparative Proposal.

32. WITHDRAWAL OR SUBSTITUTION OF A MEMBER

Without prejudice to the application of lock-in provisions in the PPP Contract, changes in, withdrawals, or substitution of Private Partners or member-firms of a consortium that result in a change of control of the Private Partner or consortium that will affect its majority ownership and/or beneficial ownership, after the approval of the project, shall be subject to the approval of the appropriate Approving Body. Any substitution or member-firms of a consortium should be with substitutes of equal or better qualification/pre-qualifications as with the original member.

33. SIGNING OF PUBLIC-PRIVATE PARTNERSHIP CONTRACT

(a) No Contract Negotiation

Except to incorporate the applicable terms of the Technical and Financial Proposals of the Winning Bidder and considering that the final terms and conditions of the Project had been previously and successfully negotiated between the CGB and the Original Proponent, there shall be no contract negotiation or major amendments made to the PPP Contract during the Comparative Challenge Process and after contract award.

(b) **Execution of the Contract**

Within five (5) calendar days from the receipt by the winning bidder of the notice from the City of Bacolod that all conditions stated in the Notice of Award have been complied with, the authorized signatories of the Winning Bidder and the City of Bacolod shall execute the PPP Contract.

The Private Proponent that was qualified and awarded the PPP Project, or the SPC that the winning Private Proponent formed for purposes of undertaking the PPP Project, shall be the signatory to the PPP Contract.

(c) **Failure to Enter into Contract**

In the event of refusal, inability or failure of the Winning Bidder to sign the PPP Contract within the prescribed time, the CGB shall forfeit and call on the Bid Security without prejudice to any other right or action that the CGB may decide to exercise or institute against the Winning Bidder.

In such event, the CGB may consider the next best offer or Comparative Proposal and so on, until the PPP Contract has been validly awarded and signed pursuant to Section 108 of the PPP Code IRR.

34. NOTICE TO PROCEED OR COMMENCE IMPLEMENTATION

A Notice to Proceed/ Commence Implementation or similar certification shall be issued to the Private Sector Proponent after the signing of the PPP Contract and the fulfillment of all conditions precedent for the start of the development and implementation of the Project.

The full development and implementation of the Project are subject to all government consents, licenses, permits and approvals under applicable laws.

35. NO CHALLENGERS; SUBMISSION OF ONE BID

If there are no Challengers or if no Comparative Proposals are received or complying, the Project will be immediately and automatically awarded to the Original Proponent.

The submission of only one (1) Comparative Proposal will not result in a failure of the Comparative Challenge Process. Such Comparative Proposal will be opened and evaluated. If the sole Comparative Proponent passes the evaluation of its Qualification Documents, Technical Proposal and Financial Proposal, and are found to be complying, the PPP-PBAC shall declare the sole proponent to be the Winning Comparative Proponent. The PPP-PBAC shall proceed to the Right to Match Stage of the Original Proponent where it will now evaluate the Comparative Bid of the Winning Comparative Proponent against the Matching Proposal of the Original Proponent.

36. GENERAL CONDITIONS AND PROHIBITIONS

By submitting Comparative Proposals and participating in the Comparative Challenge Process, the Challenger or Prospective Bidder acknowledges and agrees that:

- (a) It, including all Consortium Members, Affiliates, nominated contractors/entities, and their respective officers, employees, agents and advisers shall observe the highest standard of professional and business ethics during the Comparative Challenge Process.
- (b) It, including all Consortium Members, Affiliates, nominated contractors/entities, and their respective officers, employees, agents and advisers shall not commit any Corrupt Fraudulent, Coercive, Undesirable and Restrictive Practices, as these terms are defined in this ITC.
- (c) It, including all Consortium Members, Affiliates, nominated contractors/entities, and their respective officers, employees, agents and advisers, will not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Comparative Challenge Process; and
- (d) It accepts all the terms and conditions of the RCP, and it recognizes that the PPP-PBAC has the right to modify any such terms of the RCP at any time.

