
REPUBLIC OF THE PHILIPPINES

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS



SOUTH INTEGRATED TRANSPORT SYSTEM PROJECT

INSTRUCTIONS TO PROSPECTIVE BIDDERS

(ITPB)

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DISCLAIMER

The information contained in these Instructions to Prospective Bidders and any other Invitation Documents, whether verbal or written, provided by the Department of Transportation and Communications (“DOTC”) or any of its employees or advisors, or on behalf of the DOTC, is provided to Prospective Bidders on the terms and conditions set out in the Invitation Documents and such other terms and conditions subject to which such information is provided.

The Invitation Documents are not agreements or offers by the DOTC to the Prospective Bidders or any other person. The purpose of the Invitation Documents is to provide interested parties with information that may be useful to them in making their financial offers pursuant to the Invitation Documents. The Invitation Documents include statements that reflect various assumptions and assessments arrived at by the DOTC in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Prospective Bidder may require. The Invitation Documents may not be appropriate for all persons, and it is not possible for the DOTC, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses the Invitation Documents. The assumptions, assessments, statements and information contained in the Invitation Documents and associated documents may not be complete, adequate, accurate or correct. Each Prospective Bidder should therefore, conduct its own investigations and analysis and should check the completeness, adequacy accuracy, correctness, and reliability of the assumptions, assessments, statements and information contained in the Invitation Documents and obtain independent advice from appropriate sources.

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

The DOTC, its employees and advisors make no undertaking, assurance, representation or warranty and shall have no liability to any person, including any Prospective Bidder, under any law, statute, rules or regulations, principles of restitution or unjust enrichment or otherwise, for any loss, damage, cost or expense that may arise from or be incurred or suffered on account of anything contained in the Invitation Documents or other information provided to Prospective Bidders, including the completeness, adequacy accuracy, correctness, and reliability of the Invitation Documents and any assessment, assumption, statement or information contained

therein or deemed to form part of the Invitation Documents or arising in any way from participation in the Bidding Process.

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

The DOTC may, in its absolute discretion, but without being under any obligation to do so, amend, update, or supplement the information, assessments or assumptions contained in the Invitation Documents. However, the DOTC, its employees and advisors shall not be liable to any Prospective Bidder (including the Winning Bidder) in respect of any failure to (i) disclose or make available any information, documents or data; (ii) amend, update, or supplement the Invitation Documents; or (iii) provide any information regarding any inaccuracy, error, omission, defect or inadequacy in the Invitation Documents.

The issuance of the Invitation Documents does not imply that the DOTC is bound to select a Prospective Bidder or to appoint a selected Bidder or Project Proponent, as the case may be, for the Project, and the DOTC reserves the right to reject all or any of the Prospective Bidders or Bids without assigning any reason whatsoever.

Each Prospective Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, and expenses associated with any demonstrations or presentations which may be required by the DOTC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Prospective Bidder and the DOTC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Prospective Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

In purchasing the Bidding Documents, each Prospective Bidder accedes to the bid parameters, terms and obligations provided therein. In no case shall any Prospective Bidder be allowed to modify the bid parameters even if, in its opinion, it offers better terms than that provided herein.

Republic of the Philippines
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

SOUTH INTEGRATED TRANSPORT SYSTEM PROJECT

INSTRUCTIONS TO PROSPECTIVE BIDDERS

INTRODUCTION

The Department of Transportation and Communications (“**DOTC**”) invites Prospective Bidders to apply to pre-qualify and submit bids to finance, design, construct, operate and maintain the South Integrated Transport System Project (“**Project**”) pursuant to a two-stage public bidding process in accordance with the Philippine Build-Operate-Transfer (“**BOT**”) Law (Republic Act No. 6957, as amended by Republic Act No. 7718), and its 2012 Revised Implementing Rules and Regulations (“**2012 Revised IRR**”), the applicable provisions of which are incorporated herein by reference. The Project consists of the development of a mass transportation intermodal terminal at the southern outskirts of Metropolitan Manila in order to provide effective interconnection between different transport modes and services and thus ensure efficient and seamless travel for the commuting public.

These Instructions to Prospective Bidders provide for the procedures and requirements for the preparation and submission of the Pre-Qualification Documents by Prospective Bidders and the evaluation criteria and rules to be followed by the DOTC in the selection of Pre-Qualified Bidders for the Project.

The documents that describe the Project and govern the process to be followed for Pre-Qualification are:

- a. The Invitation to Pre-Qualify and Bid;
- b. This Instructions to Prospective Bidders and its Annexes; and
- c. The Project Information Memorandum.

Reference to “Invitation Documents” shall mean these three documents collectively, and any supplemental notices and bid bulletins issued by the Pre-Qualification, Bids and Awards Committee (“**PBAC**”) from the date of the first publication of the Invitation to Pre-Qualify and Bid until the Qualification Documents Submission Date.

SECTION 1: DEFINITIONS

Unless otherwise provided, the following terms used in these Instructions to Bidders shall have the following meanings:

- 1.1** *“Affiliate”* means a corporation or other juridical entity effectively Controlled by or Controlling the Prospective Bidder or associated with the Prospective Bidder under common ownership and Control.
- 1.2** *“Annex QD”* or *“QD”* along with the relevant number refers to the relevant Qualification Document submitted by the Prospective Bidder as part of its application to Pre-Qualify and Bid, and as numbered in the Instructions to Prospective Bidders.
- 1.3** *“Bid”* means the offer submitted by a Bidder to the DOTC to undertake the Project, consisting of the Bidder’s Qualification Documents and Bid Proposals.
- 1.4** *“Bid Proposal”* means the Technical Proposal and Financial Proposal submitted by a Bidder to the DOTC.
- 1.5** *“Bid Proposals Submission Date”* means the date when Bidders must submit their Bid Proposals to the DOTC.
- 1.6** *“Bidder”* means any partnership, corporation or Consortium that participates in the Bidding Process by submitting its Bid to the DOTC on the Qualification Documents Submission Date and Bid Submission Date.
- 1.7** *“Bidding Documents”* means the documents that are issued to Bidders, as enumerated in Section 7.4.c of these Instructions to Prospective Bidders, including any notices and bid bulletins issued by the PBAC from the date of the first publication of the Invitation to Pre-Qualify and Bid until the Bid Submission Date.
- 1.8** *“Bidding Process”* or *“Bidding”* means the procurement process beginning from the first publication of the Invitation to Pre-Qualify and Bid until the signing of the Concession Agreement, as described in Section 2 (*Bidding Process*).
- 1.9** *“BOT Law”* means Republic Act No. 6957, as amended by Republic Act No. 7718, entitled “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes” and the “Revised Implementing Rules and Regulations of Republic Act No. 6957, as amended by Republic Act No. 7718” that became effective in 2012.

- 1.10** *“Concession Agreement”* means the contract to be executed by the DOTC and the Concessionaire. A copy of the draft Concession Agreement is included as part of the Bidding Documents.
- 1.11** *“Concession Period”* means the period over which concession will be granted to the Winning Bidder, over a period of thirty five (35) years.
- 1.12** *“Concessionaire”* means the special purpose corporation that must be formed by the Winning Bidder and who will be the counter-party of the DOTC under the Concession Agreement.
- 1.13** *“Conflict of Interest”* is defined in Section 8.3 (*Conflict of Interest*) of these Instructions to Prospective Bidders.
- 1.14** *“Consortium”* means an unincorporated association of natural or juridical persons bound by contract or law, solidarily undertaking by mutual written agreement to participate in the Bidding Process for the Project.
- 1.15** *“Consortium Member”* means any of the natural or juridical persons comprising a Consortium, each having a definite interest in the common undertaking, solidarily liable in the Bid and whose interest will be converted into an equivalent equity participation in the Concessionaire if the Consortium is awarded and accepts the Project.
- 1.16** *“Construction Contractor”* or *“Development Contractor”* means a single juridical entity, such as a partnership or corporation, proposed by the Prospective Bidder to meet the Development Experience and that may be engaged by the Concessionaire to undertake the development of the South ITS Terminal in accordance with the Concession Agreement.
- 1.17** *“Control”* means, for purposes of defining an Affiliate, the power to direct or cause the direction of the management policies and actions of a body corporate whether through:
- 1.17.a ownership of at least fifty percent (50%) plus one share of the outstanding voting shares;
- 1.17.b ownership of at least twenty percent (20%) of the outstanding voting shares and (i) possession of voting rights through voting trusts or other voting agreements over a certain number of shares, such that the total number of shares owned or over which it has voting rights is equivalent to at least fifty percent (50%) plus one (1) share; or (ii) the ability to elect

- 1.17.c a majority of the members of the board of directors; or
a legal agreement.

In determining ownership of the shares in a corporation, shares held both directly and indirectly will be counted.

- 1.18** *“Corrupt, Fraudulent, Collusive, Coercive, Undesirable, and Restrictive Practice”* is defined in Section 8.2.b of these Instructions to Prospective Bidders.
- 1.19** *“day”* means a calendar day, unless otherwise specified.
- 1.20** *“development”* of a project means when the relevant entity has either paid for or received payment for the design and construction of that project
- 1.21** *“Development Experience”* is one of the Technical Qualification Requirements and is defined in Sections 3.2.a of these Instructions to Prospective Bidders.
- 1.22** *“DOTC”* means the Department of Transportation and Communications.
- 1.23** *“Eligible Project”* means project for development of any of the following: a bus terminal, commercial complex, shopping mall, airport terminal, parking complex, freight terminal; provided that a project must have a minimum development cost of at least six hundred million Philippine Pesos (PhP600,000,000) and a capacity of at least seventy five (75) parking bays for land surface transport vehicles with four (4) or more wheels, excluding rail.
- 1.24** *“Equity Interests”* means all voting and non-voting shares of stock in the Concessionaire and/or the Facility Operator, as the case may be, and all rights in respect of subordinated or interest-free unsecured loans extended thereto by the Concessionaire, its Affiliates, Shareholders, or Affiliates of Shareholders.
- 1.25.** *“Equity Requirements”* means, for purposes of these Instructions to Prospective Bidders, the minimum shareholding requirements applicable to the Lead Member and each Qualifying Initial Shareholder, as set out in the proposed equity structure for the Concessionaire as provided in the Bid.
- 1.26** *“Facility Operator”* means the entity designated by the Winning Bidder that will undertake Operation and Maintenance of the Project, in accordance with the Concession Agreement.

- 1.27** *“Financial Capability Qualification Requirements”* is defined in Section 3.3 (*Financial Capability Qualification Requirements*) of these Instructions to Prospective Bidders.
- 1.28** *“GIS”* means the General Information Sheet as per the format specified by the Philippine Securities and Exchange Commission.
- 1.29** *“ICC”* means the Investment Coordination Committee of NEDA.
- 1.30** *“Invitation Documents”* means the Invitation to Pre-Qualify and Bid, this Instructions to Prospective Bidders, including its Annexes, the Preliminary Information Memorandum, and any supplemental notices and bid bulletins issued by the PBAC from the date of the first publication of the Invitation to Pre-Qualify and Bid until the Qualification Documents Submission Date.
- 1.31** *“ISO”* means the International Organization for Standardization.
- 1.32** *“ITS”* means the Integrated Transport System.
- 1.33** *“ITS Terminal”* means the terminal to be designed and constructed by the Concessionaire for the use of passengers, in accordance with the Concession Agreement.
- 1.34** *“Lead Member”* is defined in Section 3.3.c of these Instructions to Prospective Bidders.
- 1.35** *“Legal Qualification Requirements”* is defined in Section 3.1 (*Legal Qualification Requirements*) of these Instructions to Bidders.
- 1.36** *“Minimum Performance Standards and Specifications”* or *“MPSS”* means the set of minimum performance or functional standards and specifications that the Concessionaire must comply with in undertaking the design, construction, operation and maintenance of the ITS Terminal.
- 1.37** *“NEDA”* means the Philippine National Economic and Development Authority.
- 1.38** *“Notice of Qualification”* is defined in Section 7.4 of these Instructions to Prospective Bidders.
- 1.39** *“O&M”* means operation and maintenance.
- 1.40** *“O&M Contractor”* means a single juridical entity, such as a partnership or corporation,

proposed by the Prospective Bidder to meet the Operation and Maintenance Experience and that may be engaged by the Concessionaire to undertake the operation and maintenance of the South ITS Terminal in accordance with the Concession Agreement.

