

JOINT VENTURE SELECTION COMMITTEE (JVSC)

**SELECTION OF JOINT VENTURE PARTNER FOR THE COMMERCIALIZATION OF THE
INFORMATION AND COMMUNICATIONS TECHNOLOGY INFRASTRUCTURE PROJECT IN NEW
CLARK CITY (NCC)**

BID BULLETIN NO. 1, s. 2023

ADDITIONAL INFORMATION TO ALL PROSPECTIVE BIDDERS:

1. In order to access the Data Room where the Bidding Documents for the Project will be made available, a Confidentiality Undertaking in the form set out in **Annex A** must be executed by your authorized representative.
2. Your authorized representative must also submit an executed authorization letter using the template in **Annex B**. The BCDA reserves the right to require additional proof of the authority of the authorized representative.

You are further required to provide the BCDA with, at most, two (2) e-mail addresses, which will be given access to the Data Room.

3. The Prospective Bidders or their representatives are advised of the following arrangements during the Pre-Selection Conference scheduled on November 14, 2023, 2:00 pm at the ADB Office Asian Development Bank Headquarters 6 ADB Avenue, Mandaluyong City 1550, Metro Manila:
 - Strictly maximum of two (2) representatives per Prospective Bidder is allowed to join in the face-to-face meeting in the ADB office. All Prospective Bidders who are interested to join this activity are advised to send their information to the JVSC Secretariat to pre-register and to avail of limited slots.
 - For Prospective Bidders who cannot attend face-to-face, the BCDA also provides for an online access via ZOOM. The link will be provided upon prior request addressed to the JVSC Secretariat (jvsc_ict@bcda.gov.ph, +632 8575-1765). Online participants will be limited to two (2) representatives per Prospective Bidder.

For your guidance and information.

Issued this 24th day of October 2023.

JOINT VENTURE SELECTION COMMITTEE

By:


VIRGIL M. ALVAREZ
Vice Chairperson

[Letterhead]

AUTHORIZATION LETTER

[date]

BASES CONVERSION AND DEVELOPMENT AUTHORITY

Joint Venture Selection Committee (JVSC)
ICT Infrastructure Project in New Clark City
2/F BCDA Corporate Center,
Bonifacio Technology Center
31st Street corner 2nd Avenue
Bonifacio Global City, Taguig City

Attention: **HEDDA Y. RULONA**
Chairperson, JVSC
ICT Infrastructure Project

Gentlemen:

In connection with the intended participation of *(name of Bidder)* in the bidding process for the Commercialization of Information and Communications Technology (“ICT”) Infrastructure in New Clark City (“NCC”), I hereby certify, based on *(insert basis of authority)*, that *(name of authorized representative)* is authorized to request access to the Data Room and to sign the Confidentiality Undertaking on behalf of *(name of Bidder)*.

Please provide access to the Data Room to the following persons with these email addresses:

Name: (Authorized Representative)

Email Address:

Name: (Assistant/Authorized Representative)

Email Address:

Yours,

[name]

[Corporate Secretary/Equivalent Officer]

[name of Bidder]

CONFIDENTIALITY UNDERTAKING

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

1. CONFIDENTIAL INFORMATION

Recipient is interested in obtaining information from the BCDA, in furtherance of the Commercialization of Information and Communications Technology (“**ICT**”) Infrastructure in New Clark City (“**NCC**”) (“**Project**”) which will entail the commercialization and, as necessary, the expansion, repair, and maintenance, of passive ICT Infrastructure (e.g., conduits, fiber optic cables, chambers, colocation facilities, etc.) to address the urgent requirements of NCC locators. The selection process shall be undertaken through a public bidding in accordance with BCDA Joint Venture Guidelines and other applicable laws. By reason of such interest of the Recipient, the BCDA proposes to disclose certain Confidential Information (as defined below) to the Recipient. Recipient acknowledges that the BCDA has the exclusive right to determine what information it may furnish to the Recipient.

As used herein, “**Confidential Information**” means any information concerning the Project, the BCDA, BCDA’s assets, liabilities or obligations, or the bidding process for the procurement of the joint venture partner for the Project furnished to the Recipient directly by any of the BCDA’s officials, employees, and professional advisers appointed by the BCDA including ADB Office of Markets Development and PPP and ADB’s advisors (“**Advisors**”, and together with the BCDA’s officials and employees, the “**BCDA Representatives**”), including: (i) information obtained by Recipient (a) during the due diligence process, (b) through site visits to the NCC and/or BCDA or its offices and facilities and (c) through any management presentation by the BCDA or the BCDA Representatives; (ii) information contained in any other written material furnished or otherwise made available to Recipient; (iii) information furnished to Recipient electronically or through the Data Room; (iv) information presented to Recipient, or its Authorized Representatives (as defined in Section 3 hereof) orally, whether presented in a management presentation or another forum; and (v) all analyses, compilations, forecasts, studies or other documents prepared by Recipient or its Authorized Representatives which contain or reflect any of the foregoing information.

As used herein, “**Data Room**” means the designated website-based electronic data room that will be used by the BCDA and the BCDA Representatives for the storing and distribution of Confidential Information to the Recipient.