37. CORRUPT PRACTICE, FRAUD, COLLUSION, COERCION, UNDESIRABLE PRACTICE, AND RESTRICTIVE PRACTICE

For the purposes of the RCP, 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 Comparative Challenge Process or in contract

execution; this also includes similar acts punishable under: (a) Republic Act No. 3019 (otherwise known as the "Anti-Graft and Corrupt Practices Act"); (b) Act No. 3815 (otherwise known as the "Revised Penal Code"); (c) Republic Act No. 6713 (otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees"); (d) Republic Act No. 7080 (otherwise known as "Plunder Law"); and (v) other applicable laws and relevant rules and procedures;

- (b) "*Fraud*" means a misrepresentation of facts in order to influence the Comparative Challenge Process to the detriment of the CGB and/or the Philippine Government, and includes collusive practices among Challengers or Prospective Bidders (prior to or after bid submission) designed to establish financial offers or prices at artificial, non-Comparative levels and to deprive the CGB of the benefits of a free, transparent and open competition;
- (c) "*Collusion*" means a scheme or arrangement between two or more Challengers or Prospective Bidders, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-Comparative levels;
- (d) "*Coercion*" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Comparative Challenge Process, or affect the execution of the PPP Contract;
- (e) "*Undesirable Practice*" means (a) establishing contact with any person connected with, employed or engaged by the CGB or any member of the PPP-PBAC with the objective of canvassing or lobbying, or (b) in any manner influencing or attempting to influence the Comparative Challenge Process, the evaluation of Comparative Proposals, or the implementation of the PPP Contract; 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 Challengers or Prospective Bidders, Consortium Members, Affiliates, and nominated contractors/entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Comparative Challenge Process.

Aside from being disqualified from the Comparative Challenge Process, any person found to be engaging in any Corrupt Practice, Fraud, Collusion, Coercion, or Undesirable or Restrictive Practices shall: (1) incur civil and criminal liability under the applicable laws and regulations, (2) forfeiture if the Bid

Security, without prejudice to any other right or remedy that may be available to the City of Bacolod, and (3) shall be prohibited from participating in any public bidding conducted by the CGB and the Philippine Government from the date that they are found to have directly or indirectly engaged in any such practices.

38. CONFLICT OF INTEREST

Challengers or Prospective Bidders and Consortium Members, including their Affiliates and nominated contractors/entities, must not have any Conflict of Interest. Without limiting the generality of such term, any of the following will be considered a "Conflict of Interest":

- (a) a Challenger, Prospective Bidder, any of its Consortium Members, or any of their Affiliates (of either a Challenger or Prospective Bidder or any of its Consortium Members) is a member of another Consortium, or an Affiliate of a member of another Consortium;
- (b) a Challenger or Prospective Bidder, any of its Consortium Members, or any of their Affiliates (of either a Challenger or Prospective Bidder or any of its Consortium Member) is proposed as a nominated contractor/entity of another Challenger or Prospective Bidder;
- (c) a Challenger or Prospective Bidder, any of its Consortium Members, or any of their Affiliates (of either a Challenger or Prospective Bidder or any of its Consortium Members) has ownership interest of at least 20% in any other Challenger or Prospective Bidder, any Consortium Member of any other Challenger or Prospective Bidder, or any of their Affiliates (of either the other Challenger or Prospective Bidder or any of its Consortium Members);
- (d) a member of the board of directors, partner, officer, employee, professional advisor or agent of a Challenger, Prospective Bidder, any Consortium Member, or any of their Affiliates (of either the Challenger or Prospective Bidder or any of its Consortium Members), is also directly involved in any capacity related to the Comparative Challenge Process for the Project for another Challenger or Prospective Bidder, any Consortium Member of any other Challenger or Prospective Bidder, or any of their Affiliates (of either the Challenger or Prospective Bidder or any of its Consortium Members) provided, however, that in relation to professional advisors, there shall be no Conflict of Interest if prior written disclosure is submitted by such professional advisor to its client Challenger or Prospective Bidder and the CGB, together with a conflict management plan which must be approved by the CGB. The phrase "directly involved in any capacity related to the Comparative Challenge Process for the Project" found in this Section includes the act of voting by a director on any matter

related to the Comparative Challenge Process, including but not limited to the approval of the relevant entity's participation in such process;

- (e) a Challenger or Prospective Bidder, any of its Consortium Members, any of its nominated contractors/entities, or any Affiliate of any of these, has participated as a consultant to the CGB in the preparation of any documents, design, or technical specifications of the Project in connection with the Comparative Challenge Process; or
- (f) a Challenger or Prospective Bidder, any of its Consortium Members, any of its nominated contractors/entities, or any Affiliate of any of these, engages any legal, financial, or technical advisor of the CGB in relation to the Project, or anyone who is or was an employee of the CGB less than one (1) year before his or her engagement by the Challenger or Prospective Bidder, any of its Consortium Member, any of its nominated contractors/entities, or any Affiliate of any of these.

If at any time prior to the signing of the PPP Contract, any Challenger or Prospective Bidder, Consortium Member, nominated contractor/entities, or any Affiliate of any of these, is found to have a Conflict of Interest as defined in this Section, it shall be disqualified from further participating in the Comparative Challenge Process. If the Conflict of Interest involves another Challenger or Prospective Bidder, then both Challengers concerned shall be disqualified.

39. OUTSTANDING DISPUTE WITH GOVERNMENT

For purposes of this ITC, an "Outstanding Dispute" with the Philippine Government refers to any pending judicial, administrative or alternative dispute resolution proceeding, including suspension or blacklisting proceedings, between the Challenger, Prospective Bidder, any Consortium Members or any Affiliates or Contractors proposed by the Challenger or Prospective Bidder, on the one hand, and the CGB or the Philippine Government, any of its offices, agencies or instrumentalities, or any government-owned-or-controlled-corporation, arising out of, or in connection with any bidding, project or contract of the Philippine Government or the CGB, any of its instrumentalities or any government-owned-or-controlled corporation which is intended to provide a critical basic necessity and/or is of paramount public interest and importance, and where, in the opinion of the CGB, such dispute would be an impediment to the successful implementation of the Project.

40. LOCK-UP RULES AND SUBSTITUTION DURING THE BIDDING PROCESS

From the Comparative Proposal Submission Date until the execution of the

PPP Contract, the following rules (“Bidding Process Lock-Up Rules”)

shall apply:

- (a) Corporation, Partnership, or other Juridical Entity.
 - a. For a Comparative Proponent that is a corporation, partnership, or any other juridical entity, no restrictions shall be imposed on the ownership structure of such a Comparative Proponent. Provided that, the Comparative Proponent shall ensure its continued eligibility with respect to the individual Technical and Financial Qualification Requirements as provided in this document.
- (b) Consortium.
 - a. Once a Consortium is qualified to bid, the Consortium's Lead Member and the Consortium Member proposed to meet any Qualification Requirements, may not withdraw from the Consortium, nor reduce their percentage interests in the Consortium as declared in the Consortium's Qualification Documents, except as provided herein.
 - b. Except for the Lead Member, the other members of the Consortium may withdraw from the Consortium prior to the Comparative Proposals Submission Date. The Consortium Member proposed to meet Operation and Maintenance Experience under Technical Qualification Requirements and the Financial Qualification Requirements, that withdraw from the Consortium, need to be substituted by new members such that the Consortium continues its eligibility with respect to the individual Technical and Financial Qualification Requirements as provided in this document. The other Consortium Members that withdraw from the Consortium may be substituted by new members, at the discretion of the remaining members of the Consortium. Any new members of the Consortium must comply with the Legal Qualification Requirements. Withdrawing Consortium Members shall be prohibited from joining any other Consortium that has been declared qualified to bid for the Project.
 - c. Any change in the composition of the Consortium must be approved by the PPP-PBAC.
 - d. A Bidder/Comparative Proponent may submit to the PPP-PBAC only one (1) application for all changes in the composition of the Consortium. The application must be submitted to the PPP-PBAC at least forty-five (45) days before the Comparative Proposals Submission Date. Together with such application, the Comparative Proponent should re-submit the entire Qualification Documents that should be revised to reflect the changes applied for.

- e. If the proposed change is not approved by the PPP-PBAC, the applying Bidder/Comparative Proponent may revert to the original Consortium composition or the shareholding structure of the Consortium, as provided in its Qualification Documents.
 - f. Subject to the above, in the event of a withdrawal, the Comparative Proponent must only inform the PPP-PBAC on the Comparative Proposals submission Date.
- (c) A withdrawal or substitution made in violation of this Section shall be a ground for disqualification or cancellation of the award and/or PPP Contract, and/or the forfeiture of the Challenger's Bid Security or the Private Sector Proponent's performance security, as the case may be.