1.41 *“O&M Experience”* is one of the Technical Qualification Requirements and is defined in Sections 3.2.b of these Instructions to Prospective Bidders.

1.42 *“Outstanding Dispute” with government refers to any pending judicial, administrative or alternative dispute resolution proceeding, including suspension or blacklisting proceedings, between the Prospective Bidder, any Consortium Member, their Affiliates that are directly involved in the Project or contractor proposed by the Bidder or Consortium, on the one hand, and the DOTC on the other, in connection with any transportation project or contract of the DOTC, provided such project or contracts is:*

- a. intended to provide a critical basic necessity, and*
- b. is of paramount public interest and importance, and*
- c. where the Prospective Bidder, any Consortium Member, or their Affiliates, that are directly involved in the Project has/have committed a default or breach of:*
 - i. contract,*
 - ii. any representation, or*
 - iii. any warranty,*

which act prevents the DOTC from fully or timely complying with its statutory obligations in the implementation of the Project.

1.43 *“PBAC”* means the Pre-Qualification, Bids and Awards Committee for the Project created by the DOTC under pursuant to Order No. 2013-349-A (issued on 10 March 2014), pursuant to the BOT Law.

1.44 *“PCAB”* means the Philippine Contractors Accreditation Board.

1.45 *“Permitted Security Interests”* means any Security Interest permitted by the DOTC (as Grantor) in favor of the Finance Parties securing indebtedness under the Finance Documents.

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

1.47 *“Pre-Qualification”* means the first stage of the Bidding Process involving the submission, opening and evaluation of the Qualification Documents submitted to the

Prospective Bidders.

- 1.48** ***“Pre-Qualified Bidder”*** is defined in Section 7.4.a of these Instructions to Prospective Bidders.
- 1.49** ***“Project”*** is defined in the Introduction of these Instructions to Prospective Bidders.
- 1.50** ***“Prospective Bidder”*** means any individual, partnership, corporation, or any other juridical entity, or Consortium that participates in the Bidding Process by applying to pre-qualify and bid.
- 1.51** ***“Pre-Qualification Requirements”*** means the criteria which a Prospective Bidder must meet in order to pre-qualify to submit a Bid for the Project, as described in Section 3, and includes Legal Qualification Requirements, Technical Qualification Requirement, and Financial Qualification Requirements.
- 1.52** ***“Public Transport Operator”*** means a partnership, corporation, sole proprietorship or any other juridical entity that engaged in the operation of public land transportation utilities and services, except rail transport, toll roads, and land transport terminals, in the Philippines, including any Affiliate, Shareholder or Affiliate of Shareholder of such entity, whether or not it is a holder of a certificate of public convenience or permit authorizing the operation of public land transportation utilities and services in the Philippines, including any Affiliate of such entity.
- 1.53** ***“Qualification Documents”*** is defined in Section 4 (*Qualification Documents*) of these Instructions to Bidders.
- 1.54** ***“Qualification Documents Submission Date”*** means the date mentioned under Section 2.2 of these Instructions to Prospective Bidders.
- 1.55** ***“Qualification Requirements”*** mean the criteria that a Bidder must meet to qualify for the Project, as described in Section 3 (*Qualification Requirements*) of these Instructions to Prospective Bidders, and includes Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability Qualification Requirements.
- 1.56** ***“Qualifying Initial Shareholder”*** means any of the shareholders qualified by the DOTC (as Grantor) as meeting the Financial Capability Qualification Requirements or Technical Qualification Requirements in respect of the Instructions to Bidders, including all supplemental notices and bid bulletins.

- 1.57** **“SEC”** means the Philippine Securities and Exchange Commission.
- 1.58** **“Signing Date”** means the date of execution of the Concession Agreement by the Concessionaire and DOTC.
- 1.59** **“Technical Qualification Requirements”** is defined in Section 3.2 (*Technical Qualification Requirements*) of these Instructions to Prospective Bidders.
- 1.60** **“Unsatisfactory Performance”** means any of the following:
- 1.60.a in relation to any project or contract that was commenced or in the process of implementation within the last five (5) years prior to the Qualification Document Submission Date by any entity whose experience is proposed by the Bidder to meet any of the Technical Qualification Requirements –
 - 1.60.a(1) the failure by such entity to satisfactorily perform any of its material obligations for such project or contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
 - 1.60.a(2) the expulsion by such entity from any such project or contract;
 - 1.60.a(3) the termination or suspension of any such project or contract due to such entity’s breach of its obligations; or
 - 1.60.a(4) the material violation of laws and/or regulations applicable to any such projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;
 - 1.60.b for any entity whose experience or qualifications is proposed by the Prospective Bidder to meet any of the Technical Qualification Requirements or Financial Capability Qualification Requirements, inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms and Individuals list posted in the World Bank website (www.worldbank.org/debarr), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
 - 1.60.c for any entity whose experience is proposed by the Prospective Bidder to meet any of the Technical Qualification Requirements or Financial Capability Qualification Requirements, involvement in any Corrupt, Fraudulent, Collusive,

Coercive, Undesirable, or Restrictive Practice or having a Conflict of Interest insofar as the current Project is concerned.

10.61 “Winning Bidder” is the highest ranked Bidder determined by the PBAC and issued a Notice of Award as described in Section 2.3.k of these Instructions to Prospective Bidders.

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

SECTION 2: BIDDING PROCESS

2.1 PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE

The Pre-Qualification, Bids and Awards Committee for the Integrated Transport System Project – South Terminal (“**PBAC**”) created pursuant to the Special Order No. 2013-349-A (issued on 10 March 2014) shall administer the Bidding Process for the Project.

2.2 OUTLINE OF THE BIDDING PROCESS

The competitive public bidding for the Project shall be conducted in accordance with the rules and procedures for public bidding set under the BOT Law and its 2012 Revised IRR, the applicable provisions of which are incorporated herein by reference.

An indicative timeline for the Bidding Process is shown in the following table. The following timeline may be subject to change by the PBAC either through the Instructions to Bidders or through Supplemental Bid Bulletins.

Table 1. Indicative Schedule

Milestone	Responsibility	Target date
Publication of Invitation to Pre-Qualify and Bid	DOTC	31 July 2014
Issuance of the Instructions to Prospective Bidders	DOTC	8 August 2014
Site Visit	DOTC	Upon request to DOTC
Pre-Qualification Conference	DOTC	3 September 2014
Qualification Documents Submission Date	Bidders	6 October 2014

Milestone	Responsibility	Target date
Opening of Qualification Documents	DOTC	On Qualification Documents Submission Date
Notification of the results of the evaluation of the Qualification Documents	DOTC	31 October 2014
Issuance of Instructions to Bidders, Draft Concession Agreement and Draft Schedules to the Concession Agreement	DOTC	10 November 2014
Pre-Bid Conference	DOTC	24 November 2014
Submission of 1 st batch of queries/comments on the Instructions to Bidders, Draft Concession Agreement and Draft Schedules to the Concession Agreement	Bidders	1 December 2014
One-on-One Meetings : 1 st Round	DOTC	8 -12 December 2014
Submission of 2 nd batch of queries/comments on revised Instructions to Bidders, Draft Concession Agreement and Draft Schedules to the Concession Agreement	Bidders	5 January 2015
One-on-One Meetings : 2 nd Round	DOTC	12 – 16 January 2015
Bid Proposal Submission Date	Bidders	16 March 2015
Opening of Technical Proposal	DOTC	On Bid Proposals Submission Date
Notification of the results of evaluation of the Technical Proposals	DOTC	Within twenty (20) calendar days from opening of Technical Proposals
Opening of Financial Proposal	DOTC	Within fifteen (15) calendar days from the completion of the evaluation of Technical Proposals
Issuance of Notice of Award	DOTC	Within five (5) calendar days from decision by DOTC Secretary to award the Project to Winning Bidder
Submission of Post-Award Requirements	Winning Bidder	Within twenty (20) calendar days from official receipt by Winning Bidder of Notice of Award

Milestone	Responsibility	Target date
Issuance of Notice of complete compliance with all Post-Award Requirements	DOTC	Within five (5) calendar days from receipt by DOTC of Post-Award Requirements
Signing Date of Concession Agreement and Compliance with other requirements	DOTC and Winning Bidder	Within five (5) calendar days from receipt by Winning Bidder of notice from DOTC that all Post-Award Requirements have been complied with

The actual schedule may be changed by the DOTC at any time, without incurring any liability to the Prospective Bidders. Prospective Bidders shall be notified by the PBAC of any changes in the indicative schedule through bid bulletins.

All references to dates shall refer to Philippine Standard Time.

2.3 SUMMARY OF BIDDING PROCESS

The competitive bidding for the Project will be conducted in accordance with the rules and procedures for the two-stage bidding process provided under the BOT Law and its 2012 Revised IRR, the applicable provisions of which are deemed incorporated herein by reference.

The general procedure for the Bidding will be as follows:

- 2.3.a The PBAC will conduct a Pre-Qualification Conference for Prospective Bidders. Prospective Bidders will be asked to apply to pre-qualify by submitting their Qualification Documents, as described in greater detail in this document, on the Qualification Submission Date.
- 2.3.b Within twenty (20) calendar days from the Qualification Documents Submission Date, the PBAC shall determine which Prospective Bidders fulfill the Qualification Requirements as herein provided in Section 3. Thereafter and within ten (10) calendar days from approval of such Pre-Qualification results, the PBAC shall issue a notice to all Prospective Bidders who have been pre-qualified (“Pre-Qualified Bidders”). Only Pre-Qualified Bidders will be invited and allowed to submit their respective Bids for the Project.

- 2.3.c Upon completion of Pre-Qualification of Prospective Bidders, the PBAC will announce the Bid Proposal Submission Date. The PBAC will also announce the date, time and location of the Pre-Bid Conference, to which all Pre-Qualified Bidders will be invited. Pre-Qualified Bidders will be invited to raise any questions and issues regarding the Project and the Bidding Process during the Pre-Bid Conference.
- 2.3.d Pre-Qualified Bidders will be asked to bid for the Project by submitting their Bid Proposals – which will include both Technical and Financial Proposals, a Bid Security, as well as other supporting documents – on the Bid Proposals Submission Date. The PBAC shall issue the Instructions to Bidders to all Pre-Qualified Bidders. The Instructions to Bidders shall provide in detail the form and required contents of the Bid Proposals and the detailed procedures to be followed for bid submission, bid evaluation, and post-bid requirements.
- 2.3.e The draft Concession Agreement shall likewise be provided to all Pre-Qualified Bidders to give each the opportunity to comment on the draft. The PBAC may consider these comments in refining the draft Concession Agreement leading up to the issuance of the final Concession Agreement on which the Pre-Qualified Bidders must base their bids.
- 2.3.f After submission of Bid Proposals, the PBAC will review the Technical and Financial Proposals. The PBAC will first review the Bidders' Technical Proposals and evaluate them on a pass or fail basis. Bidders will be informed as to whether their Technical Proposals were rated "passed". The PBAC will return the Financial Proposals and Bid Securities of Prospective Bidders whose Technical Proposals did not pass the evaluation upon expiration of the period to file a Motion for Reconsideration/appeal or until the Motion for Reconsideration/appeal is denied with finality.
- 2.3.g For the Technical Proposal, the evaluation on a pass/fail basis shall involve the assessment of the Bidder's Technical Proposal vis-à-vis the requirements and criteria/minimum standards and basic parameters that may be prescribed in the Bidding Documents.
- 2.3.h Only those Bids that have been determined to have passed the first stage of evaluation shall be qualified and considered for the evaluation of its Financial Proposal.

- 2.3.i Financial Proposals of Bidders whose Technical Proposals were rated “passed” will be opened and evaluated at a later date, with completion of the evaluation of the Financial Proposals no later than fifteen (15) calendar days after completion of the evaluation of the Technical Proposals.
- 2.3.j For the Financial Proposal, the evaluation shall involve the assessment and comparison of the Financial Proposals of the Bidders, based on the parameters stated in the Bidding Documents. The PBAC shall compare the bid amounts submitted by the Pre-Qualified Bidders with Technical Proposals which were rated “passed” by PBAC.
- 2.3.k Following the evaluation of the Financial Proposals, the PBAC shall rank the bid amounts in accordance with the parameters stated in the Bidding Documents and determine the Pre-Qualified Bidder which submitted the best bid as the “Winning Bidder”. Within three (3) calendar days from the completion of the evaluation of its Financial Proposal, the PBAC will recommend to the DOTC Secretary the issuance of a Notice of Award to the Winning Bidder. Within three (3) calendar days from the PBAC recommendation to award, the DOTC Secretary shall decide and, within five (5) calendar days from such decision in case of approval, issue the Notice of Award to the Winning Bidder. This Notice of Award shall indicate the requirements that have to be submitted before the signing of the Concession Agreement.
- 2.3.l The Winning Bidder will have to comply with all the requirements stated in the Notice of Award within twenty (20) calendar days from official receipt of the Notice of Award. Failure to comply with the requirements in the Notice of Award within the prescribed twenty (20)-day period will result in the forfeiture of the Bid Security and the cancellation of the Notice of Award. Within five (5) calendar days from the receipt by the PBAC of all the requirements of the Notice of Award, the DOTC Secretary shall determine and notify the Winning Bidder of its compliance with all the requirements of the Notice of Award. Within five (5) calendar days from receipt by the Winning Bidder of such notice, the DOTC shall enter into the Concession Agreement with the Winning Bidder. Failure to enter into the Concession Agreement will result in the forfeiture of the Bid Security and the cancellation of the Notice of Award.
- 2.3.m The Winning Bidder shall cause the incorporation of the Concessionaire that shall assume and accede to all the rights and obligations of the Winning Bidder under the Concession Agreement.

2.4 RESPONSIBILITIES OF PROSPECTIVE BIDDERS

- 2.4.a Notwithstanding any information given in the Invitation Documents, and any additional communications from the DOTC or the PBAC, including any notices and bid bulletins, it is the sole responsibility of any Prospective Bidder to:
- 2.4.a(1) be fully acquainted with the requirements, terms, and conditions of the Bidding Process;
 - 2.4.a(2) examine all of the Invitation Documents and Bidding Documents, including all instructions, annexes, forms, schedules, terms, specifications, etc. and verify the correctness, completeness and accuracy of the information contained in these documents;
 - 2.4.a(3) familiarize itself with all the applicable laws and administrative issuances and regulations of the Philippines, whether national or local, that may affect the Bidding Process and the Project; and
 - 2.4.a(4) determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic and ridership projections; the financial viability of the Project; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.
- 2.4.b By submitting Qualification Documents, a Prospective Bidder shall be presumed to have fully examined and accepted all of the terms and conditions provided in all of the Invitation Documents.

2.5 COSTS AND EXPENSES OF PARTICIPATION

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

2.6 QUERIES AND SUPPLEMENTAL NOTICES

2.6.a All parties who purchased the Invitation Documents may send any queries on any aspect of these documents in writing, by personal delivery and e-mail or fax, to the Head of PBAC, and copies to the PBAC Secretariat, the DOTC, the Public-Private Partnership Center (“PPP Center”), at the following addresses, e-mail addresses and fax numbers:

PBAC Chairman for the Project

Attention: Undersecretary Jose Perpetuo M. Lotilla
Address: 16 Floor, The Columbia Tower, Ortigas Avenue, Mandaluyong City
E-mail: juloti1@gmail.com
Telephone: (+63 2) 7277960/7241728
Fax: (+63 2) 7256609

PBAC Vice-Chairman for the Project

Attention: Undersecretary Rene K. Limcaoco
Address: 16 Floor, The Columbia Tower, Ortigas Avenue, Mandaluyong City
E-mail: renelimcaoco.dotc@gmail.com
(cc:jaimeraphael.feliciano@dotc.gov.ph)
Telephone: (+63 2) 7277960/7250204
Fax: (+63 2) 726 6221

PBAC Secretariat for South Integrated Transport System Project

Attention: Undersecretary Catherine P. Gonzales
Address: 15 Floor, The Columbia Tower, Ortigas Avenue, Mandaluyong City
E-mail: bacsec@dotc.gov.ph

cpg.dotc@gmail.com
catherinepgonzales@yahoo.com
Telephone: (+63 2) 727 7960 or 726 7128
Fax: (+63 2) 654 7725

Technical Working Group Chairman

Attention: Florencia A. Creus
Address: 6 Floor, The Columbia Tower, Ortigas Avenue, Mandaluyong City
E-mail: florcreus@yahoo.com
florencia.creus@dotc.gov.ph
Telefax: (+63 2) 727 1703

PPP Center

Attention: Executive Director Cosette V. Canilao
Address: Public-Private Partnership Center
NEDA Complex, Diliman, Quezon City
E-mail: cvcanilao@ppp.gov.ph
Telephone: (+63 2) 929 5187

Feedback Infra Private Limited

Attention: Amandeep Singh Virk
Vice President
E-mail: amandeep.virk@feedbackinfra.com
abhishek.rathore@feedbackinfra.com
Telephone: (+63) 906 436 1741 / (+91) 9711686667
(+63) 927 365 8722 / (+91) 9868932923

Project E-mail: its-sp@ppp.gov.ph

In case of a discrepancy between copies personally delivered and emailed, the copy personally delivered shall prevail.

- 2.6.b Bidders must submit their queries and/or comments in sets on or before the dates indicated in Table 1.
- 2.6.c For all of its queries/comments submitted by personal delivery and email, Bidders must use the Excel template provided in **Schedule 1**.

- 2.6.d Queries on the Bidding Documents must be concrete or clarificatory, and not purely hypothetical in nature.
- 2.6.e While the PBAC will endeavor to respond to the queries/comments submitted in accordance with these Instructions to Prospective Bidders, it is under no obligation to do so. Responses to queries and any modifications to the Invitation Documents will be made on a non-attributable basis and shall be in writing and made known to Prospective Bidders through bid bulletins issued by the PBAC. All bid bulletins issued by the PBAC shall be deemed to be incorporated in and made an integral part of relevant Invitation Documents.

2.7 OWNERSHIP OF DOCUMENTS

All documents submitted in response to the Invitation to Pre-Qualify and Bid, including Qualification Documents and their attachments, shall become the property of the DOTC.

2.8 LANGUAGE AND FOREIGN DOCUMENTS

- 2.8.a The Qualification Documents, and all correspondence and documents relating to the Invitation Documents and the Bid, shall be prepared and written in the English language. All certified statements, regardless of the place of execution, must be notarized.
- 2.8.b All documents issued or executed in a foreign country must be authenticated before a Philippine consular official or embassy official at the relevant Philippine consulate or embassy. For purposes of Pre-Qualification, the PBAC will accept the documents if they have been stamped “received” by such Philippine consulate or embassy or if the Prospective Bidder submits a copy of such documents together with a copy of the receipt issued by the Philippine consulate or embassy evidencing payment of the fee for the authentication, subject to submission of the same documents duly authenticated before a Philippine consular official or embassy official on the Bid Proposal Submission Date.
- 2.8.c If the document was issued by a foreign authority, the Prospective Bidder should also submit a certified true copy of such document issued by such

foreign authority, in addition to the authentication by the Philippine consular official or embassy official referred to in Section 2.8.b.

- 2.8.d If the document is written in a foreign language, the Prospective Bidder should also submit an accurate English translation of such document, accompanied by a notarized certification by the Prospective Bidder that such translation is accurate, in addition to the authentication by the Philippine consular official or embassy official referred to in Section 2.8.b. In case of conflict, the English translation shall prevail.
- 2.8.e For each instance in the Instructions to Prospective Bidders where authentication by a Philippine consular or embassy official is required, the form, including language, of the authentication shall be subject to the forms and rules applicable in the relevant Philippine consular office or embassy provided in 1.8.b above.

2.9 WAIVER OF RIGHTS TO ENJOIN PROJECT

By participating in the Bidding Process, Prospective Bidders thereby waive any right they may have to seek and obtain a writ of injunction or prohibition or restraining order against the DOTC or the PBAC to prevent or restrain the holding of a bidding or any proceedings related thereto, the negotiation, award and execution of the contract to the Winning Bidder, and the carrying out of the awarded Concession Agreement. Such waiver shall, however, be without prejudice to the right of a disqualified or losing Bidder to question the lawfulness of its disqualification or the rejection of its Bid Proposal by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

2.10 PRE-QUALIFICATION CONFERENCE

The DOTC through its PBAC shall conduct a Pre-Qualification Conference on the date indicated in Table 1. The purpose of the Pre-Qualification Conference is to clarify any part of the Invitation Documents and/or the Bidding Process and to answer any relevant questions from Prospective Bidders regarding the Invitation Documents, or such other relevant issues that the Prospective Bidders may raise. The details of the Pre-Qualification Conference are as follows:

Date: 3 September 2014

Time: To be announced
Venue: To be announced

No provisions, terms, or conditions in the Invitation Documents shall be modified by statements made at the Pre-Qualification Conference unless these are made in writing and contained in a bid bulletin issued by the PBAC.

2.10 PRE-BID CONFERENCE

The DOTC through its PBAC shall conduct a Pre-Bid Conference on the date indicated in Table 1. The purpose of the Pre-Bid Conference is to clarify any part of the Bidding Documents and/or the Bidding Process and to answer any relevant questions from Bidders regarding the Bidding Documents, or such other relevant issues that the Bidders may raise. The details of the Pre-Bid Conference are as follows:

Date: 24 November 2014
Time: To be announced
Venue: To be announced

2.11 ONE-ON-ONE MEETINGS WITH PRE-QUALIFIED BIDDERS

The PBAC shall also arrange for at least two (2) rounds of one-on-one meetings with Pre-Qualified Bidders on scheduled dates, which will be announced through a bid bulletin. A Bidder scheduled for a one-on-one meeting is requested to submit its questions and/or comments at least three (3) calendar days prior to such meeting, following the same procedures indicated in Section 2.6. No provision, term, or condition in the Bidding Documents shall be modified by statements made during these meetings unless these are made in writing and contained in a bid bulletin issued by the PBAC.

SECTION 3: QUALIFICATION REQUIREMENTS

Prospective Bidders must fulfill all the Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability Qualification Requirements provided in this Section 3 (*Qualification Requirements*).

3.1 LEGAL QUALIFICATION REQUIREMENTS

3.1.a If the Prospective Bidder is a partnership or corporation, it must be registered with the Securities and Exchange Commission (“SEC”). If the Prospective Bidder

is a foreign partnership or corporation, it must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign partnership or corporation was registered for creation or recognition of its juridical personality or capacity. The Prospective Bidder must certify that it and its Affiliates whose projects and experience are being submitted as evidence of fulfillment of the Technical Qualification Requirements or Financial Capability Qualification Requirements have no record of Unsatisfactory Performance.

- 3.1.b If the Prospective Bidder is a Consortium, its members must be partnerships or corporations registered with the SEC. If any member of the Consortium is a foreign partnership or corporation, such member must be registered with the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. Each Consortium Member must certify that it and its Affiliates whose projects and experience are being submitted as evidence of fulfillment of the Technical Qualification Requirements or Financial Capability Qualification Requirements have no record of Unsatisfactory Performance.
- 3.1.c If the Prospective Bidder is a partnership or corporation, the Prospective Bidder itself or its Affiliates cannot be a Public Transport Operator.