Notwithstanding the foregoing, information disclosed by the BCDA or by the BCDA Representatives which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said

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

2. NO REPRESENTATION

Recipient acknowledges and agrees that neither the BCDA nor any of the BCDA Representatives is making any representation or warranty, expressed or implied, and no responsibility or liability is accepted by the BCDA and by any of the BCDA Representatives as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Recipient releases the BCDA and the BCDA Representatives of any liability to the Recipient or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by the Recipient. Only those representations or warranties that are made to Recipient in a definitive agreement issued by the BCDA in connection with the Project, as, and if it is executed by the BCDA, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

3. RECIPIENT'S OBLIGATIONS

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

- (a) not use the Confidential Information for any other purpose than for the Project;
- (b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
- (c) limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives, or (as applicable) other persons, partnerships or corporations with whom the Recipient shall form a consortium for purposes of submitting a bid for the Project (collectively, the "**Authorized Representatives**") who need to know such Confidential Information and only for the purpose of evaluating the Project and who

have executed and delivered a confidentiality undertaking in favor of the BCDA covering the Confidential Information.

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

During the course of Recipient's evaluation, Recipient shall make all inquiries and other communications directly to the BCDA in writing and addressed to the JVSC Secretariat at jvsc_ict@bcda.gov.ph and at the BCDA office, 2F Bonifacio Technology Center 31st Street Cor 2nd Ave Bonifacio Global City, Taguig. Recipient agrees not to directly or indirectly contact or communicate with any other official or other employee of the BCDA concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of the BCDA.

4. COMMUNICATIONS WITH OTHER BIDDERS

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

5. ACCESS TO THE DATA ROOM

- A. Data Room service is outsourced to a third-party provider ("**Data Room Service Provider**"), and accordingly, the Recipient shall:
 - (1) allocate adequate time for processing of information; and

- (2) follow the instructions of the Data Room Service Provider necessary for registration, access, use and compliance with security measures.
- B. The Recipient shall ensure at all times that:
- (1) only the Authorized Representatives shall seek access to the Data Room; and
 - (2) the number of Authorized Representatives who shall seek such access is limited only to those for whom it is strictly necessary for the purposes of, or in connection with, undertaking the bidding process for the Project.
- C. Access to the Data Room by any Authorized Representative is subject to:
- (1) acceptance of Data Room rules of the Data Room Service Provider; and
 - (2) an authorized representative of the Recipient, being the individual duly authorized under a corporate resolution, power of attorney or otherwise by the Recipient and the signatory of this Agreement, having:
 - (a) signed and returned a copy of this Agreement; and
 - (b) if available, countersigned and returned copies of any non-reliance letters issued by Advisors whose reports are included in the Data Room, in each case as identified to the Recipient by the BCDA or ADB.
- D. The BCDA reserves the right to refuse, terminate or withdraw access to the Data Room (either in general or by any Authorized Representative) at any time at their own discretion without giving any reason.
- E. If the Recipient withdraws from the tender process (whether formally or informally), or it is disqualified, or its bid is rejected, access to the Data Room will be withdrawn.
- F. Subject to Data Room rules related to scheduled downtime and communications as notified by the Data Room Service Provider, the Data Room is expected to be open twenty-four (24) hours per day, seven (7) days per week from the date of its opening until the deadline to apply for eligibility and submit a proposal, or such other dates as notified by the BCDA to the prospective bidders. The Data Room may subsequently be reopened to the successful prequalified bidders to respond to the Instructions to Participants and the tender documents.
- G. The Recipient acknowledges and accepts that neither the BCDA, nor the BCDA Representatives accept responsibility for or make any representation, express or implied, nor give any warranty with respect to the accuracy or completeness of the information provided in the Data Room or accept any responsibility or liability for technical issues affecting the Data Room service outsourced to the Data Room Service Provider.



6. SECURITY

- A. The Recipient and its Authorized Representatives shall strictly adhere to the security rules of the Data Room Service Provider. Authorized Representatives must not reveal their username or password to anyone for any reason whatsoever.
- B. When accessing the Data Room, Authorized Representatives must:
 - (1) take all necessary steps to ensure that none of the Confidential Information contained therein is visible to, or capable of being overlooked by, other persons;
 - (2) not leave their computer (or other communications device through which they have logged on to the Data Room) unattended whilst they are logged on to the Data Room; and
 - (3) ensure that they log-out of the Data Room when they have finished using it, by closing down their Internet browser program or as otherwise notified by the rules of the Data Room.
- C. It should be noted that the Data Room system keeps a record of which user names have been used, and at what time, to access particular documents.

7. DISCLAIMER

No liability is accepted by the BCDA or the BCDA Representatives for any damage of any sort which may be caused to any computer, computer system or other communications device through which the Data Room has been accessed, or any information stored on any such computer, computer system or other communications device, in any way resulting from the use of or the downloading of any information from the Data Room. Use of the Data Room is entirely at the user's own risk.

8. GOVERNING LAW AND VENUE

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

9. NO IMPLIED WAIVER

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

10. NO COMMITMENT

- A. Recipient acknowledges that the BCDA has reserved the right to terminate or suspend, at any time and without cause, further participation in the investigation by Recipient and to refuse to disclose any further Confidential Information to Recipient.
- B. This Undertaking does not constitute a solicitation of bids for the Project.

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

11. SEVERABILITY

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

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

[NAME OF BIDDER]

By: _____
(Authorized Representative)
Date: _____

Signed in the Presence of:

