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# Instructions to Private Sector Participants: Volume 1 – Eligibility Documents

## **COMPETITIVE SELECTION FOR THE JOINT VENTURE ON THE NEW CLARK CITY (“NCC”) INFORMATION AND COMMUNICATIONS TECHNOLOGY (“ICT”) INFRASTRUCTURE DISPOSITION**

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01 February 2024

## Introduction

These Instructions to Private Sector Participants (“**IPSP**”) Volume 1 – Eligibility Documents describe the procedures that shall be followed in connection with the competitive selection by the Bases Conversion and Development Authority (“**BCDA**”) of its private partner in an incorporated joint venture (“**JV**”) for the disposition of BCDA’s passive ICT infrastructure through the commercialization, and as necessary, expansion, repair, and maintenance of the passive information and communications technology (“**ICT**”) infrastructure, such as conduits, fiber optic cables, chambers, colocation facilities, and others in New Clark City (the “**Project**”).

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

This IPSP: Volume 1 – Eligibility Documents details the requirements for eligibility of interested private sector participants (“**PSP**”) to be found eligible to submit Proposals (as defined below) for the Project. IPSP: Volume 1 – Forms and Annexures details the forms and technical annexures that are required for interested PSPs to submit the Eligibility Documents (as defined in Section 1.2 Definitions). Interested PSPs shall be entitled to receive the IPSP: Volume 1 – Forms and Annexures upon submission of a letter of intent and purchase of the amount stipulated in Section 2.6.

IPSP: Volume 2 – Competitive Selection Documents details the requirements and procedures for the submission of Proposals, and IPSP: Volume 2 – Forms and Annexures details the forms and annexures that are required for submission of Proposals, with the end-view of determining to whom the Project shall be awarded. IPSP: Volume 2 – Competitive Selection Documents and IPSP: Volume 2 – Forms and Annexures shall be made available free of charge to PSPs determined by the BCDA to be eligible pursuant to the requirements of this IPSP: Volume 1 – Eligibility Documents.

BCDA, through the JVSC, as defined in Section 1.2 this IPSP, reserves the right to amend, revise, modify, clarify, or supplement this IPSP: Volume 1 – Eligibility Documents or IPSP: Volume 1 – Forms and Annexures at any time prior to the submission of the Eligibility Documents, provided, that the BCDA shall provide updated versions of the IPSP: Volume 1 – Eligibility Documents and IPSP: Volume 1 – Forms and Annexures free of charge to any PSPs that have previously purchased the IPSP: Volume 1 – Forms and Annexures.

## Project Description

New Clark City (NCC) is located in Tarlac Province in the Central Luzon Region (Region III), next to Pampanga Province. The NCC footprint covers 97.7 km<sup>2</sup> and is adjacent to the former US Camp O’Donnell airbase, in addition to some small local villages and towns. NCC is characterized by the Cutcut River which tracks from South-West to East through the area.

BCDA envisions resilient, cost-efficient, and ubiquitous ICT infrastructure and services across the footprint of New Clark City (NCC) to support smart urban development. The Project

underpins this vision as it aims to develop, through a JV, the passive ICT infrastructure in NCC that will be offered to Data Transmission Providers (DTPs) on a wholesale, non-discriminatory basis, such that all DTPs receive the same pricing and terms and conditions (including service levels and service credits) regardless of location within NCC (the “**Open Access Model**”).

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

The scope of the JV for the Project will involve the disposition of BCDA's passive ICT infrastructure by carrying out the commercialization, and as necessary, expansion, repair, and maintenance of passive physical ICT infrastructure including, but not limited to, conduits, fiber optic cables, chambers, and colocation facilities, and others in NCC. The JV scope shall also include the last mile connection direct to home or office up to the network termination point within the lettable area of a building, apartment, office or other facility. Infrastructure and services provided by the JV shall be configured to ensure that the end-users in all lettable locations will have a choice of DTPs. In exchange for its services, the JV shall collect tariffs from its DTP customers in accordance with the terms of the JV Agreement.

The term of the JV will be twenty-five (25) years, extendable for a maximum period of ten (10) years upon the mutual agreement of the parties. Based on projections for NCC development and locator demand, preliminary cost estimates place the total cost of the Project over the JV term at approximately PhP 2,500,000,000.00.

The Project will be further detailed in IPSP: Volume 2 – Competitive Selection Documents.

Pursuant to the BCDA Guidelines, the BCDA is issuing this IPSP: Volume 1 – Eligibility Documents and IPSP: Volume 1 – Forms and Annexures in connection with the Project.

**INSTRUCTIONS TO PRIVATE SECTOR PARTICIPANTS:  
VOLUME 1 – ELIGIBILITY DOCUMENTS**

**1. Governing Law and Definitions**

**1.1 Governing Law and Rules**

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

**1.2 Definitions**

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

“**ADB**” means the Asian Development Bank.

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

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

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

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

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

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

“**BCDA Guidelines**” shall refer to the 2017 Guidelines on the Disposition and Privatization of BCDA Properties – Procedures for Entering in JV Agreement with Private Entities issued by BCDA.

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

“**BIR**” refers to the Bureau of Internal Revenue.

“**Certificate of Project Completion**” means a certificate attesting to completion of 100% of the works under a contract submitted as part of the Eligibility Documents.

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

**“Commercialization Experience Requirements”** means the Technical Capability Requirements as provided in Section 3.2.6 that must be met by a PSP.

**“Competitive Selection Process” or “Competitive Selection”** means the process beginning from the publication of the IAESP until the signing of the JV Documents.

**“Conflict of Interest”** is defined in Section 18.

**“Consortium”** means an incorporated or unincorporated association of Consortium Members, in which each of the Consortium Members satisfying the Maintenance Experience Requirement and/or Commercialization Experience Requirement having not less than 20% interest and the Consortium Member/s satisfying the Design Experience Requirement and/or Construction Experience Requirement having not more than 30% interest, bound by contract or law, solidarily undertaking, by mutual written agreement, a common enterprise which is to participate in the Competitive Selection Process for the Project.

**“Consortium Agreement”** means the mutual written agreement executed by and among the Consortium Members to undertake a common enterprise (i.e., to participate in the Competitive Selection Process) and pursuant to which the Consortium Members bind themselves to be solidarily liable for the obligations of the Consortium until the execution of the JV Documents and if declared as the Winning PSP, until the SPC adheres to the JV Agreement and other relevant JV Documents.

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

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

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

**“Construction Experience Requirements”** means the Technical Capability Requirements as provided in Section 3.2.4.1(B) Table 1-B that must be met by a PSP.

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

direction of the management or policies of such corporation, partnership or other legal entity, whether through:

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

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

**"Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice"** are each defined in Section 17.

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

**"Day"** or **"day"** means a calendar day, unless otherwise specified.

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

**"Design and Construction Experience Requirements"** means the Technical Capability Requirements as provided in Section 3.2.4.1 that must be met by a PSP.

**"Design Experience Requirements"** means the Technical Capability Requirements as provided in Section 3.2.4.1(A) Table 1-A that must be met by a PSP.

**"DSG"** refers to Design Standards and Guidelines

**"DTI"** refers to the Department of Trade and Industry.

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

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

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

**“Eligibility Documents”** means the documents required to be submitted by the PSP as provided in Section 4 during the Pre-Selection Process, which also include IPSP: Volume 1 – Forms and Annexures

**“Eligibility Documents Submission Date”** means the day to be set by the BCDA for submission of the Eligibility Documents as indicated in Section 8.

**“Eligibility Form” or “EF”** means eligibility forms which are submitted as part of IPSP: Volume 1 – Forms and Annexures.

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

**“Financial Capability Requirement”** refers to the Eligibility Requirements as provided in Section 3.3 that must be met by a PSP.

**“GIS”** means General Information Sheet, an annual report required to be filed with and accepted by the SEC.

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

**“Government Authority”** means any national or local agency, instrumentality, body, unit, official, employee or agent exercising executive, legislative, judicial, quasi-judicial or administrative powers and having jurisdiction or authority over a person, or any of its respective properties, assets or representatives, or the matter in question.

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

**“ICT”** means information and communications technology.

**“ICT Infrastructure Project Eligibility Requirements”** refers to the Design and Construction Experience Requirements, Maintenance Experience Requirements, and Commercialization Experience Requirements.

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

**“IPSP”** means the Instructions to Private Sector Participants.

**“JV”** means joint venture.

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



**"JV Documents"** means the JV Agreement and any forms and annexures which form an integral part of the JV Agreement.

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

**"JVSC"** refers to the Joint Venture Selection Committee.

**"Lead Member"** means, for a PSP that is a Consortium, the Consortium Member having the highest percentage of interest in the Consortium, which should not be less than 33 $\frac{1}{3}$ %, and which should be designated in writing as such by the other Consortium Members.

**"Legal Capacity Requirements"** refers to the Eligibility Requirements as provided in Section 3.1 that must be met by a PSP.

**"Lock-Up Period"** is defined in Section 13.

**"Lock-Up Rules"** is defined in Section 13.

**"Maintenance Experience Requirements"** means the Technical Capability Requirements, as provided in Section 3.2.5 that must be met by a PSP.

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

**"New Clark City" or "NCC"** means New Clark City situated in Capas, Tarlac province, the metes and bounds of which are stipulated in the map attached as **Annex A** of IPSP: Volume 1 – Forms and Annexures.

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

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

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

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

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

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

**“Post-Eligibility Documents Submission Date”** means the date that is seven (7) days prior to the Proposals Submission Date.

**“Pre-Selection Conference”** is defined in Section 2.10.

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

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

**“Proposal”** means the technical proposal and the financial proposal to be submitted by the Eligible PSPs pursuant to IPSP: Volume 2 – Competitive Selection Documents.

**“Proposals Submission Date”** is the date set in IPSP: Volume 2 – Competitive Selection Documents as the date of the Eligible PSPs’ submission of their Proposal.

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

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

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

**“SEC”** refers to the Philippine Securities and Exchange Commission.

**“Substitution”** is defined in Section 13.2.2.

**“Technical Capability Requirements”** refers to the Eligibility Requirements that must be met by a PSP, as provided in Section 3.2.

**“Telecommunications”** refers to processes involving the relay and receipt of voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible or audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means.

**“Telecommunications Company”** means any juridical person having the requisite Authorization to provide Telecommunications services to the public for compensation.

**“Unsatisfactory Performance Record”** means any of the following:

- a. Within the last five (5) years:
  - (i) failure to satisfactorily perform any of its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
  - (ii) expulsion from any project or contract;
  - (iii) termination or suspension of any of its projects or contracts due to breach of its obligations; or
  - (iv) material violation of laws and/or regulations applicable to any of its projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;
- b. Inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website ([www.worldbank.org/debarr](http://www.worldbank.org/debarr)), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
- c. Involvement in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice or having Conflicts of Interest.

**“VAT”** means value-added tax.

**“Wholesale Services Agreement”** means open access wholesale passive service offer on ICT infrastructure that is available on equal terms, to DTPs on a non-discriminatory basis, such that for each wholesale service, all DTPs receive the same price, terms, conditions, including service levels and service credits.

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

**“Withdrawal”** is defined in Section 13.2.1.

## 2. The Competitive Selection Process

### 2.1 The JVSC

The JVSC for the Project created by the BCDA pursuant to the BCDA Guidelines shall administer the Competitive Selection Process for the Project. It shall be responsible for the preparation of the Invitation Documents, publication of the IAESP, determination of eligibility of the PSPs, conduct of Pre-Selection Conferences and issuance of supplemental notices, interpretation of rules regarding the selection process, conduct of the selection process, evaluation of financial and technical proposals, and resolution of disputes between PSPs, and recommendation for the acceptance of the proposal and/or the award of JV Agreement.

### 2.2 Transaction Advisor

The ADB has been appointed by the BCDA to act as its transaction advisor for the Project together with other technical and legal advisors.

### **2.3 Revisions and Clarifications to the Invitation Documents**

The JVSC reserves the right to amend, revise, modify, clarify, or supplement any section of the Invitation Documents at any stage of the Competitive Selection Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated, in writing, through special bid bulletins issued by the JVSC to all parties who purchased the Invitations Documents. Upon notice or communication to PSPs regarding the issuance of a bid bulletin by the JVSC, the same shall automatically be incorporated into and made an integral part of the particular document to which it relates. Any such notice or communication shall be deemed given when so sent by electronic mail in the electronic mail addresses provided by the PSPs.

### **2.4 Interpretation of IPSP**

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

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

The rule of construction, if any, that a contract should be interpreted against the party responsible for the drafting and preparation thereof, shall not apply.

For avoidance of doubt, the interpretation of the IPSP shall be without prejudice to the provisions of the BCDA Guidelines.

### **2.5 Responsibility of PSPs**

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

- (a) be fully acquainted with the laws, requirements, terms, and conditions of the Competitive Selection Process;
- (b) examine all the Invitation Documents and other BCDA Supplied Information, including all instructions, forms, schedules, terms, specifications, and drawings;
- (c) familiarize itself with all existing laws, decrees, acts, rules, and ordinances of the Philippines, whether national or local, which may affect the Project; and

- (d) determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions related to the Project; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications, and other relevant factors; resource requirements; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.

PSPs (including any Consortium Members, their Affiliates or proposed Contractors) acknowledge that any BCDA Supplied Information is provided solely for background information on the Project, and therefore no reliance on such BCDA Supplied Information is being made for purposes of formulating its Proposal. PSPs (including any Consortium Members, their Affiliates or proposed Contractors) shall not be entitled to, and shall not make, any claim against BCDA, its officers, the JVSC, any BCDA employee, or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the following grounds:

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

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

## **2.6 Costs and Expenses of Participation**

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

A copy of this IPSP: Volume 1 – Eligibility Documents, excluding the IPSP: Volume 1 – Forms and Annexures, may be downloaded free of charge from <https://bcda.gov.ph/bids/development-information-communications-technology-ict-infrastructure-new-clark-city>. The IPSP: Volume 1 – Forms and Annexures, however, may only be secured by Prospective PSPs upon submission of a letter of intent and payment of a non-refundable fee of Two Hundred Fifty Thousand Philippine Pesos (PhP250,000.00),

in cash or manager's check issued by a bank in the Philippines to BCDA. Only Eligible PSPs shall be provided IPSP: Volume 2 – Competitive Selection Documents, which will contain the requirements in relation to the Proposals, without additional cost. Under no circumstances, whether qualified, disqualified or Provisionally-Eligible, PSP shall be entitled to a reimbursement of the purchase costs for IPSP: Volume 1 – Forms and Annexures.

The person duly authorized under a notarized special power of attorney executed by a PSP to purchase the Invitation Documents must present to the JVSC his/her authorization from a PSP and must provide an electronic mail address where all correspondence of the BCDA to the PSP shall be sent. Upon receipt of payment, the PSP will be issued an official receipt and given copies of the IPSP: Volume 1 – Forms and Annexures. In addition to the IPSP: Volume 1 – Eligibility Documents, including the IPSP: Volume 1 – Forms and Annexures, certain documents will be provided to the PSP solely to provide background information on the Project (“**Information Documents**”), which documents shall be made available in the Data Room.

## **2.7 Queries and Supplemental Notices**

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

**HEDDA Y. RULONA**  
**The Chairperson**  
**JVSC for the NCC ICT Infrastructure Project**  
Bases Conversion and Development Authority  
2/F Bonifacio Technology Center  
31<sup>st</sup> Street corner 2<sup>nd</sup> Avenue, Bonifacio Global City, Taguig City  
E-mail: [jvsc\\_ict@bcda.gov.ph](mailto:jvsc_ict@bcda.gov.ph)  
Telephone: +63 2 8575 1765

The JVSC will accept all reasonable queries, comments, and clarifications only in relation to the Invitation Documents not later than 12:00 p.m. on the “last date of clarification to bidders” under Section 2.13 Schedule of Bidding. Responses to queries and any modifications to the Invitation Documents shall be communicated to all PSPs in writing in accordance with Section 2.3.

Any and all queries on any aspect of these documents must be sent to the contact details as stated above. BCDA, the JVSC, and its officers and employees will not entertain any comments or queries with respect to these documents coursed through channels other than as stated above.

## **2.8 Ownership of Documents**

All documents submitted in response to the Invitation Documents, including Eligibility Documents, shall become the property of BCDA, and any information obtained by BCDA

from such documents may be reasonably used by BCDA subject to the confidentiality clause in Section 2.11.

## 2.9 Language and Foreign Documents

- (a) The Eligibility Documents and all submissions to JVSC shall be prepared and written in the English language. Any document written in a foreign language shall be accompanied by an English translation and authenticated by a Philippine consular official. The authentication of such documents should follow the authentication rules of the relevant Philippine consular office. In case of conflict, the English translation shall prevail.
- (b) All documents that are required to be submitted under oath, acknowledged, or sworn to must be complied with as follows:
- i if executed in the Philippines, it must be sworn to or acknowledged before a Philippine Notary Public; or
  - ii if executed outside the Philippines, either:
    1. it is sworn to or acknowledged before a Philippine consular official authorized to administer oaths; or
    2. it may be sworn to or acknowledged before any person authorized to administer oaths in that jurisdiction, provided that the same shall be authenticated before a Philippine consular official authorized to authenticate documents at the Philippine consulate nearest the place of execution or certified pursuant to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, otherwise known as the *Apostille Convention*, if the foreign country where the document was issued or executed is a signatory to the *Apostille Convention*.
- (c) If the document was issued by a foreign authority, the PSP must submit a certified true copy of such document issued by such foreign authority that is either:
- i certified pursuant to the *Apostille Convention*, if the foreign country where the document was issued or executed is a signatory to the *Apostille Convention*; or
  - ii authenticated by a Philippine consular official authorized to authenticate documents at the Philippine consulate nearest the place of execution if the foreign country where the document was issued or executed is not a signatory to the *Apostille Convention*.
- (d) For purposes of determining the eligibility of the PSP, the JVSC will accept foreign documents that are not yet notarized and/or authenticated or apostilled but shall be subject to compliance with the following conditions:
- (1) the photocopy of the foreign document must be submitted to the JVSC on the Eligibility Documents Submission Date;

- (2) the original notarized and/or authenticated or apostilled foreign document must be submitted to the JVSC no later than the Post-Eligibility Documents Submission Date;
  - (3) the original notarized and/or authenticated or apostilled foreign document submitted to the JVSC must be identical to the photocopy of the foreign document previously submitted by the PSP; and
  - (4) the relevant foreign document must be listed in **Annex EF-1** of IPSP: Volume 1 – Forms and Annexures.
- (e) If a PSP undertakes to submit notarized and/or authenticated or apostilled documents no later than the Proposals Submission Date, it may be provisionally qualified if, based on the Eligibility Documents it submits on the Eligibility Documents Submission Date, it meets all of the Eligibility Requirements enumerated under Section 3 of this IPSP: Volume 1 – Eligibility Documents. As a Provisionally-Eligible PSP, it shall be allowed to purchase the IPSP: Volume 2 – Competitive Selection Documents. However, a Provisionally-Eligible PSP shall be automatically disqualified if:
- (1) it fails to submit the notarized and/or authenticated documents within the prescribed period in Section 2.9(d)(2); or
  - (2) There are differences between the contents of the documents submitted on the Eligibility Documents Submission Date and the subsequently notarized and/or authenticated documents submitted to the JVSC.
- (f) In foreign countries where there is no Philippine embassy/consulate and is not a party to the *Apostille Convention*, the document issued or executed therein shall only be notarized by a notary public in the said foreign country and then legalized by the relevant department in the foreign country's Ministry of Foreign Affairs or its equivalent, who must also state in the same document that there is no Philippine embassy/consulate in that foreign country. No authentication by the Philippine embassy/consulate shall be required in such a case.

## **2.10 Pre-Selection Conference**

The JVSC will conduct a Pre-Selection Conference to further clarify the Invitation Documents and to answer any additional questions from interested parties and PSPs. The Pre-Selection Conference shall be on the date stipulated in Section 2.13 to be conducted in-person at 02:00 pm at the Asian Development Bank Headquarters, 6 ADB Avenue, Mandaluyong City 1550, Metro Manila, Philippines and/or through video conferencing. PSPs who wish to participate virtually in the Pre-Selection Conference shall send a request by electronic mail in accordance with Section 2.7. BCDA will thereafter send the relevant registration details for the Pre-Selection Conference to the relevant PSP. All PSPs that wish to attend the Pre-Selection Conference through video conferencing must register on or before 09 November 2023.



PSPs are encouraged to attend the Pre-Selection Conference to ensure that they fully understand BCDA's requirements. Non-attendance at the Pre-Selection Conference will not prejudice a PSP's Eligibility.

Any statement made at the Pre-Selection Conference shall not modify the terms of the Invitation Documents unless such statement is specifically identified in writing as an amendment thereto and issued through a special bid bulletin issued by the JVSC pursuant to Section 2.3. Such modifications, the PSP is expected to be aware of even if the PSP did not attend the Pre-Selection Conference.

## **2.11 Confidentiality**

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

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

- (i) it has not relied and will not rely upon any of BCDA Supplied Information as being proper, accurate, adequate, suitable, or complete for any purpose;
- (ii) it will make its own independent evaluation, inspection, and investigation of all BCDA Supplied Information and will fully satisfy itself as to any matter or thing disclosed by any BCDA Supplied Information in connection with the Project, including (but not limited to) the accuracy, adequacy, suitability, or completeness of any reports, data, test results, samples, geotechnical investigations, opinions, recommendations, findings, summaries, design, or other information; and
- (iii) it will not rely upon (or allow any other person assisting or advising it to rely upon) the BCDA Supplied Information in connection with any aspect of the Competitive Selection Process or the Project until it has satisfied itself as to the accuracy, adequacy, suitability, and completeness of the Information.

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

## **2.12 Acceptance of Criteria and Waiver of Rights to Enjoin Project**

By submitting the Eligibility Documents, particularly the Acceptance of Criteria and Waiver of Rights to Enjoin Activity form in **Annex EF-6A** or **Annex EF-6B**, whichever is applicable, of IPSP: Volume 1 – Forms and Annexures, a PSP thereby unequivocally accepts the Eligibility Requirements established by the BCDA, and such PSP, including

all Consortium Members, nominated Contractors and PSP Industry Affiliates, irrevocably waives, to the fullest extent allowable by law, any right it may have to, and shall not seek or obtain, any writ of injunction or prohibition or restraining order, or any other form of coercive judicial, quasi-judicial or administrative writ, process, or issuance, or any other similar remedy or course of action intended to have similar effect, including but not limited to any claim for payment of costs, fees, expenses, or damages, in any jurisdiction, against BCDA, its JVSC, its Affiliates, or any of the BCDA Advisers or any other entity as would prevent, suspend, restrain or in any manner forestall, hinder, or render inconvenient any stage of the Competitive Selection Process, the award of the JV Agreement and other relevant JV Documents to the Winning PSP, or the carrying out of the awarded JV Agreement and other relevant JV Documents.