If the Prospective Bidder is a Consortium and any Consortium Member or any Affiliate of such Consortium Member is a Public Transport Operator, such Consortium Member or its Affiliate that is a Public Transport Operator, for the duration of the Concession Period (1) cannot own, directly or indirectly, more than thirty-three percent (33%) of the Concessionaire's total number of outstanding shares of stock, whether or not entitled to vote in the election of directors and (2) the number of such Public Transport Operator's representatives in the board of directors of the Concessionaire shall be limited to its proportionate ownership in the outstanding shares of stock in the Concessionaire, which shall not be more than thirty-three percent (33%) of the total membership of the board of directors; provided that if there is more than one Consortium Member or Affiliate of a Consortium Member that is a Public Transport Operator, then for the duration of the Concession Period such

Consortium Members and its Affiliates that are Public Transport Operators collectively (1) cannot own, directly or indirectly, an aggregate of more than thirty-three percent (33%) of the Concessionaire's total number of outstanding shares of stock, whether or not entitled to vote in the election of directors and (2) the aggregate number of such Public Transport Operators' representatives in the board of directors of the Concessionaire shall be limited to their proportionate ownership in the outstanding shares of stock in the Concessionaire, which shall not be more than thirty-three percent (33%) of the total membership of the board of directors.

A Public Transport Operator cannot be designated as the Facility Operator or own any equity in the Facility Operator. However, if a Public Transport Operator was the entity that was qualified by the PBAC as meeting the O&M Experience, (1) such entity shall be allowed to own up to thirty-three percent (33%) of the Facility Operator's total number of outstanding shares of stock, whether or not entitled to vote in the election of directors and (2) the number of such Public Transport Operator's representatives in the board of directors of the Facility Operator shall be limited to its proportionate ownership in the outstanding shares of stock in the Facility Operator, which shall not be more than thirty-three percent (33%) of the total membership of the board of directors.

In all cases, the participation of a Public Transport Operator in the board of directors of the Concessionaire or the Facility Operator shall be limited to its proportionate share in the Concessionaire's or Facility Operator's outstanding shares of stock, whether or not entitled to vote in the election of directors. In no case shall the control, management, administration, and operation of the Concessionaire and the Facility Operator vest, directly or indirectly, in a Public Transport Operator.

The Prospective Bidder and each Consortium Member that is not a Public Transport Operator must certify that it is not a Public Transport Operator.

- 3.1.d If an Affiliate of the Prospective Bidder, Consortium Member, Development Contractor or O&M Contractor is proposed to meet either the Technical

Qualification Requirements or Financial Capability Qualification Requirements, such proposed entity must remain an Affiliate of such Prospective Bidder, Consortium Member, Development Contractor or O&M Contractor from the Bid Submission Date until the execution of the Concession Agreement.

3.2 TECHNICAL QUALIFICATION REQUIREMENTS

3.2.a DEVELOPMENT EXPERIENCE

3.2.a(1) The Prospective Bidder, or a related entity as described in Section 3.2.a(3), must have local or international experience, within the last ten (10) years prior to the Qualification Documents Submission Date, in having successfully completed the development of one or more Eligible Projects with a cumulative cost of at least three billion Philippine Pesos (PhP3,000,000,000) and with a cumulative capacity of at least seven hundred fifty (750) parking bays for land surface vehicles with four (4) or more wheels, excluding rail.

3.2.a(2) The Prospective Bidder must prove that an entity proposed to meet the Development Experience possesses the required experience through the submission of projects where such entity actively participated in the development works for such project, whether as principal or primary contractor or as lead development manager, and was directly responsible and accountable for the outcome of such development works.

3.2.a(3) The entity proposed to meet the Development Experience may be any of the following:

3.2.a(3)(i) if the Prospective Bidder is a partnership or corporation:

- the Prospective Bidder itself; or
- a Construction Contractor; or

3.2.a(3)(ii) if the Prospective Bidder is a Consortium:

- a Consortium Member; or
- a Construction Contractor.

- 3.2.a(4) A Prospective Bidder shall be allowed to nominate not more than three (3) entities to meet the Development Experience. If the entity nominated to meet the Development Experience is a Construction Contractor, such contractor must be a single juridical entity registered with the SEC, or if the contractor is a foreign entity, with the appropriate government agency equivalent to the SEC in the foreign country where the contractor was registered for creation or recognition of its juridical personality or capacity.
- 3.2.a(5) Each entity proposed by the Prospective Bidder to meet the Development Experience must meet such experience on its own. Entities are not permitted to cumulate their experience in order to meet the Development Experience.
- 3.2.a(6) For the purpose of determining whether the Prospective Bidder fulfills the Development Experience, a project completed by the Affiliate of a Prospective Bidder shall be considered to have been completed by the Prospective Bidder, a project completed by the Affiliate of a Consortium Member shall be considered to have been completed by such Consortium Member, and a project completed by the Affiliate of a Construction Contractor shall be considered to have been completed by such Construction Contractor.
- 3.2.a(7) Any entity proposed to meet the Development Experience must certify that it has no record of Unsatisfactory Performance.
- 3.2.a(8) Any entity proposed to meet the Development Experience must possess a valid license issued by the Philippine Contractors Accreditation Board ("**PCAB**") for General Building Classification – Large B for Buildings and Industrial Plants – AAA License Category, in the case of a Filipino Construction Contractor, or an equivalent license issued by an equivalent accreditation institution in the Construction Contractor's country of origin, in the case of a foreign Construction Contractor, provided that such foreign Construction Contractor must secure a license and accreditation from the PCAB after the Prospective Bidder is awarded the Project.
- 3.2.a(9) Any entity proposed to meet the Development Experience must possess a valid ISO 9001:2008 certification or its equivalent. For this

particular requirement, an “equivalent” of the ISO 9001:2008 certification would be a notarized certification from a competent regulatory authority stating that: (i) it is the regulatory authority in the country where the entity proposed to meet the Development Experience was registered for creation or recognition of its juridical personality or capacity and it has jurisdiction over such entity; (ii) the laws in such country do not require entities like the entity proposed to meet the Development Experience to secure ISO certifications; (iii) the entity proposed to meet the Development Experience is compliant with the relevant policies, procedures and programs required by applicable laws, rules and regulations of such country; and (iv) the entity proposed to meet the Development Experience has in place internal procedures and processes equivalent to those required under the ISO 9001 certification; in addition, the entity proposed to meet the Development Experience must prove that it has substantially equivalent internal procedures as those required for the ISO 9001:2008 certification, as evidenced by the submission of a notarized document describing the entity’s approved internal quality and environmental management system.

- 3.2.a(10) Any Consortium Member, Construction Contractor or Affiliate of the Consortium Member or Construction Contractor proposed to meet the Development Experience must submit a statement under oath of its willingness to participate in, and capacity to undertake, the requirements of the Project, and commitment to enter into an agreement with the Concessionaire to undertake the construction of the ITS Terminal.
- 3.2.a(11) The entity or entities proposed to meet the Development Experience that are qualified by the PBAC will be identified in the Concession Agreement. The Concessionaire may use the entity or entities identified in the Concession Agreement without need for further consent from the DOTC. The use of any entity other than those identified in the Concession Agreement shall require the prior written consent of the DOTC and shall be subject to the Concessionaire’s demonstration that the proposed entity meets the Development Experience.
- 3.2.a(12) Without prejudice to the Bidding Period Lock-Up Rules, a Prospective Bidder shall be disqualified from the Bidding if all of the

entities qualified by the PBAC as meeting the Development Experience withdraw from the Bidding between the Bid Submission Date and the execution of the Concession Agreement by the Concessionaire.

3.2.b OPERATION AND MAINTENANCE EXPERIENCE

3.2.b(1) The Prospective Bidder, or a related entity as described in Section 3.2.b(2), must have local or international experience in the operation and maintenance of -

3.2.b(1)(i) one or more bus terminals with a cumulative bus parking capacity for at least eighty (80) passenger buses, and a minimum parking capacity of at least twenty (20) passenger buses in each bus terminal; or

3.2.b(1)(ii) one or more commercial complexes, shopping malls, airport terminals, parking complexes (either stand alone or as a part of any building/project), freight terminals with a cumulative parking capacity of at least three hundred twenty (320) parking bays for land surface transport vehicles with four (4) or more wheels, excluding rail, and a minimum parking capacity of at least eighty (80) parking bays for land surface transport vehicles with four (4) or more wheels, excluding rail, in each commercial complex, shopping mall, airport terminal, parking complex (either stand alone or as a part of any building/project), freight terminal,

for a period of at least three (3) full consecutive years, within the last ten (10) years prior to the Qualification Documents Submission Date

3.2.b(2) The entity proposed to meet the O&M Experience may be any of the following:

3.2.b(2)(i) if the Prospective Bidder is a partnership or corporation:

- the Prospective Bidder itself; or
- an O&M Contractor.

- 3.2.b(2)(ii) if the Prospective Bidder is a Consortium:
- a Consortium Member; or
 - an O&M Contractor.
- 3.2.b(3) A Prospective Bidder shall be allowed to nominate not more than three (3) entities to meet the O&M Experience.
- 3.2.b(4) Each entity proposed by the Prospective Bidder to meet the O&M Experience must meet such experience on its own. Entities are not permitted to cumulate their experience in order to meet the O&M Experience.
- 3.2.b(5) For the purpose of determining whether the Prospective Bidder fulfills the O&M Experience, a project performed by the Affiliate of a Prospective Bidder shall be considered to have been performed by the Prospective Bidder, a project performed by the Affiliate of a Consortium Member shall be considered to have been performed by such Consortium Member, and a project performed by the Affiliate of an O&M Contractor shall be considered to have been completed by such O&M Contractor.
- 3.2.b(6) Any entity proposed to meet the O&M Experience must certify that it has no record of Unsatisfactory Performance.
- 3.2.b(7) Any Consortium Member, O&M Contractor or Affiliate of the Consortium Member or O&M Contractor proposed to meet the O&M Experience must submit a statement under oath of its willingness to participate in, and capacity to undertake, the requirements of the Project, and commitment to enter into an agreement with the Concessionaire to undertake the operation and maintenance of the ITS Terminal or to provide technical support to the Concessionaire in the operation and maintenance of the ITS Terminal should the Concessionaire decide to operate the ITS Terminal itself.
- 3.2.b(8) The entity or entities proposed to meet the O&M Experience that are qualified by the PBAC will be identified in the Concession Agreement. Unless it decides to operate the ITS Terminal itself, the Concessionaire may designate as its Facility Operator any of the entities identified in the Concession Agreement without need for

further consent from the DOTC. The designation as Facility Operator of any entity other than those identified in the Concession Agreement shall require the prior written consent of the DOTC. In addition, the entity that operates and maintains the ITS Terminal must (i) be registered with the SEC before it commences to operate and maintain the ITS Terminal, (ii) be owned up to at least sixty percent (60%) by Filipinos and (iii) comply with the Constitution and other applicable laws and jurisprudence relating to public utilities. If the Concessionaire designates a Facility Operator to operate and maintain the ITS Terminal, at least thirty percent (30%) of the Facility Operator’s outstanding shares entitled to vote must be owned, whether directly or indirectly, by any one of the entities qualified by the PBAC for the O&M Experience for the Lock-Up Period.

3.2.b(9) Without prejudice to the Bidding Period Lock-Up Rules, a Prospective Bidder shall be disqualified from the Bidding if all of the entities qualified by the PBAC as meeting the O&M Experience withdraw from the Bidding between the Bid Submission Date and the execution of the Concession Agreement by the Concessionaire.

3.2.c QUALIFIED KEY PERSONNEL

3.2.c(1) The Prospective Bidder, Consortium Members, Construction Contractors, O&M Contractors and any Affiliates of any of these entities whose projects are being submitted to meet the Technical Qualification Requirements, must have, among their personnel, individuals with the following required qualifications and experience:

Minimum Experience Required
Individual having experience in the planning, direction, coordination, integration, implementation, and administration of development activities for at least two (2) Eligible Projects
Individual having experience in the coordination of operations and maintenance activities for at least two (2) Eligible Projects
Individual having experience in the supervision/implementation of at least two (2) Eligible Projects

Minimum Experience Required
Individual having experience in the design of at least two (2) Eligible Projects, including site planning, landscaping and the architectural design of building structures

- 3.2.c(2) In order to meet the qualifications and experience required in Section 3.2.c, a Prospective Bidder may propose persons who are employed or engaged, including external experts with relevant experience, by the Prospective Bidder itself, a Consortium Member or any of their proposed Construction Contractors, O&M Contractors or Affiliates.
- 3.2.c(3) In the event that it is selected as the Winning Bidder, a Bidder must assign these key personnel to implement the Project.
- 3.2.c(4) In case the key personnel is separated from or disengaged by the Bidder, they may be replaced or substituted by new personnel possessing at least the same qualifications as those of the key personnel initially assigned to implement the Project subject to the prior written consent of DOTC, which consent shall not be unreasonably withheld.

3.3 FINANCIAL CAPABILITY QUALIFICATION REQUIREMENTS

- 3.3.a The Prospective Bidder, or a related entity as described in Section 3.3.b, must –
 - 3.3.a(1) possess a net worth of at least nine hundred million Philippine Pesos (PhP900,000,000) or its equivalent as of its latest audited financial statements which must be for a fiscal period ending in any month of 2013 or 2014, whichever is applicable; and
 - 3.3.a(2) provide evidence that it has the capability to raise loans of at least two billion one hundred million Philippine Pesos (PhP2,100,000,000) for the Project.
- 3.3.b The entity proposed to meet the Financial Capability Qualification Requirements may be any of the following:

3.3.b(1) if the Prospective Bidder is a partnership or corporation:

- the Prospective Bidder itself; or
- an Affiliate of the Prospective Bidder, or

3.3.b(2) if the Prospective Bidder is a Consortium:

- the Lead Member of the Consortium; or
- an Affiliate of the Lead Member of the Consortium.

3.3.c For a Prospective Bidder that is a Consortium, the entity proposed to meet the Financial Capability Qualification Requirements shall be the Lead Member of the Consortium. As Lead Member, such entity must be the Consortium Member with the most significant equity interest in the Concessionaire, and this interest must be at least thirty-three percent (33%) of both voting and non-voting shares of the Concessionaire.

3.3.d A Prospective Bidder shall be allowed to nominate only a single entity to meet the Financial Capability Qualification Requirements, which entity must meet all of the requirements in Section 3.3.a on its own.

3.3.e The entity proposed to meet the Financial Capability Qualification Requirements must certify that it has no record of Unsatisfactory Performance.

SECTION 4: QUALIFICATION DOCUMENTS

On the Qualification Documents Submission Date, the Prospective Bidder must submit its Notarized Application to Pre-Qualify and Bid. The Application to Pre-Qualify and Bid consisting of the following Qualification Documents, using the relevant forms indicated in this Section 4 (*Qualification Documents*):

- 4.1 Notarized Application to Pre-Qualify and Bid, using the form in **Annex QD-1A**. This must be submitted by the Prospective Bidder.
- 4.2 Notarized Corporate Authorizations and Designation of Authorized Representative

- 4.2.a If the Prospective Bidder is a partnership or corporation, it must submit a Notarized Authority to Apply to Pre-Qualify and Bid and Designation of Authorized Representative, using the form in **Annex QD-1B**.
- 4.2.b If the Prospective Bidder is a Consortium, each Consortium Member must submit a Notarized Authority to Participate in the Consortium and Apply to Pre-Qualify and Bid, and Designation of Lead Member and Authorized Representative of the Consortium, using the form in **Annex QD-1C**.
- 4.3 Notarized Certification of No Relationship with Public Transport Operator, using the form in **Annex QD-1D**.
- 4.4 Business Structure, using the form in **Annex QD-2A** for partnerships or corporations, or **Annex QD-2B** for Consortiums.
 - 4.4.a The Business Structure must indicate the entities that fulfill the Technical Qualification Requirements and the Financial Capability Qualification Requirements, and any Affiliates of these entities whose projects, experience, or financial capabilities are being submitted to comply with such Qualification Requirements.
 - 4.4.b For Consortiums, the Business Structure must indicate the Lead Member and all Consortium Members, the proposed equity interest of each Consortium Member in the Concessionaire, and the total percentage interest of all Consortium Members in the Concessionaire must be one hundred percent (100%).
 - 4.4.c If an Affiliate will be used to comply with any of the Technical Qualification Requirements or the Financial Qualification Requirements, evidence of affiliation must be submitted.
- 4.5 Basic Information Sheet, using the form in **Annex QD-3**.
 - 4.5.a The Basic Information Sheet must be submitted for all entities identified in the Business Structure.
 - 4.5.b For each entity identified in the Business Structure, the following attachments must also be submitted:

- 4.5.b(1) Certified true copy of its latest General Information Sheet, stamped “received” by the SEC or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copies may be issued by either the SEC or its equivalent in a foreign country, or the entity’s corporate secretary or authorized representative. If it is issued by the entity’s corporate secretary or authorized representative, the certification must be under oath and notarized.

If one of the members of the Consortium is a foreign entity and the jurisdiction where the foreign entity is incorporated or registered does not require or accept, or even agree to acknowledge, the filing of the equivalent of the Philippines' General Information Sheet ("GIS"), only a document providing similar information as required under the GIS must be submitted by the foreign entity. Such document need not be submitted to and acknowledged by a government agency of the foreign jurisdiction, and is only required to be certified by the authorized representative of the foreign entity, under oath and notarized, and thereafter authenticated by a Philippine consular or embassy official.

- 4.5.b(2) Certified true copy of its SEC Certificate of Incorporation or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copy of the SEC Certificate of Incorporation, or the equivalent document for a foreign entity, must be issued by the SEC or its equivalent in a foreign country.
- 4.5.b(3) Certified true copy of its Articles of Incorporation and 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 creation or recognition of its juridical personality or capacity. The certified true copy of the Articles of Incorporation and By-Laws may be issued either by the SEC or its equivalent in a foreign country, or by the entity’s corporate secretary or authorized representative. If the

certified true copies are issued by the entity's corporate secretary or authorized representative, the certification must be under oath and notarized.

- 4.6 Notarized Certification of Absence of Unsatisfactory Performance Record, using the form in **Annex QD-4**. The Notarized Certification of Absence of Unsatisfactory Performance Record must be submitted for all entities identified the Business Structure.
- 4.7 Development Experience, using the form in **Annex QD-5**.
 - 4.7.a This document must be submitted by the entity or entities which fulfill the Development Experience, as identified in the Business Structure.
 - 4.7.b For each entity required to submit this document, the following attachments must also be submitted:
 - 4.7.b(1) Notarized certification of project completion from the project's owner or a copy of the original certificate of project completion accompanied by a notarized certification issued by an officer of the entity which fulfills the Development Experience Requirement that such copy is a true and faithful reproduction of the original certificate.
 - 4.7.b(2) Certified true copy of a valid license issued by the PCAB for General Building Classification – Large B for Buildings and Industrial Plants – AAA License Category, in the case of a Filipino Construction Contractor, or an equivalent license issued by an equivalent accreditation institution in the entity's country of origin, in the case of a foreign entity, provided that such foreign entity must secure a license and accreditation from the PCAB after the Prospective Bidder is awarded the Project. The certified true copy of the PCAB license must be issued by PCAB. In case of a foreign entity, the certified true copy of the equivalent of the PCAB license must be issued by the equivalent accreditation institution. If the equivalent accreditation institution does not issue a certified true copy, the Prospective Bidder must submit a notarized certification from its authorized representative that the equivalent license is a true copy. All documents issued or executed in a foreign country must be authenticated by the Philippine consular or embassy official as provided in Section 2.8.b.

- 4.7.b(3) Certified true copy of a valid ISO 9001:2008 certification or its equivalent.
- 4.8 Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Construction Requirements of, the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Construction of the South ITS Terminal, using the form in **Annex QD-6**. This must be submitted by any Consortium Member, Construction Contractor or Affiliate of the Consortium Member or Development Contractor proposed to meet the Development Experience Requirement, as identified in the Business Structure.
- 4.9 Operation and Maintenance Experience, using the form in **Annex QD-7**.
- 4.9.a This document must be submitted by the entity or entities which fulfills the O&M Experience Requirement, as identified in the Business Structure.
- 4.10.b The entity required to submit this document must also submit
- (i) a notarized certification of the project completion from the project's owner; or
 - (i) a notarized certification from the project's owner that the project is ongoing or in operation; or
 - (i) a copy of the original certificate of project completion accompanied by a notarized certification issued by an officer of the entity which fulfills the O&M Experience that such copy is a true and faithful reproduction of the original certificate; or
 - (i) a certificate that the project is ongoing or in operation accompanied by a notarized certification issued by an officer of the entity which fulfills the O&M Experience that such copy is a true and faithful reproduction of the original certificate.
- 4.10 Notarized Statement of Willingness to Participate In, and Capacity to Undertake the O&M Requirements of, the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the O&M of the South ITS Terminal or to Provide Technical Support to the Concessionaire in the O&M of the South ITS Terminal, using the form in **Annex QD-8**. This must be submitted by any Consortium Member, O&M Contractor or Affiliate of the Consortium Member or O&M Contractor proposed to meet the O&M Experience, as identified in the Business Structure.

- 4.11 Key Personnel, using the form in **Annex QD-9**. This is a list of key personnel who fulfill the requirements of Section 3.2.c of these Instructions to Prospective Bidders. More than one name may be submitted for each position.
- 4.12 Notarized Statement of Financial Capability, using the form in **Annex QD-10**.
- 4.12.a The Notarized Statement of Financial Capability must be executed by the entity proposed to meet the Financial Capability Qualification Requirements, as identified in the Business Structure.
- 4.12.b This document must be submitted together with the following attachments:
- 4.12.b(1) Certified true copies of the latest audited financial statements and latest income and business tax returns, which must be for a fiscal period ending in any month of 2013 or 2014, whichever is applicable and certified true copy of the latest unaudited quarterly financial statements for the quarter ending prior to the month of the Qualification Documents Submission Date, and provided that the audited financial statements must be stamped “received” by the Bureau of Internal Revenue (“BIR”) or any BIR authorized agent bank, or for foreign entities, the appropriate government agency equivalent to the BIR in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. In the event that the laws of the foreign country where the foreign entity is registered do not require the submission of an audited financial statements to the government agency equivalent to the BIR but to another government agency that is mandated to incorporate companies and regulate businesses to ensure compliance with business registration and corporate legislation, the PBAC will accept the audited financial statements acknowledged/received by the latter government agency. The certification may be issued by an officer of the entity proposed to meet the Financial Capability Qualification Requirements, in which case the certification must be under oath and notarized, provided that the certification relating to the unaudited quarterly financial statements must be issued by the entity’s chief financial officer. If there is a discrepancy between the financial statements, the entity must submit the relevant supporting documents to explain the discrepancy.

Furthermore, the corporate secretary or authorized representative of the foreign entity can issue the certification that a copy of the audited financial statements (acknowledged received by the relevant government agency) is a true copy. If a foreign entity is not required to submit its audited financial statements to any government office, the audited financial statements, certified by the corporate secretary or authorized representative, must be submitted.

- 4.12.b(2) A letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the Bangko Sentral ng Pilipinas (“BSP”) attesting that the Prospective Bidder or Consortium Members, or their Affiliates, as the case may be, are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the project.

If the Prospective Bidder will use an Affiliate or an Affiliate of the Lead Member to comply with the Financial Qualification Requirements, attach evidence of such affiliation.

SECTION 5: VALIDITY OF BIDS

5.1 ONE BIDDER, ONE SUBMISSION

Each Prospective Bidder shall submit only one Application to Pre-Qualify and Bid. A Prospective Bidder may not be a member of another Consortium, nor have an Affiliate which is a member of another Consortium.

To ensure a level playing field and a competitive Bidding Process, there are restrictions on the extent of affiliation and ownership between Prospective Bidders and members of different Consortia. These are described in greater detail in Section 8.3.

These restrictions do not limit the participation of proposed Construction Contractor or O&M Contractor, which may be proposed by more than one Prospective Bidder, provided such contractor is not a: (i) Prospective Bidder, (ii) Consortium Member or (iii) Affiliate of any of the Prospective Bidders or Consortium Members.

5.2 RIGHT TO REJECT QUALIFICATION DOCUMENTS, TO WAIVE MINOR DEFECTS AND TO TERMINATE BIDDING PROCESS

- 5.2.a The PBAC reserves the right to accept or reject any or all of the Applications to Pre-Qualify and Bid without assigning any reason whatsoever.
- 5.2.b The PBAC reserves the right to waive any minor defects in the Qualification Documents, and accept the offer it deems most advantageous to the Government.
- 5.2.c At any time, the DOTC reserves the right not to proceed with the Bidding Process and the execution of the Concession Agreement, without prior notice or incurring liability, and without any obligation to give any reason not to proceed.

SECTION 6: SUBMISSION OF QUALIFICATION DOCUMENTS

6.1 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS

- 6.1.a A Prospective Bidder must submit its Qualification Documents in the following form:
 - 6.1.a(1) one (1) complete original set, clearly marked on each page as “QUALIFICATION DOCUMENTS-ORIGINAL,” and numbered continuously;
 - 6.1.a(2) four (4) sets of photocopies, clearly marked on each page as “QUALIFICATION DOCUMENTS-COPY NO. ___”; and
 - 6.1.a(3) five (5) readable compact discs (CD-R), each containing electronic files of all of the Qualification Documents in either Portable Document Format (.pdf) or Microsoft Word (.doc) formats, with the pages arranged in exactly the same sequence as the sequence in the original set of the Qualification Documents; provided that in the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail.
- 6.1.b Each page of the original set of Qualification Documents, including any required attachments, shall be initialed using blue ink on the right margin by the

Prospective Bidder's authorized representative as identified in the form in Annex QD-1B or QD-1C. In case of conflict between the original set and the photocopies, the original set shall prevail.

- 6.1.c Each set of the Qualification Documents should contain a table of contents.
- 6.1.d Whenever possible, the Qualification Documents must be printed either in standard A4 or letter size (8 ½" x 11") paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 12-font size.
- 6.1.e Each set of the Qualification Documents must be placed in an envelope. The five (5) CDs should also be placed in an envelope. Each of the five (5) envelopes containing the Qualification Documents and the envelope containing the five (5) CDs must be sealed and appropriately addressed and marked as follows:

<p>DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS</p> <p>SOUTH INTEGRATED TRANSPORT SYSTEM PROJECT</p> <p>QUALIFICATION DOCUMENTS – [ORIGINAL / COPY NO.(<u> </u>) / CDs]</p> <p><i>[STATE NAME AND ADDRESS OF PROSPECTIVE BIDDER]</i></p> <p>DO NOT OPEN UNTIL [●], 2014</p>

- 6.1.f If any of the envelopes are not properly sealed and/or marked as instructed above, the PBAC shall not assume any responsibility for the loss of the Qualification Documents.

6.2 FORMAT OF SUBMISSION OF QUALIFICATION DOCUMENTS ON THE QUALIFICATION DOCUMENTS SUBMISSION DATE

- 662.a The Prospective Bidder shall place the envelopes containing (i) original sets of the Qualification Documents, (ii) four (4) sets of photocopies of the Qualification Documents and (iii) the CDs containing the electronic copies, in one outer sealed box marked as follows:

<p>PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE FOR</p> <p>DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS</p> <p>SOUTH INTEGRATED TRANSPORT SYSTEM PROJECT</p> <p>APPLICATION TO PRE-QUALIFY AND BID</p> <p><i>[STATE NAME AND ADDRESS OF PROSPECTIVE BIDDER]</i></p>

- 6.2.b If any of the envelopes are not sealed and marked as required, the PBAC shall assume no responsibility for the misplacement or premature opening of the envelopes.

6.3 DEADLINE AND PLACE OF SUBMISSION OF APPLICATIONS TO PRE-QUALIFY AND BID

- 6.3.a Prospective Bidders shall submit their Bids to:

**Pre-Qualification, Bids and Awards Committee of
Department of Transportation and Communications
For South Integrated Transport System Project
Room No. 167, 16th Floor, The Columbia Tower,
Ortigas Avenue, Mandaluyong City**

- 6.3.b The Applications to Pre-Qualify and Bid must be submitted on or before 2:00 p.m. of the Qualification Documents Submission Date. The time of submission of Applications to Pre-Qualify and Bid shall be determined by reference to Philippine Standard Time as determined by the Philippine Atmospheric, Geophysical and Astronomical Services Administration (“**PAGASA**”) and displayed at the following website: <http://www.dost.gov.ph>. An Application to Pre-Qualify and Bid submitted outside of the prescribed time shall not be accepted by the PBAC and such Prospective Bidder shall be automatically disqualified.
- 6.3.c Each application submitted shall be numbered in the order received and stamped with the time of receipt. In addition, the receipt of applications shall be recorded in a register in the order of receipt specifying the date, time and

name of the Prospective Bidder submitting the same.

SECTION 7: OPENING OF QUALIFICATION DOCUMENTS

7.1 OPENING OF ENVELOPE

- 7.1.a Immediately after 2:00 p.m. on the Qualification Documents Submission Date, the PBAC will begin the opening proceedings by announcing the names of the Prospective Bidders who have submitted Applications to Pre-Qualify and Bid and such other details as the PBAC may consider appropriate. The PBAC shall then open the envelope of each Prospective Bidder, one at a time, in the order in which the applications were received.
- 7.1.b The PBAC shall examine the contents of the envelope to determine whether it contains all of the Qualification Documents required in Section 4 (*Qualification Documents*). If the contents of the envelope are found to be incomplete or non-responsive, the PBAC shall automatically disqualify the entire application.
- 7.1.c Each Prospective Bidder may send a representative to witness the opening of the envelope. Such representative shall sign the register confirming his attendance. A Prospective Bidder who does not send a representative to witness the opening of the envelope shall be deemed to have waived the opportunity to witness the opening.

7.2 EVALUATION OF QUALIFICATION DOCUMENTS

- 7.2.a The PBAC shall evaluate the Qualification Documents over a period of no longer than twenty (20) days from the Qualification Documents Submission Date. The detailed evaluation of the compliance by the Prospective Bidder with the Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability Qualification Requirements for the Project shall be based solely upon the Qualification Documents submitted.
- 7.2.b The PBAC reserves the right to seek clarification from any Prospective Bidder on the form and contents of its Qualification Documents. The PBAC also reserves the right to make inquiries with any person, government authority, client organization, Consortium Member, officer, director, employee or other agent of any Prospective Bidder, Consortium Member, proposed contractor, or Affiliate

of any of these entities for the purpose of clarifying any matter included in its Qualification Documents. The PBAC shall make all requests for clarification from any Prospective Bidder in writing.

- 7.2.c All submitted information and any clarifications requested by the PBAC shall be assessed against the criteria for qualification provided in Section 3 (*Qualification Requirements*) and the documents required under Section 4 (*Qualification Documents*) and rated on a “pass-or-fail” basis. The Prospective Bidder will be considered as “qualified” if all Qualification Requirements are rated “passed” and all required Qualification Documents and attachments are completely submitted in the proper form. The Prospective Bidder may be considered as “disqualified” if any Qualification Requirement is rated “failed” or if any required Qualification Document or attachment is missing or not in the proper form.
- 7.2.d In determining a Prospective Bidder’s compliance with any of the Technical Qualification Requirements, if a Prospective Bidder submits the name of more than one entity to fulfill the Development Experience and/or the O&M Experience, for as long as at least one entity is rated “passed” for each of the Development Experience and O&M Experience, then the Prospective Bidder will be rated “passed” for the Technical Qualification Requirements.

7.3 OTHER GROUNDS FOR DISQUALIFICATION

In addition to the grounds for disqualification described above in Section 7.2, a Prospective Bidder may also be disqualified from participating in the Bidding for any of the following reasons:

- 7.3.a material or willful misrepresentation in the Pre-Qualification process;
- 7.3.b corrupt practice, fraud, collusion, coercion, undesirable or restrictive practice in the Pre-Qualification process;
- 7.3.c any form of politicking or other lobbying with respect to the Pre-Qualification process;
- 7.3.d illegal conduct or attempt to influence the PBAC’s evaluation of the Qualification Documents of the Pre-Qualification process;

- 7.3.e any conflict of interest that would give it any unfair advantage in the Pre-Qualification process as defined in Section 8.3;
- 7.3.f any Outstanding Dispute with government as defined under Section 1.42;
- 7.3.g failure to comply with any of the terms, conditions and instructions of the Invitation Documents; or
- 7.3.h other grounds for rejection or disqualification of Prospective Bidders under the Philippine BOT Law, the 2012 Revised IRR, and all other applicable laws.

The grounds for disqualification under this Section shall also apply to all Consortium Members (in case the Prospective Bidder is a Consortium), and any Affiliates or contractors proposed by the Prospective Bidder to fulfill any of the Qualification Requirements.

7.4 NOTIFICATION OF RESULTS OF EVALUATION OF QUALIFICATION DOCUMENTS

- 7.4.a Within five (5) calendar days from the completion of the evaluation of the Qualification Documents, the PBAC shall notify all Prospective Bidders as to whether or not they passed the pre-qualification stage (“**Notice of Qualification**”). All Prospective Bidders that pass the qualification stage shall be known as “**Pre-Qualified Bidders.**”
- 7.4.b If a Pre-Qualified Bidder proposed more than one entity to meet the Development Experience or O&M Experience, the PBAC shall notify such Pre-Qualified Bidder as to which of the entities it proposed passed the qualification process.
- 7.4.c Pre-Qualified Bidders will be furnished the following Bidding Documents immediately upon notification that they have been pre-qualified:
 - Instructions to Bidders, which will give detailed information about the requirements for the preparation of the Bid Proposals;
 - The Draft Concession Agreement;
 - The Draft Schedules to the Concession Agreement , which will set out technical requirements for undertaking the Project; and

- Other technical documents prepared by or on behalf of DOTC.

7.4.d Disqualified Bidders shall be informed of the reason/s for their disqualification.

7.4.e Within fifteen (15) working days from receipt of the “Notice of Disqualification,” a disqualified Bidder may appeal its disqualification to the Secretary of the DOTC, upon the filing of a non-refundable appeal fee equivalent to one-half of one percent (0.5%) of the project cost as approved by the NEDA-ICC. The appeal will be resolved following the procedure laid down in the BOT Law.

7.5. SINGLE PROSPECTIVE BIDDER PROCESS

If only one Prospective Bidder submits its Qualification Documents, or if there is only one Pre-Qualified Bidder after the evaluation of Qualification Documents, the Pre-Qualification Process shall proceed in accordance with the BOT Law and its Revised IRR.

SECTION 8: GENERAL CONDITIONS AND PROHIBITIONS

8.1 GENERAL CONDITIONS

By submitting its Application to Pre-Qualify and Bid, the Prospective Bidder acknowledges and agrees that:

8.1.a it, including all Consortium Members, proposed contractors and Affiliates, and their respective officers, employees, agents and advisors shall observe the highest standard of ethics during the Bidding Process;

8.1.b it, including all Consortium Members, proposed contractors and Affiliates, and their respective officers, employees, agents and advisors shall not commit any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice;

8.1.c it, including all Consortium Members, proposed contractors and Affiliates, and their respective officers, employees, agents and advisors, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process; and

8.1.d it accepts all the terms and conditions of the Invitation Documents.

8.2 CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, UNDESIRABLE, AND RESTRICTIVE PRACTICES

8.2.a If a Prospective Bidder, any Consortium Member, any proposed contractor or Affiliate is found to have, directly or indirectly, engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice during the Pre-Qualification Process, or after the issuance of the Notice of Qualification, the PBAC/DOTC shall –

8.2.a(1) reject or disqualify the application of or withdraw the Notice of Qualification to such Prospective Bidder, without being liable in any manner whatsoever to the Prospective Bidder;

8.2.a(2) seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and/or entities involved in such practices; and

8.2.a(3) permanently prohibit or disqualify individuals and/or entities involved in such practices from participating in any bidding of the DOTC from the date that they are found to have directly or indirectly engaged in any such practices.