41. LOCK-UP RULES DURING THE CONCESSION PERIOD

No changes shall be allowed in the shareholder or equity structure of the Winning Proponent from Comparative Proposals Submission Date until the signing by the Project SPC of the PPP Contract. The following rules ("Concession Period Lock-up Rules") shall apply from the signing by the Project SPC of the PPP Contract:

- (a) If the winning proponent is an individual, partnership, corporation, or any other juridical entity, the Winning Proponent must undertake that it or its Affiliates shall own at least fifty percent plus one (50%+1) of the voting and non-voting shares of the Project SPC until the end of the second (2nd) year from the start of operations and at least thirty-three and one-third percent (33 1/3%) of both voting and non-voting shares of the Project SPC until the end of the concession period.
- (b) In case the Winning Proponent is a Consortium:
 - a. The Lead Member, or its Affiliates, shall own the highest percentage equity interest with at least fifty percent plus one (50%+1) of both voting and non-voting shares in the Project SPC until the end of the fifth (5th) year from the start of operation, the Lead Member or its Affiliates may transfer or deal with any shares in the Project SPC, provided however that notwithstanding any such transfer or any such dealing, the Lead Member or its Affiliates continues to retain the highest percentage equity interest and at least fifty percent plus one percent (50%+1) of both voting and non-voting shares in the Project SPC during the said period.
 - b. The Consortium Member that fulfills the Operations and

Maintenance Experience under the Technical Qualifications Requirements, or its Affiliates, shall own at least ten percent (10%) of both voting and non-voting shares of the Project SPC until the end of the fifth (5th) year from the start of operation, such Consortium Member or its Affiliates may transfer or deal with any shares in the Project SPC, provided however that notwithstanding any such transfer or any such dealing, the Consortium Member or its Affiliates continues to retain at least ten percent (10%) of both voting and non-voting shares in the Project SPC during the said period.

- c. Each of the Consortium Members that fulfill the Financial Qualification Requirements, or their respective Affiliates, shall own at least fifty percent plus one (50%+1) of both voting and non-voting shares of the Project SPC until the end of the one (1) year from the start of operation, such Consortium Member or its Affiliates may transfer or deal with any shares in the Project SPC, provided however that notwithstanding any such transfer or any such dealing, the relevant Consortium Member or its Affiliates continues to retain at fifty percent plus one (50%+1) of both voting and non-voting shares of the Project SPC during the said period.
- d. Provided that, in case the Winning Proponent is a Consortium, the Consortium Members that fulfill the Operation and Maintenance Experience, and the Financial Qualification Requirements, or their respective Affiliates, shall collectively hold at least fifty percent plus one (50% + 1) of the voting and non-voting shares of the Project SPC until the end of the second (2nd) year from the start of operations.
- e. Provided further that, in the event that a Consortium Member is considered to satisfy more than one (1) Qualification Requirement as provided in sub-clause (i) to (iv) above, the sub-clause under which the Consortium Member shall be required to retain a higher equity share for a longer period of time shall be applicable.
- f. The Proponent shall ensure its continued eligibility with respect to the individual Technical and Financial Qualification Requirements as provided in this document until such respective periods (vis-à-vis the specific Technical and Financial Qualification Requirements). Provided that, the shareholders may pledge or otherwise encumber their shares for the purpose of financing the Project.

42. CONSEQUENCE OF VIOLATION OF LOCK-UP RULES

- (a) Any violation of the Lock-Up Rules prior to the execution of the PPP Contract between the Winning Proponent and the City of Bacolod shall be a ground for disqualification from the Bidding and forfeiture of the Bid Security.

- (b) Any violation of the Lock-Up Rules after the execution of the PPP Contract between the Winning Proponent and the City of Bacolod shall be treated in accordance with the provisions of the PPP Contract.

43. GOVERNING LAW AND RULES

The City Government of Bacolod's Ordinances, Executive Orders, PPP Code and other applicable Philippine laws, rules and regulations shall govern all matters not specifically covered by the ITC and the RCP.