### 2.13 Indicative Bidding Schedule

The table below provides an indicative schedule for the Competitive Selection Process, as follows:

#### STAGE 1 - Pre-Selection Stage

| Activities   | Responsibility | Date                         |
|--|----------------|------------------------------|
| Release of Information Documents and IPSP Vol. 1   | BCDA           | 25 October 2023              |
| Purchase of Bidding and Information Documents  | Bidders        | 06 November 2023             |
| Opening of Data Room   | BCDA           | 06 November 2023             |
| Pre-Selection Conference   | BCDA           | 14 November 2023             |
| Site Visit   | Bidders/BCDA   | 12 January 2024              |
| Last date of submission of queries and clarification   | Bidders        | 25 January 2024, 5:00 PM     |
| Issuance of final IPSP Vol. 1 – Eligibility Documents, including IPSP Vol. 1 – Forms and Annexures | BCDA           | 01 February 2024             |
| Submission of Eligibility Documents  | Bidders        | 16 February 2024, 12:00 P.M. |
| Opening of Eligibility Documents   | BCDA           | 16 February 2024, 1:00 P.M.  |
| Notification of Shortlisted PSPs   | BCDA           | 28 February 2024             |

## 2.14 Site Visit

All parties who purchase the Invitation Documents may conduct a maximum of two days of site visits by sending requests to BCDA through the following contact persons:

**Stevenson E. Tugas, Jr.**  
**Lucky Niño Baula**  
E-mail: [jvsc\\_ict@bcda.gov.ph](mailto:jvsc_ict@bcda.gov.ph)  
Telephone: +63 2 8575 1765

## 3. Eligibility Requirements

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

### 3.1 Legal Capacity Requirements

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

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

3.1.2 If the PSP is a partnership or corporation, it must be registered with the SEC. If the PSP is a foreign partnership or corporation, it must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign partnership or corporation was registered for creation or recognition of its juridical personality or capacity. The PSP must certify that it, its Affiliates, and contractors whose projects and experience are being submitted as evidence of fulfillment of the Technical Capability Requirements or Financial Capability Requirements have **no Unsatisfactory Performance Record** within the last five (5) years from the Eligibility Documents Submission Date (using the form in **Annex EF-5** of IPSP: Volume 1 – Forms and Annexures).

3.1.3 If the PSP is a Consortium, its members must be partnerships or corporations registered with the SEC. If any member of the Consortium is a foreign partnership or corporation, such member must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity.

Each Consortium Member must certify that it, its Affiliates, and contractors whose projects and experience are being submitted as evidence of fulfillment of

the Technical Capability Requirements or Financial Capability Requirements have **no Unsatisfactory Performance Record** within the last five (5) years from the Eligibility Documents Submission Date (using the form in **Annex EF-5** of IPSP: Volume 1 – Forms and Annexures).

- 3.1.4 Regardless of the PSP's ownership, the PSP undertakes that it does not and shall not engage in any Anti-Competitive Behavior (using the form in **Annex EF-13** of IPSP: Volume 1 – Forms and Annexures).
- 3.1.5. If the PSP that is a Consortium becomes the Winning PSP, it shall cause the incorporation of an SPC, which shall either sign and execute, or accede to the JV Agreement and other relevant JV Documents. In the incorporation of such SPC, the Consortium Members shall ensure that the SPC shall benefit from and maintain the qualifications and experience of the Consortium which were used as basis for the eligibility and award of the Project to the PSP that is a Consortium.

### **3.2 Technical Capability Requirements**

3.2.1 The Technical Capability Requirements consist of (i) Design and Construction Experience Requirements, (ii) Maintenance Experience Requirements and (iii) Commercialization Experience Requirements. Unless specified otherwise in the relevant sections of this document, the entity fulfilling each area of Technical Capability Requirements shall be the following:

- (1) if the PSP is a partnership or corporation:
  - i the PSP itself; and/or
  - ii an Affiliate of the PSP
- (2) if the PSP is a Consortium:
  - i a Consortium Member; and/or
  - ii an Affiliate of the Consortium Member

3.2.2. There shall be **no aggregation of experience** by different entities from the foregoing list for all of the Technical Capability Requirements. The nominated entity itself must comply with the relevant Technical Capability Requirement for which it is being nominated. Each entity whose completed projects are being submitted to fulfill the relevant Technical Capability Requirement must certify that they have **no Unsatisfactory Performance Record** (using the form in **Annex EF-5** of IPSP: Volume 1 – Forms and Annexures).

3.2.3. If selected as a Winning PSP, the entity or entities proposed by PSP to meet the Technical Capability Requirements, which are declared eligible by the JVSC, shall be recognized/named in the JV Agreement and other relevant JV Documents without need for further consent from BCDA, subject to compliance with applicable law. The use of any entity or Contractor other than those recognized/named in the JV Agreement and other relevant JV Documents as having been declared eligible by the JVSC will require the prior written consent of BCDA; provided, that such prior written consent of the BCDA is not required for

contracts, which are less than One Hundred Million Philippine Pesos (PhP100,000,000.00) in contract value; and will be subject to the Winning PSP's demonstration to the BCDA's satisfaction that the proposed entity or Contractor meets the requirements in Section 3.2.4.1(A) and/or Section 3.2.4.1(B), whichever is applicable, and other requirements relevant to the entity being replaced, if any.

3.2.4. Design and Construction Experience Requirements

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

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

3.2.4.1. The entity nominated to fulfill the Design and Construction Experience Requirements must have client-side or in-house experience of satisfactorily completing the design of **ALL** of the following eligible projects, whether locally or abroad, within the last five (5) years prior to the Eligibility Documents Submission Date. If the entity nominated to fulfill the Design and Construction Experience Requirements is a Telecommunications Company, it may submit its in-house experience and/or its client-side experience.

**(A) Table 1-A: Design Experience Requirements**

| <b>Eligible project/<br/>facilities</b>                   | <b>Minimum requirement</b>  |
|---|---|
| Design of underground optical fiber multi-conduit network | <p>More than one hundred (100) kilometers of underground optical fiber multi-conduit network within seven (7) passive Integrated Networks.</p> <p>An <b>“Integrated Network”</b> is defined as a multi-conduit network with multiple fiber routes/cables built to a common design that serves an identifiable, contiguous area aggregated back to a central network site/connection point with capability for</p> |

|   |  |
|---|--|
|   | interconnection to the equipment of more than one (1) DTP.   |
| Design of fiber installations to address Mixed End User Base including residential and enterprise buildings, government, and other end points | More than one hundred thousand (100,000) Billable End-Points including Mixed End User Base within seven (7) Integrated Networks.<br><br>“ <b>Billable End-Points</b> ” refer to the DTP end-user points that are connected or connectable to an Integrated Network.<br><br>“ <b>Mixed End User Base</b> ” means different customer market segments, e.g., a mix of business and residential. |
| Design of passive wholesale network services (e.g., end-to-end dark fiber services)   | At least one (1) passive fiber wholesale network delivering services to at least two (2) DTPs.   |

**(B) Table 1-B: Construction Experience Requirements**

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

- 3.2.4.2. In case the entity nominated to fulfill the Design and/or Construction Experience Requirements is a Consortium Member or the Affiliate of a Consortium Member and such entity is not also nominated to fulfill either the Maintenance Experience Requirements or the Commercialization Experience

Requirements, the equity of such Consortium Member in the Consortium must not exceed thirty percent (30%).

3.2.4.3. For avoidance of doubt, PSPs may nominate the same Contractor to satisfy the Design and/or Construction Experience Requirements. Further, during the qualification stage of this Competitive Selection Process, different PSPs may submit the same Contractor to satisfy the Design and/or Construction Experience Requirements.

3.2.5. Maintenance Experience Requirements

3.2.5.1. The PSP shall only nominate one (1) entity with either client-side or in-house experience to fulfill the Maintenance Experience Requirements and the entity nominated to fulfill the Maintenance Experience Requirements must have prior and current experience in maintaining the eligible projects/ facilities referred to in Table 2 below for a period of at least five (5) consecutive years within the last seven (7) years prior to the Eligibility Documents Submission Date.

**Table 2: Maintenance Experience Requirements**

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

3.2.5.2. In case the entity which fulfills the Maintenance Experience Requirements is a Consortium, Consortium Member shall additionally meet following shareholding requirements:

- (1) a Consortium Member, that is neither a natural person nor a sole proprietorship with at least twenty percent (20%) interest in the Consortium, or
- (2) an Affiliate of a Consortium Member with at least twenty percent (20%) interest in the Consortium.

3.2.6. Commercialization Experience

3.2.6.1. The PSP shall only nominate one (1) entity with either client-side or in-house experience to fulfill the Commercialization Experience Requirements and the entity nominated to fulfill the Commercialization Experiences must have prior

and current experience in commercializing the eligible projects/ facilities referred to in Table 3 below for a period at least five (5) consecutive years within the last seven (7) years prior to the Eligibility Documents Submission Date:

**Table 3: Commercialization Experience Requirements**

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

3.2.6.2. In case the entity which fulfills the Commercialization Experience Requirements is a Consortium, Consortium Member shall additionally meet following shareholding requirements:

- (1) a Consortium Member, that is neither a natural person nor a sole proprietorship with at least twenty percent (20%) interest in the Consortium, or
- (2) an Affiliate of a Consortium Member with at least twenty percent (20%) interest in the Consortium.

### 3.3 Financial Capability Requirements

3.3.1 The PSP, or a related entity as described in Section 3.3.2(a)(ii), or the Consortium must:

- (a) Possess a net worth of at least One Billion Philippine Pesos (PhP 1,000,000,000.00) or its equivalent as of its latest audited financial statements for the previous three (3) financial years, the latest of which must be dated not earlier than 31 December 2022; or
- (b) Have a set-aside deposit equivalent to One Billion Philippine Pesos (PhP 1,000,000,000.00) evidenced by a notarized certification from the relevant bank as proof of set-aside deposit indicating the name of the account holder and the amount of the set-aside deposit.

3.3.2 The entity which fulfills the Financial Capability Requirement may be:

- (a) If the PSP is a partnership or corporation:
  - i. The PSP itself; or
  - ii. An Affiliate of the PSP that will guarantee the obligations of the PSP under the JV Documents in relation to the Project.
- (b) If the PSP is a Consortium:



- i. The Consortium Members, by combining their respective net worth in relation to their percentage of participation in the Consortium.

3.3.3 The entity/ies being submitted to fulfill the Financial Capability Requirement must certify that it has no **Unsatisfactory Performance Record** (using the form in **Annex EF-5** of IPSP: Volume 1 – Forms and Annexures).

#### 4. Eligibility Documents

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

##### 4.1 Legal Capacity Documents

4.1.1 Notarized Application to be Declared Eligible and Submit Proposal (using the form in **Annex EF-1** of IPSP: Volume 1 – Forms and Annexures) to be submitted by the PSP.

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

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

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

If the PSP is a Consortium, the Business Structure must show the Lead Member and all Consortium Members, such that the sum total of the percentage interest of all Consortium Members must add up to one hundred percent (100%).

Each Consortium Member must also provide an undertaking that it will enter into and submit a Consortium Agreement using the form in IPSP: Volume 2 – Forms and Annexures.

The Consortium Member with the highest percentage of interest in the Consortium must also provide an undertaking that it binds itself to be solidarily liable for the obligations of the SPC under the JV Agreement and other relevant JV Documents once the SPC adheres to the JV Agreement and other relevant JV Documents.

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

(a) Required attachments, as applicable:

- (1) Certified true copy of its latest GIS, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the PSP. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the PSP, the certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 2.9.

If in a particular foreign jurisdiction there is no document equivalent to the GIS, an officer of the entity registered in such foreign jurisdiction may instead submit a notarized certification stating that there is no document equivalent to the GIS in the foreign country where it is registered. The notarized certification should also provide the information required under the GIS.

- (2) Certified true copy of SEC Certificate of Incorporation (for corporations) or Certificate of Recording (for partnerships), or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity (as applicable).

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the PSP. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the PSP, the certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 2.9.

- (3) Certified true copy of the latest Articles of Incorporation or Articles of Partnership or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the PSP. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the PSP, the certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 2.9.

- (4) Certified true copy of the latest By-Laws, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity.

The certification may come from the SEC or its equivalent in a foreign country, the entity's corporate secretary, any officer of the entity duly authorized to make such certification, or the authorized representative/s of the PSP. If it comes from the entity's corporate secretary, the entity's duly authorized officer, or the authorized representative/s of the PSP, the certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) must be under oath and notarized. If the certification is issued or notarized outside the Philippines, the certification must comply with the requirements in Section 2.9.

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

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

**Annex EF-7B** of IPSP: Volume 1 – Forms and Annexures for a PSP which is a Consortium).

- 4.1.8 A Notarized Certification Relating to Eligibility Documents (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures).
- 4.1.9 A Notarized Confidentiality Undertaking in favor of the BCDA to be submitted by the PSP; for a PSP which is a Consortium, it is to be executed by all Consortium Members (using the form in **Annex EF-9**).
- 4.1.10 A Notarized Undertaking Against Anti-Competitive Behavior to be submitted by the PSP (using the form in **Annex EF-13** of IPSP: Volume 1 – Forms and Annexures).

#### **4.2 Technical Capability Documents**

- 4.2.1 Design Experience Requirements, or Construction Experience Requirements, or Design and Construction Experience Requirements (using the form in **Annex EF-10A** and **Annex EF-10B** of IPSP: Volume 1 – Forms and Annexures) to be submitted by the entity or entities that fulfill the Design Experience Requirements, or Construction Experience Requirements, or Design and Construction Experience Requirements in Section 3.2.4, as identified in the Business Structure, together with the following required attachments:
  - (a) Notarized Certification of Absence of Unsatisfactory Performance Record (using the form in **Annex EF-5** of IPSP: Volume 1 – Forms and Annexures).
  - (b) Following documents for the project(s) satisfying the specified Design Experience Requirements and/or Construction Experience Requirements under Section 3.2.4:
    - (i) To establish design of underground optical fiber multi-conduit network, the document described below, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design Experience Requirements that such copy is a true and faithful reproduction of the original:
      1. For client-facing experience, copy of the Detailed Engineering Design (or equivalent) contract, which demonstrates the scope for completed design along with location certified by an independent party (e.g., client or consultant); or
      2. For in-house experience of a Telecommunications Company, copy of the Detailed Engineering Design (or equivalent), which demonstrates the scope for completed design along with location.

- (ii) To establish design of fiber installations to address Mixed End User Base including residential and enterprise buildings, government, and other end points, the document described below, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design Experience Requirements that such copy is a true and faithful reproduction of the original:
1. For client-facing experience, copy of Detailed Engineering Design (or equivalent) contract, which demonstrates the scope for completed design along with location and number of Billable End Points including Mixed End User Base certified by an independent party (e.g., client or consultant); or
  2. For in-house experience of a Telecommunications Company, copy of Detailed Engineering Design (or equivalent), which demonstrates the scope for completed design along with location and number of Billable End-Points including Mixed End User Base.

The documents enumerated in Section 4.2.1(b)(ii) can be supplemented, as necessary, with other relevant documents that contain the information specified above, provided that the supplemental documents are accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design Experience Requirements that such copy is a true and faithful reproduction of the original.

For avoidance of doubt, the same document may be used to satisfy the requirements under Section 4.2.1(b)(i) and (ii) as long as the document satisfies the requirements under both subsections.

- (iii) To establish design of passive wholesale network services (e.g., end-to-end dark fiber services):
1. For client-facing experience --
    - (a) copy of Detailed Engineering Design (or equivalent) contract, which demonstrates the scope for completed design, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design Experience Requirements that such copy is a true and faithful reproduction of the original; AND
    - (b) product specification certified by an independent party (e.g., client or consultant). Such product specification must be accompanied by public information (e.g., printout of the website

together with its Uniform Resource Locator) or documentation, which demonstrates service availability to at least two (2) DTPs (such documentation may be redacted, if necessary, in case commercial sensitivity needs to be removed); or

2. For in-house experience of a Telecommunications Company --

(a) copy of Detailed Engineering Design (or equivalent), which demonstrates the scope for completed design along with product specification, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Design Experience Requirements that such copy is a true and faithful reproduction of the original; AND

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

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

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

2. For in-house experience of a Telecommunications Company, certification by the senior representative of the entity meeting the requirement demonstrating successful installation of the underground optical fiber multi-conduit network (using the form in **Annex EF-10C** of IPSP: Volume 1 – Forms and Annexures), which must be notarized.

(v) To establish construction of fiber installations to address Mixed End User Base including residential and enterprise buildings, government, and other end points:

1. For client-facing experience, copies of (a) Final Acceptance Test certificates from an independent party (e.g., client, local

administration/ road authority); OR (b) Certificate of Project Completion issued by a project owner indicating successful reinstatement of the underground optical fiber multi-conduit network along with number of Billable End-Points including Mixed End User Base accompanied with the documents demonstrating the connected customers being served over the multi-conduit network (e.g., extract from network management/planning tool), provided that either (a) or (b) is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Construction Experience Requirements that such copy is a true and faithful reproduction of the original; or

2. For in-house experience of a Telecommunications Company, certification by the senior representative of the entity meeting the requirement demonstrating successful installation of the underground optical fiber multi-conduit network along with number of Billable End-Points including Mixed End User Base accompanied by the documents demonstrating the connected customers being served over the multi-conduit network (e.g., extract from network management/planning tool) (using the form in **Annex EF-10C** of IPSP: Volume 1 – Forms and Annexures), which must be notarized.

For avoidance of doubt, the same document may be used to satisfy the requirements under Section 4.2.1(b)(iv) and (v) as long as the document satisfies the requirements under both subsections.

- (vi) To establish configuration of passive wholesale network services (e.g., end-to-end dark fiber services):
  1. For client-facing experience, product specification in a public or negotiated Reference Offer (e.g., website or contract extract), which demonstrates the service availability to at least two (2) DTPs (such documentation may be redacted, if necessary, in case commercial sensitivity needs to be removed); or
  2. For in-house experience of a Telecommunications Company, certification by the senior representative of the entity which demonstrates the service availability to at least one (1) DTP (such documentation should show SLAs or Operating-Level Agreements (OLAs) and may be redacted, if necessary, in case commercial sensitivity needs to be removed) (using the form in **Annex EF-10C** of IPSP: Volume 1 – Forms and Annexures), which must be notarized.
- (c) If the project was undertaken by an Affiliate of the PSP or Consortium Member, evidence of such affiliation, as in the document mentioned in Section 4.1.4(a)(1).

4.2.2 Maintenance Experience Requirements (using the form in **Annex EF-10D** of IPSP: Volume 1 – Forms and Annexures) to be submitted by the entity that fulfills the Maintenance Experience Requirement(s) in Section 3.2.5, as identified in the Business Structure, together with the following required attachments:

(a) Notarized Certification of Absence of Unsatisfactory Performance Record.

(b) The following, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Maintenance Experience Requirements that such copy is a true and faithful reproduction of the original:

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

The documents enumerated in Section 4.2.2(b)2 can be supplemented, as necessary, with other relevant documents that contain the information specified above, provided that the supplemental documents are accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Maintenance Experience Requirements that such copy is a true and faithful reproduction of the original.

(c) Notarized Certificate of Successful Contractual Implementation from the principal, or an entity authorized to issue such certificate on behalf of the principal, payment certificate or any other document from the principal, or an entity authorized to issue such certificate on behalf of the principal. A copy of the original Certificate of Successful Contractual Implementation or other certificate or document will be accepted, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner, authorized entity or the relevant officer of the PSP that such copy is a true and faithful reproduction of the original Certificate of Successful Contractual Implementation. There is no specific format for the Notarized Certificate of Successful Contractual Implementation but it shall, at the minimum, state that the service provider has met the stipulated service level agreements in Section 3.2.5.



(d) If the project was undertaken by an Affiliate of the PSP or Consortium Member, evidence of such affiliation, as in the document mentioned in Section 4.1.4(a)(1).

4.2.3 Commercialization Experience Requirements (using the form in **Annex EF-10E** of IPSP: Volume 1 – Forms and Annexures) to be submitted by the entity that fulfills the Commercialization Experience Requirement(s) in Section 3.2.6, as identified in the Business Structure, together with the following required attachments:

(a) Notarized Certification of Absence of Unsatisfactory Performance Record.

(b) The following, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner or authorized entity or the relevant officer of the entity which fulfills the Commercialization Experience Requirements that such copy is a true and faithful reproduction of the original:

1. For client-facing experience, copy of at least one Wholesale Services Agreement with a 3<sup>rd</sup> party, which demonstrates the available services and pricing in a contract or Reference Offer; or
2. For in-house experience, copies of OLA between business units, which demonstrate the available services and commercial arrangements.

(c) Notarized Certificate of Successful Commercialization from the principal, or an entity authorized to issue such certificate on behalf of the principal, payment certificate or any other document from the principal, or an entity authorized to issue such certificate on behalf of the principal. A copy of the original Certificate of Successful Commercialization or other certificate or document will be accepted, provided that it is accompanied by a notarized certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) issued by the relevant officer of the project owner, authorized entity or the relevant officer of the PSP that such copy is a true and faithful reproduction of the original Certificate of Successful Commercialization. There is no specific format for the Notarized Certificate of Successful Commercialization but it shall, at the minimum, state that the project was successfully commercialized.

(d) If the project was undertaken by an Affiliate of the PSP or Consortium Member, evidence of such affiliation, as in the document mentioned in Section 4.1.4(a)(1).

4.2.4 Statement of Willingness to Participate In, and Capacity to Undertake the Design, Construction, Maintenance, or Commercialization Commitment to Enter into an Agreement with the JV to Undertake the Design, Construction, Maintenance, or Commercialization of the Project (using the form in **Annex EF-11** of IPSP: Volume 1 – Forms and Annexures) to be submitted by each entity proposed by the PSP to meet the Technical Capability Requirements.

### 4.3 Financial Capability Documents

4.3.1 Notarized Statement of Financial Capability (using the form in **Annex EF-12** of IPSP: Volume 1 – Forms and Annexures) to be submitted by each entity nominated to fulfill the Financial Capability Requirement as identified in the Business Structure, together with the following required attachments:

- (a) Certified true copy of the latest audited financial statements for the previous three financial years, the latest of which must be dated not earlier than 31 December 2022, stamped “Received” by the BIR or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for recognition or creation of its legal personality or capacity. The certification (using the form in **Annex EF-8** of IPSP: Volume 1 – Forms and Annexures) of the latest audited financial statements may be issued by the relevant officer of the entity that fulfills the Financial Capability Requirements. However, such certified true copy must be stamped “received” by the BIR (or the equivalent agency in the case of the foreign entity).

In case the Financial Capability Requirement will be fulfilled through a set-aside deposit, a notarized certification from the relevant bank as proof of set-aside deposit indicating the name of the account holder, and the amount of the set-aside deposit; or

- (b) Notarized statement/certification from a domestic universal/commercial bank or any international bank recognized by the *Bangko Sentral ng Pilipinas* attesting that the nominated entity/entities under Section 3.3.1(b) is banking with them, is in good financial standing, and is qualified to obtain credit accommodations from such banks to finance the Project.
- (c) If an Affiliate will be used to comply with the Financial Capability Requirements, evidence of such affiliation, as in the document mentioned in Section 4.1.4(a)(1).

## 5. One PSP, One Submission

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

To ensure a level playing field and the competitiveness of the Competitive Selection Process, there are restrictions on the extent of affiliation and ownership between PSPs and members of different Consortia. These are described in greater detail in Section 18.

These restrictions, however, do not cover or limit the participation of proposed Contractors, which may be proposed by more than one PSP provided that such Contractors: (1) are not themselves (or through their Affiliates) (i) PSPs, (ii) Consortium

Members or (iii) Affiliates of any of the PSPs or Consortium Members; and (2) are compliant with the applicable requirements set forth in Section 18 with regard to Contractors. If a Contractor complies with the requirements of this Section 5, it shall not be considered a Conflict of Interest for the purposes of this IPSP: Volume 1 – Eligibility Documents.

## **6. Format and Signing of Eligibility Documents**

- 6.1 PSPs shall submit their Eligibility Documents (as a single package) through their duly authorized representative/s on or before the Eligibility Documents Submission Date.
- 6.2 The Eligibility Documents shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative/s of the PSP.
- 6.3 The Eligibility Documents must be printed in standard A4 paper and bound together in ring binders or folders of appropriate size. Documents must be paginated, and text must be at least font size twelve (12). The requirements relating to paper and font size shall only apply to prescribed forms provided in this IPSP: Volume 1 – Eligibility Documents and to any other documents, which may be reasonably made to comply with these requirements.
- 6.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the PSP.

## **7. Sealing and Marking of Eligibility Documents**

- 7.1 Each PSP shall submit one (1) original and one (1) copies of its Eligibility Documents.
- 7.2 PSPs shall enclose their original Eligibility Documents described in Section 4, in a sealed envelope marked as “ORIGINAL – ELIGIBILITY DOCUMENTS” for the original set and “COPY – ELIGIBILITY DOCUMENTS” for the copy set. The words “ORIGINAL – ELIGIBILITY DOCUMENTS” and “COPY – ELIGIBILITY DOCUMENTS” shall be typed or written in indelible ink and shall be signed by the PSP’s duly authorized representative/s. The envelopes containing the original and the copies shall then be enclosed in one single envelope or box.
- 7.3 The PSP shall also submit five (5) clear electronic or scan copies of the Eligibility Documents in CDs/DVDs/USBs. The electronic copies of the Eligibility Documents must be in Portable Document Format (PDF) files arranged in exactly the same sequence as those of the original set of Eligibility Documents. Where practicable, the PSP shall also provide searchable PDF copies of its Eligibility Documents. The CDs/DVDs/USBs must be placed in a sealed envelope and marked “ELECTRONIC COPY – ELIGIBILITY DOCUMENTS”, and such envelope shall be placed in the envelope or box together with the original set.
- 7.4 All envelopes shall be labeled as follows:

- (a) marked in accordance with Section 7.2 above;
- (b) addressed to the BCDA – JVSC for ICT:

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

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

**ICT INFRASTRUCTURE PROJECT**

- (d) bear the name and address of the PSP in capital letters;
- (e) bear a warning “**DO NOT OPEN BEFORE 1:00 PM / 16 February 2024**” the time and date for the opening of Eligibility Documents.

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

**8. Eligibility Documents Submission Date**

The Eligibility Documents must be submitted on **16 February 2024, 12:00 PM at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City.**

**9. Late Submission of Eligibility Documents**

Any Eligibility Documents submitted after the Eligibility Documents Submission Date and time as indicated in Section 8 shall be declared “Late” and shall be returned unopened by the BCDA.

**10. Modification and Withdrawal of Eligibility Documents**

10.1 The PSP may modify its Eligibility Documents after it has been submitted; provided that the modification is received by the JVSC prior to the deadline specified in Section 8. The PSP shall not be allowed to retrieve its original Eligibility Documents, but shall be allowed to submit another set equally sealed, properly identified, linked to its original bid marked as “ELIGIBILITY MODIFICATION” and complying with the other labelling requirements stipulated in Section 7.4(b) to (e) (inclusive), and stamped “received” by the JVSC. The PSP's modified Eligibility Documents supersede the original Eligibility Documents. Modifications received after the

Eligibility Documents Submission Date shall not be considered and shall be returned to the PSP unopened.

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

## **11. Opening and Preliminary Examination of Eligibility Documents**

- 11.1 The JVSC will open the envelopes containing the Eligibility Documents in the presence of the PSP's representatives who choose to attend the opening of Eligibility Documents at the BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street corner 2nd Avenue, Bonifacio Global City, Taguig City on 16 February 2024 at 1:00 pm. The PSPs' representatives who are present shall sign a register evidencing their attendance.
- 11.2. Letters of withdrawal shall be read out and recorded during the opening of Eligibility Documents, and the envelope containing the corresponding withdrawn Eligibility Documents shall be returned unopened to the withdrawing PSP. If the withdrawing PSP's representative is present during the opening, the original Eligibility Documents and all copies thereof shall be returned to the representative during the opening of Eligibility Documents. If no representative is present, the Eligibility Documents shall be returned unopened by registered mail.
- 11.3. BCDA, through its JVSC, shall within fifteen (15) calendar days after the deadline set for the submission of the Eligibility Documents, complete the evaluation of the Eligibility Documents of the PSPs, and determine which among them are "eligible" and "ineligible." Accordingly, the JVSC shall duly inform the Eligible PSP within seven (7) calendar days after the approval of their Eligibility Documents. Ineligible PSPs shall be similarly given notice of such ineligibility, stating therein the grounds for ineligibility within the same period.
- 11.4. A PSP determined as "ineligible" shall have three (3) days from the JVSC's delivery of the notice of ineligibility to file, in accordance with the notice delivery requirements under Section 2.7, a motion for reconsideration with the JVSC. The JVSC shall act on the motion for reconsideration within seven (7) days. If the motion for reconsideration is not resolved within said period, the motion is deemed denied.

If the motion for reconsideration is denied (or deemed denied) by the JVSC, the PSP shall have seven (7) days from the JVSC's delivery of its decision (or lapse of the 7-day period, if deemed denied by the JVSC) to file a written appeal to the BCDA Board in accordance with the requirements under the appeals mechanism in Section 6.15 of the BCDA JV Guidelines. The BCDA Board shall act on the appeal within

thirty (30) days from receipt of the appeal. The decision of the BCDA Board shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.

- 11.5. The envelopes containing the Eligibility Documents, as well as their modifications, if any, shall be opened one at a time, and the following read out and recorded:
- (a) the name of the PSP;
  - (b) whether there is a modification or substitution; and
  - (c) the presence or absence of each document comprising the Eligibility Documents vis-à-vis a checklist of the required documents.
- 11.6. The eligibility of each PSP shall be determined by examining each of its eligibility requirements or statements against a checklist of requirements, using a non-discretionary “pass/fail” criterion, as stated in this IPSP: Volume 1 – Eligibility Documents, shall be determined as either “eligible” or “ineligible.” If a PSP submits the specific Eligibility Document required, it shall be rated “passed” for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered “failed” for the particular eligibility requirement concerned. If a PSP is rated “passed” for all the Eligibility Requirements, it shall be considered eligible to participate in the Competitive Selection Process, and the JVSC shall mark the set of Eligibility Documents of the PSP concerned as “eligible.” If a PSP is rated “failed” in any of the Eligibility Requirements, he shall be considered ineligible to participate in the Competitive Selection Process, and the JVSC shall mark the set of eligibility documents of the PSP concerned as “ineligible.” In either case, the JVSC chairperson or his duly designated authority shall countersign the markings.
- 11.7. A PSP may also be disqualified for any of the following reasons:
- (a) late submission of the Eligibility Documents or any part thereof;
  - (b) material or willful misrepresentation in the Pre-Selection Process;
  - (c) any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice as described in Section 17;
  - (d) any form of political or other lobbying with respect to the Pre-Selection Process;
  - (e) illegal conduct or attempt to influence the JVSC’s evaluation of the Eligibility Documents or the Pre-Selection Process;
  - (f) any Conflict of Interest that would give it any unfair advantage in the Pre-Selection Process as described in Section 18;

- (g) any Outstanding Dispute with Government as described in Section 19; or
- (h) failure to comply with any of the terms, conditions and instructions of the Invitation Documents.

11.8. Only Eligible PSPs may purchase the IPSP: Volume 2 – Competitive Selection Documents for the preparation of Proposals.

**12. Notification of Results of Evaluation of Eligibility Documents**

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

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

**13. Lock-Up Rules during the Competitive Selection Process**

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

**13.1 Corporation and Partnership**

- (a) For a PSP that is a corporation, partnership or other legal entity, no restrictions shall be imposed on the ownership structure of such a PSP, provided that, the PSP shall ensure its continued eligibility with respect to the Technical Capability Requirements and the Financial Capability Requirements.
- (b) If a PSP which is a corporation, partnership or other legal entity proposes an Affiliate to meet any of the Eligibility Requirements, the proposed Affiliate must remain as such in accordance with the criteria for Affiliates as provided in Section 1.2.

**13.2 Consortium**

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

- (a) A Consortium Member proposed to meet the Technical Capability Requirements and Financial Capability Requirements cannot Withdraw from the Consortium, except in the event of a Substitution as provided in Section 13.2.2 below.
- (b) Withdrawing Consortium Members cannot join any other PSP that has been determined to be eligible to bid for the Project.

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

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

(b) The substitute should not be the entities identified in the Business Structure of another Eligible PSP.

13.2.3 Subject to Sections 13.2.4(a) and (b), any Consortium Member may increase or reduce its committed percentage equity interest in the Consortium as specified in Business Structure.

13.2.4 In the event of a Withdrawal, Substitution, or change in equity interest in a Consortium, the following requirements must be met:

(a) Each Consortium Member's equity interest must be at least 20% and the Lead Member must always own the highest percentage interest in the Consortium.

(b) No Consortium Member, on its own or together with its Affiliates, shall own a greater percentage interest in the Consortium than the Lead Member, on its own or together with its Affiliates.

(c) Any change in the composition of the Consortium or its ownership structure must be approved by the JVSC.

(d) An application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date. Together with its application, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements, and if such change does not delay the submission of proposals on the Proposals Submission Date.

(e) In the event of a Withdrawal, the PSP must inform the JVSC in writing, and in accordance with Section 2.7, on or prior to the Proposals Submission Date.

(f) If the proposed Consortium composition change is not approved by the JVSC in the JVSC's discretion, the applying PSP may revert to the original



Consortium composition or proposed Consortium ownership structure, as provided in its Eligibility Documents.

13.2.5 No change in Control of the PSP or the Lead Member of a Consortium shall be permitted during the Competitive Selection Process without the prior written approval of the JVSC.

### 13.3 **Contractors**

13.3.1 None of the nominated Contractors fulfilling the Technical Capability Requirement may withdraw from a PSP during the Lock-Up Period, unless:

- (a) If the Contractor withdrawing from the PSP is the only entity which is proposed to meet a particular Technical Capability Requirement, then the PSP shall nominate a replacement Contractor that meets or exceeds the particular Technical Capability Requirements, which such withdrawing Contractor was proposed to meet.
- (b) If the Contractor withdrawing from the PSP is not the only entity which is proposed to meet a particular Technical Capability Requirement, then the other Contractors proposed by the PSP to meet the applicable Technical Capability Requirement shall confirm in writing that they remain willing to participate in the Project with the applicable PSP.
- (c) An application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date, the PSP should submit the relevant Eligibility Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the PSP complies with all of the Eligibility Requirements and the other terms and conditions in this IPSP: Volume 1 – Eligibility Documents, and if such change does not delay the submission of proposals on the Proposals Submission Date.

### 13.4 **Additional Consortium Members and Contractors**

13.4.1 Other than in connection with a Withdrawal or Substitution as provided in Section 13.2 above or the Withdrawal of a Contractor as provided in Section 13.3 above, in the event that any (a) PSP adds a Contractor; or (b)(i) a non-Consortium PSP decides to form a Consortium, or (b)(ii) any Consortium adds additional Consortium Members, an application reflecting such change must be submitted to the JVSC no later than seven (7) days before the Proposals Submission Date. For avoidance of doubt, any Consortium that will be formed shall not have more than three (3) Consortium Members.

13.4.2 PSPs intending to avail of the option under Section 13.4.1 above must submit the relevant Eligibility Documents to reflect the proposed changes together with the application.

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

### **13.5 Consequence of Violation of Lock-Up Rules**

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

## **14. Failure of Pre-Selection Process**

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

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

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

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

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

## **16. General Conditions and Prohibitions**

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

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

**17. Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, Restrictive Practice , and Anti-Competitive Behavior**

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

- (a) **“Corrupt Practice”** means any behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the Competitive Selection or in contract execution; this also includes similar acts punishable under the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019);
- (b) **“Fraud”** means a misrepresentation of facts in order to influence the Competitive Selection Process to the detriment of the government, and includes collusive practices among PSPs (prior to or after bid submission) designed to establish financial offers or prices at artificial, non-competitive levels and to deprive the government of the benefits of a free, transparent and open competition;
- (c) **“Collusion”** means a scheme or arrangement between two or more PSPs, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-competitive levels;
- (d) **“Coercion”** means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Competitive Selection Process, or affect the execution of the JV Agreement and other relevant JV Documents;
- (e) **“Undesirable Practice”** means (i) establishing contact with any person connected with, employed or engaged by BCDA or any member of the JVSC with the objective of canvassing, lobbying or (ii) in any manner influencing or attempting to influence the Competitive Selection Process, the evaluation of Eligibility Documents or Proposals, or the implementation of the JV Documents; and
- (f) **“Restrictive Practice”** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among PSPs, Consortium Members, or Contractors with the objective of restricting, subverting or manipulating a full and fair competition in the Competitive Selection Process.

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

**18. Conflict of Interest**

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

- (a) A PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) is a member of another Consortium, or an Affiliate of a member of another Consortium.
- (b) A PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) is proposed/nominated as a Contractor of another PSP.
- (c) A PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates (of either a PSP or of the Consortium Member) has ownership interest in any other PSP, any Consortium Member of any other PSP, or any of its Affiliates that is nominated to fulfill any of the Eligibility Requirements.
- (d) A member of the board of directors, partner, officer, employee, or agent of a PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates, who is directly involved in any capacity related to the Competitive Selection Process of such PSP, any Consortium Member (if the PSP is a Consortium), or any of their Affiliates is also directly involved in any capacity related to the Competitive Selection Process for the Project for another PSP, any Consortium Member of another PSP, or any of their Affiliates.

The phrase “**directly involved in any capacity**” shall refer to actual participation in the deliberations and/or decision-making for the Competitive Selection Process of the PSP or access to the documents related thereto, that would give the director, partner, officer, employee, or agent knowledge or information regarding the bid of such PSP, including the act of voting on any matter related to the Competitive Selection Process of two or more PSPs, such as but not limited to the approval of the relevant entity’s participation in the Competitive Selection Process.

The same conflict of interest arises for consulting firms acting as professional advisors, Contractors, in each case, to the extent such entities are engaged by more than one PSP in any capacity related to the Competitive Selection Process, unless said Contractor, or professional advisor discloses such fact in writing to each relevant PSP, submits a Conflict Management Plan to such PSPs and submits to BCDA a written consent from each such PSP stating that such PSP has been notified of the potential conflict of interest, has reviewed and approved the Conflict Management Plan prepared by such Contractor or professional adviser and the parties consent to such Contractor or professional adviser’s engagement by the other relevant PSP.

- (e) Any of the following shall be considered a Conflict of Interest on account of engagement by the BCDA or ADB for the Project:

- (1) a PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) or any of its proposed Contractors has been directly engaged as a consultant by the BCDA or ADB in the preparation of any Invitation Documents or the design, or technical specifications of the Project or in connection with the Competitive Selection Process.
- (2) a PSP, any of its Consortium Members, or any of their Affiliates (of either a PSP or any of its Consortium Members) or any of its proposed Contractors of any of these entities, engages any legal, financial, or technical advisor of the BCDA or ADB in relation to the Project, or anyone who is or was an employee of the BCDA or ADB less than one (1) year before his or her engagement in relation to the Project by the PSP, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities.

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

#### **19. Outstanding Dispute with Government**

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