8.2.b For the purposes of this Section, the following terms shall have the meanings hereinafter assigned to them:

8.2.b(1) ***"Corrupt Practice"*** means any of the prohibited acts and omissions punishable under Republic Act No. 3019 (**"Anti-Graft and Corrupt Practices Act"**), Act No. 3815 (**"Revised Penal Code"**), Republic Act No. 6713 (**"Code of Conduct and Ethical Standards for Public Officials and Employees"**), Republic Act No. 7080 (**"Plunder Law"**), and other applicable laws and relevant rules and procedures, by which a person improperly and unlawfully enriches or benefits himself or others, or induces others to do so, and includes the offering, giving, receiving, or soliciting of anything of value to influence the actions of any person connected with the Bidding Process or the execution of the Concession Agreement;

- 8.2.b(2) **"Fraudulent Practice"** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating and the like, especially when involving misrepresentation, omission, concealment, suppression, non-disclosure or disclosure of incomplete facts, in order to influence the Bidding Process or the execution of the Concession Agreement;
- 8.2.b(3) **"Collusive Practice"** means a scheme or arrangement between two or more Bidders, with or without the knowledge of the government, designed to establish the Bid Amount at artificial, non-competitive levels;
- 8.2.b(4) **"Coercive Practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person's participation in the Bidding Process or the execution of the Concession Agreement;
- 8.2.b(5) **"Undesirable Practice"** means (i) establishing contact with any person connected with or employed or engaged by the DOTC or the PPP Center with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and
- 8.2.b(6) **"Restrictive Practice"** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among Bidders, Consortium Members, Construction Contractors, O&M Contractors, or the Affiliates of any of these entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.

8.3 CONFLICT OF INTEREST

- 8.3.a Prospective Bidders and Consortium Members (if the Prospective Bidder is a Consortium), including their Affiliates, must not have any Conflict of Interest.

The assessment of the existence of a Conflict of Interest shall be based on the specific facts of each case.

8.3.b Without limiting the generality of what would constitute a Conflict of Interest, any of the following shall be considered a Conflict of Interest because they constitute overt acts or situations which indicate collusion between two or more Bidders:

8.3.b(1) a Prospective Bidder, any Consortium Member, or any of their Affiliates (of either a Prospective Bidder or of the Consortium Member) is a member of another Consortium, or an Affiliate of a member of another Consortium;

8.3.b(2) a Prospective Bidder, any Consortium Member, or any of their Affiliates (of either a Prospective Bidder or of the Consortium Member) which are used to meet any of the Technical Qualification Requirements or Financial Qualification Requirements has ownership interest of at least twenty percent (20%) in any other Prospective Bidder, any Consortium Member of any other Prospective Bidder, or any of their Affiliates (of either the other Prospective Bidder or any of its Consortium Members) that are used to meet any of the Qualification Requirements;

8.3.b(3) a member of the board of directors, partner, officer, employee, professional advisor or agent of a Prospective Bidder, any Consortium Member, or any of their Affiliates (of either the Prospective Bidder or any of its Consortium Members) who is directly involved in the Bidding Process for the Project, is also directly involved in any capacity related to the Bidding Process for the Project for another Prospective Bidder, any Consortium Member of any other Prospective Bidder, or any of their Affiliates (of either the Prospective Bidder or any of its Consortium Members); provided, however, that in relation to professional advisors, there shall be no Conflict of Interest if prior written disclosure is submitted by such professional advisor to its client Prospective Bidders and the DOTC, together with a conflict management plan which must be approved by the DOTC;

For purposes of this Section 8.3.b(3), and without limiting the discretion of the PBAC to determine what constitutes Conflict of Interest, “direct involvement” shall mean actual participation in the deliberations and decision-making for the Bidding Process that would give the director, partner, officer, employee knowledge/information regarding the Bids of the Prospective Bidders and which will allow such director, partner, officer, employee to influence the Bids.

For the avoidance of doubt, the matters listed under 8.3.b shall not be considered Collusive Practice as defined under 8.2.b(3).

8.3.c Without limiting the generality of what constitutes Conflict of Interest, any of the following shall be considered a Conflict of Interest because of engagement by the DOTC or the PPP Center for the Project:

8.3.c(1) a Prospective Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities, has been directly engaged as a consultant by the DOTC or the PPP Center in the preparation of any Bidding Documents or the design, or technical specifications of the Project or in connection with the Bidding Process; or

8.3.c(2) a Prospective Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities, engages any legal, financial, or technical advisor of the DOTC or the PPP Center in relation to the Project, or anyone who is or was an employee of the DOTC or the PPP Center less than one (1) year before his or her engagement in relation to the Project by the Prospective Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities.

8.3.d If at any time prior to the signing of the Concession Agreement, any Prospective Bidder, Consortium Member, or any Affiliate of any of these entities, is found to have a Conflict of Interest as defined in this Section 8.3 (*Conflict of Interest*), it shall be disqualified from further participating in the Bidding Process. If the

Conflict of Interest involves another Prospective Bidder, then both Prospective Bidders shall be disqualified.

- 8.3.e A Construction Contractor or O&M Contractor may be proposed by more than one Prospective Bidder provided that such contractor is not a Prospective Bidder, Consortium Member or Affiliate of any Prospective Bidder or Consortium Member.

SECTION 9: LOCK-UP RULES

9.1 LOCK-UP RULES DURING THE BIDDING PROCESS

From the Qualification Documents Submission Date until the Signing Date (“**Bidding Period**”), the following rules shall apply:

- 9.1.a For a Prospective Bidder which is a corporation or a partnership, no changes shall be made in the equity or ownership structure of such Prospective Bidder, as provided in the Prospective Bidder’s Business Structure (Annex QD-2A) and Basic Information Sheet (Annex QD-3).
- 9.1.b For a Prospective Bidder which is a Consortium, no changes shall be made in the composition of the Consortium and in the committed percentage equity interest of each Consortium Member in the Concessionaire, as provided in the Prospective Bidder’s Business Structure (Annex QD-2B) and Basic Information Sheet (Annex QD-3).

Nothing in this section shall operate to prohibit a transfer of equity interest in a corporation listed in any recognized stock exchange for the duration of the Bidding Period.

9.2 CONSEQUENCE OF VIOLATION OF BIDDING PERIOD LOCK-UP RULES

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

9.3 LOCK-UP RULES DURING THE CONCESSION PERIOD

From the Signing Date until the date falling on the 5th (fifth) anniversary of the Completion Date, the Concessionaire shall not register or otherwise permit any transfer, directly or indirectly, of its Equity Interests or any rights in relation to its Equity Interests, except in the following instances:

9.3.a if after such transfer:

9.3.a.1 the Lead Member and each Qualifying Initial Shareholder, either directly and/or through their Affiliates and/or through their holding company, continue to meet their respective Equity Requirements, and

9.3.a.2 the Qualifying Initial Shareholders, fulfilling the Development Experience, O&M Experience and the Financial Qualification Requirements either directly and/or through their Affiliates and/or Holding Company, collectively hold at least fifty percent plus 1 (50% + 1) of the Equity Interest in the Concessionaire

and, in each case any new shareholder is approved by the DOTC, such consent not to be unreasonably withheld; or

9.3.b by way of the grant of a Permitted Security Interest or the exercise of rights under a Permitted Security Interest; or

9.3.c where such transfer is necessary to comply with any applicable foreign ownership restrictions imposed by Legal Requirements and the transferee and the terms of the transfer are both approved by the DOTC, such approval not to be unreasonably withheld so long as such transfer is only to the extent necessary to comply with applicable foreign ownership restrictions; or

9.3.d where such transfer is a transfer by an outgoing director of the Concessionaire of his qualifying shares to a replacement director, and provided that the Concessionaire shall be required to obtain the prior written approval of the DOTC for the transfer of any Equity Interest in the Concessionaire or any rights in relation to the Equity Interest in the Concessionaire, such approval not to be unreasonably withheld provided the transfer complies with this Section 9.

References in this Section 9 to "transfer of Equity Interests" or of rights in relation to Equity Interests shall be deemed to include the entering into any contractual commitment which would or might transfer Control of the Concessionaire, provided that nothing in this Section 9 shall operate to prohibit a transfer of Equity Interests arising by virtue of a change in Control of any company whose shares were at the Qualification Documents Submission

Date and are at the time of any such change in Control, listed on any recognized stock exchange.

9.4 TRANSFER AFTER LOCK-UP PERIOD

After expiry of the respective Lock-up Period for each of the Qualifying Initial Shareholders or the Lead Member, changes in Equity Interest in the Concessionaire or any rights in relation to Equity Interest shall be permitted without the DOTC's approval. However, Concessionaire shall inform the DOTC about such change. Such changes in Equity Interest in the Concessionaire or any rights in relation to Equity Interest shall comply with nationality ownership restrictions as prescribed by law and applicable rules and regulations.

SECTION 10: GOVERNING LAW AND RULES

The provisions of the BOT Law and other applicable Philippine laws shall govern all matters not specifically covered by these Instructions to Prospective Bidders and other Bidding Documents.

4. *(Name of Prospective Bidder)* acknowledges the right of the DOTC to reject its Qualification Documents without assigning any reason and to cancel the Bidding Process at any time, without incurring any liability to the *(name of Bidder)*, and accepts all the terms and conditions of the Instructions to Prospective Bidders and other Invitation Documents.
5. *(Name of Prospective Bidder)*, including all its Consortium Members, and all of the entities it has identified to comply with the Qualification Requirements under the Instructions to Prospective Bidders, have not at any time engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practices, nor have a Conflict of Interest.
6. *(Name of Prospective Bidder)* waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi-judicial or administrative writ, process or issuance against the DOTC to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Bidding Process,. *(Name of Prospective Bidder)* acknowledges that the DOTC is undertaking this Bidding Process in the performance of its functions to ensure the provision of a critical basic necessity and that, therefore, the Project is of paramount public interest and importance and the DOTC will suffer serious and irreparable damage on account of any breach by *(name of Prospective Bidder)* of these undertakings, and agrees that the breach of these undertakings shall result in its automatic disqualification to bid for the Project.
7. *(Name of Prospective Bidder)* confirms that there is no litigation (including court, arbitration and other proceedings) current or pending against us, which might have a material adverse effect on our ability to participate into the Bidding Process/undertake the Project, if awarded
8. *(Name of Prospective Bidder)* undertakes that in case due to any change in facts or circumstances during the pendency of the process of participation in the Bidding Process impacting our qualification under these Instructions to Prospective Bidders, I/We would intimate the same immediately to you.

9. *(Name of Prospective Bidder)* warrants that it does not have any conflict of interest as defined in the Invitation Documents and hereby agrees to the terms and obligations set forth therein. In no case shall *(Name of Prospective Bidder)* amend, alter or modify the terms of the bid or the bid parameters.

(Date and Place of Execution.)

For and on behalf of *(Name of Prospective Bidder/Name of Consortium and List of Consortium Members)*

By:

(Name, Designation and Signature of Authorized Representative)

SUBSCRIBED AND SWORN TO before me this ____ day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)* issued at *(City)* on *(date)*.

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RESOLVED, FINALLY, that any and all acts done and/or performed by (*name of representative*) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Prospective Bidder; and
5. The above resolutions are in accordance with the records of the Prospective Bidder.

Place, Date of Execution.

[corporate secretary or equivalent officer]

SUBSCRIBED AND SWORN TO before me this (____) day of (*month and year*) at (*place*), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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ANNEX QD-1C: Consortium Member’s Notarized Authority to Participate in the Consortium and Apply to Pre-Qualify and Bid, and Designation of Lead Member and Authorized Representative of Consortium

Note: For a Prospective Bidder that is a Consortium, to be submitted by each Consortium Member

[Letterhead of Prospective Bidder]

Republic of the Philippines)
) s.s.

I, (*corporate secretary or equivalent officer*), after having been duly sworn according to law, hereby depose and state that:

1. I am a (*Filipino*) citizen, of legal age and a resident of [__];
2. I am the duly elected (*corporate secretary or equivalent officer*) of (*name of Consortium Member*) (the “Firm”), a (*corporation/partnership*) organized and existing under and by virtue of the laws of (*the Philippines*);
3. At a regular/special meeting of the (*board of directors/partners*) of *the Firm*, held on (*date*) at (*place*), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the Firm be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and committed percentage interests in the Consortium, in the Bidding Process for the South Integrated Transport System Project (“**Project**”) and to submit the Qualification Documents and Bid Proposals for the Project;

Name of Consortium Member	Nationality	% Interest

RESOLVED FURTHER, that the Firm shall maintain its percentage interest in the Consortium in accordance with the Instructions to Prospective Bidders,

Instructions to Bidders and the Concession Agreement, and thereafter shall comply with the requirements and restrictions on changes in ownership as stated in the Concession Agreement;

RESOLVED, FURTHER, that in the event that the Firm is declared as the Winning Bidder, the Firm will cooperate with the other Consortium Members to register a domestic corporation with the Philippine Securities and Exchange Commission and comply with all other requirements specified in the Instructions to Bidders and the Concession Agreement;

RESOLVED, FINALLY, that the Firm jointly and severally binds itself with the other Consortium Members listed above in undertaking the obligations of the Consortium in the Bid for the Project until, if the Consortium is selected as the Winning Bidder, the corporation formed by the Consortium signs the Concession Agreement and commences with the Start Date under the Concession Agreement, or if the Consortium is not declared as the Winning Bidder within one hundred eighty (180) days after the Bid Submission Date, until one hundred eighty (180) days after the Bid Submission Date.

RESOLVED FURTHER, that in the event the Firm is declared as the Winning Bidder, it commits to fulfill all the requirements in the Instructions to Bidders, including the submission and completion of the requirements of the Notice of Award within twenty (20) days from the issuance of the Notice of Award, and the signing of the Concession Agreement with the DOTC and fulfillment of other requirements within five (5) days of being notified by the DOTC that it has complied with the requirements of the Notice of Award.

RESOLVED FURTHER, that *(name of Firm's Representative)* be and is hereby appointed as the authorized representative of the Firm, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Firm.

RESOLVED FURTHER, that *(name of Firm's Representative)* in the exercise of its interest in the Consortium hereby:

(a) designates *(name of Lead Member of Consortium)* as Lead Member of the Consortium with the authority to represent Consortium during the Bidding for the Project;

(b) authorizes *(name of authorized representative of Name of Lead Member of Consortium)* as representative of the Consortium

during the Bidding Process for the Project, and for such purpose shall have the authority to execute, sign, submit and receive documents for, and otherwise act in the name of the Consortium.

RESOLVED, FURTHER, that any and all acts done and/or performed by *(name of Lead Member of Consortium)* and *(name of authorized representative of Consortium)* under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Firm; and
5. The above resolutions are in accordance with the records of the Firm.

Place, Date of Execution.

[corporate secretary or equivalent officer]

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, each affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

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ANNEX QD-1D: Notarized Certification of No Relationship with Public Transport Operator

Note: To be submitted by the Bidder and any Consortium Members that are not Public Transport Operators and are not Affiliates of Public Transport Operators, as identified in the Basic Information Sheet of each entity (Annex QD-3).

Republic of the Philippines)
) s.s.

Notarized Certification of No Relationship with Public Transport Operator

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of entity represented)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby certify, for and on behalf of *(name of entity represented)*, that *(name of entity represented)* is not a Public Transport Operator as this term is defined in Section 1 of the Instructions to Prospective Bidders and is not an Affiliate, as this term is defined in Section 1 of the Instructions to Prospective Bidders, of a Public Transport Operator.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

(Name)
(Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

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ANNEX QD-2A: Business Structure (for a Prospective Bidder that is a partnership or corporation)

1. Name of Prospective Bidder:

2. Contact Information of Prospective Bidder

a. Address	
b. Website	
c. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

3. Entity which fulfills Development Experience Requirements

a. Name of Entity	
b. Relationship to Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If more than one entity fulfills the Development Experience Requirement, replicate table above.]

4. Affiliate, if any, of the entity which fulfills the Development Experience Requirement, whose experience is being submitted as evidence of that entity’s Development Experience.

a. Name of Affiliate	
b. Entity With Whom It Is Affiliated	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If the experience of more than one Affiliate fulfills the Development Experience Requirement, replicate table above.]

5. Entity which fulfills Meet O&M Experience Requirement

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If more than one entity is fulfills the O&M Experience Requirement, replicate table above.]

6. Affiliate, if any, of the entity which fulfills the O&M Experience Requirement, whose experience is being submitted as evidence of that entity’s O&M Experience.

a. Name of Affiliate	
b. Entity With Whom It Is Affiliated	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If the experience of more than one Affiliate fulfills the O&M Experience Requirement, replicate table above.]

7. Entity which fulfills the Financial Capability Qualification Requirements

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	

iii. E-mail	
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8. Affiliate, if any, of the entity which fulfills the Financial Capability Qualification Requirements, whose financial capability is being submitted as evidence of that entity’s financial capability.

a. Name of Affiliate	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

For and on behalf of (Name of Prospective Bidder)

(Signature of Authorized Representative)

(Name, Title, and Date)

ANNEX QD-2B: Business Structure (for a Prospective Bidder that is a Consortium)

Name of Consortium: _____

1. Consortium Members

	Lead Member	Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation/ partnership)				
Role in Consortium				

2. Contact Information of Consortium Members

a. Lead Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If there are more Consortium Members, replicate table above.]

3. Entity which fulfills the Development Experience Requirement

a. Name of Entity	
b. Relationship to Prospective Bidder	

c. If Construction Contractor, Consortium Member to which it is related	
d. Address	
e. Website	
f. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If more than one entity meets the Development Experience Requirement, replicate table above.]

4. Affiliate, if any, of the entity which fulfills the Development Experience Requirement, whose experience is being submitted as evidence of that entity’s Development Experience.

a. Name of Affiliate	
b. Entity With Whom It Is Affiliated	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If the experience of more than one Affiliate fulfills the Development Experience Requirement, replicate table above.]

5. Entity which fulfills O&M Experience Requirement

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. If O&M Contractor, Consortium Member to which it is related	
d. Address	
e. Website	
f. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If more than one entity fulfills the O&M Experience Requirement, replicate table above.]

6. Affiliate, if any, of the entity which fulfills the O&M Experience Requirement, whose experience is being submitted as evidence of that entity’s O&M Experience.

a. Name of Affiliate	
b. Entity With Whom It Is Affiliated	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If the experience of more than one Affiliate fulfills the O&M Experience Requirement, replicate table above.]

7. Entity which fulfills the Financial Capability Qualification Requirements

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

8. Affiliate, if any, of the entity which fulfills the Financial Capability Qualification Requirements, whose financial capability is being submitted as evidence of that entity’s financial capability.

a. Name of Affiliate	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

For and on behalf of (Name of Consortium and
Lead Member)

(Signature of Authorized Representative)

(Name, Title, and Date)

ANNEX QD-3: Basic Information Sheet

- a. To be submitted by all entities listed in all sections of the Business Structure (Annex QD-2A or Annex QD-2B).
- b. Required attachments: For all entities submitting this form:

1. Certified true copy of its latest General Information Sheet, stamped "received" by the SEC or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copies may be issued by either the SEC or its equivalent in a foreign country, or the entity's corporate secretary or authorized representative. If it is issued by the entity's corporate secretary or authorized representative, the certification must be under oath and notarized.

If one of the members of the Consortium is a foreign entity and the jurisdiction where the foreign entity is incorporated or registered does not require or accept, or even agree to acknowledge, the filing of the equivalent of the Philippines' General Information Sheet ("GIS"), only a document providing similar information as required under the GIS must be submitted by the foreign entity. Such document need not be submitted to and acknowledged by a government agency of the foreign jurisdiction, and is only required to be certified by the authorized representative of the foreign entity, under oath and notarized, and thereafter authenticated by a Philippine consular official.

2. Certified true copy of its SEC Certificate of Incorporation or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copy of the SEC Certificate of Incorporation, or the equivalent document for a foreign entity, must be issued by the SEC or its equivalent in a foreign country.
3. Certified true copy of its Articles of Incorporation and 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 creation or recognition of its juridical personality or capacity. The certified true copy of the Articles of Incorporation

and By-Laws may be issued either by the SEC or its equivalent in a foreign country, or by the entity’s corporate secretary or authorized representative. If the certified true copies are issued by the entity’s corporate secretary or authorized representative, the certification must be under oath and notarized.

1. Name of Entity	
2. Type of entity (please check one)	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation
3. Consortium Member or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Construction Contractor or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. O&M Contractor or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Affiliate of an entity listed in Annex QD-2A or QD-2B? (please check one)	<input type="checkbox"/> Yes, Affiliate of _____ <input type="checkbox"/> No
7. Public Transport Operator or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Affiliate of Public Transport Operator or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Place of Incorporation or Registration	
10. Year of Incorporation or Registration	
11. Principal Purposes or Businesses	

12. Shareholder or Partner Information

Name of Shareholder or Partner	Nationality	Percentage Total of Shareholding or Partnership Interest

[Note: Insert rows as necessary]

13. Information on Beneficial Owners who own more than 5% Beneficial Interest

Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership

[Note: Insert rows as necessary]

For and on behalf of (Name of Entity)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Signature of Authorized Representative)

(Name, Title, and Date)

(Name, Title, and Date)

ANNEX QD-4: Notarized Certification of Absence of Unsatisfactory Performance Record

Note: To be submitted by all entities which fulfil the Technical Qualification Requirements or Financial Capability Qualification Requirements, as identified in the Business Structure (Annex QD-2A or QD-2B).

Prospective Bidder	
Entity which fulfills a Qualification Requirement	
Qualification Requirement	
Relationship to Bidder	

Republic of the Philippines)
) s.s.

Notarized Certification of Absence of Unsatisfactory Performance Record

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation) of (name of entity represented)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby certify, for and on behalf of *(name of entity represented)*, that *(name of entity represented)* does not have any record of Unsatisfactory Performance, as defined in Section 1 of the Instructions to Prospective Bidders.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

 (Name)
 (Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

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ANNEX QD-5: Development Experience

Note: To be submitted by each entity which fulfills the Development Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Required Attachments:

1. Secretary's Certificate stating that the authorized representative has been duly appointed by the board of directors.
2. Notarized certification of project completion from the project's owner or a copy of the original certificate of project completion accompanied by a notarized certification issued by an officer of the entity which fulfills the Development Experience Requirement that such copy is a true and faithful reproduction of the original certificate
3. If the project was completed by an Affiliate of the entity which fulfills the Development Experience Requirement, evidence of such affiliation
3. Certified true copy of a valid license issued by the PCAB for General Building Classification – Large B for Buildings and Industrial Plants – AAA License Category, in the case of a Filipino Construction Contractor, or an equivalent license issued by an equivalent accreditation institution in the entity's country of origin, in the case of a foreign entity, provided that such foreign entity must secure a license and accreditation from the PCAB after the Prospective Bidder is awarded the Project
4. Certified true copy of a valid ISO 9001:2008 certification or its equivalent

1. Entity which fulfills the Development Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Prospective Bidder	
Entity which fulfills Development Experience Requirement	
Relationship to Prospective Bidder	<i>(Prospective Bidder / Consortium Member / Construction Contractor)</i>

2. Project/s completed within the last ten (10) years prior to the Qualification Documents Submission Date consisting of the development of one or more Eligible Projects with a

cumulative cost of at least three billion Philippine Pesos (PhP3,000,000,000) and with a cumulative capacity of at least seven hundred fifty (750) parking bays for land surface vehicles with four (4) or more wheels, excluding rail.

Name of Project	
Location	
Description	
Date of Contract	
Nature of Involvement	
Client	
Cost of Contract	
Capacity of the Project (specify number of parking bays for various categories of vehicles)	
Name of Entity that Completed the Project*	

*Must be the entity identified in #1 or an Affiliate. If an Affiliate, please attach evidence of such affiliation.

[Note: If more than one project is submitted, replicate table above.]

For and on behalf of (Name of Entity)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Signature of Authorized Representative)

(Name, Title, and Date)

(Name, Title, and Date)

ANNEX QD-6: Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Construction Requirements of, the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Construction of the South ITS Terminal

Note: To be submitted by each Consortium Member or Construction Contractor proposed by the Prospective Bidder to meet the Construction Experience, as identified in the Business Structure (Annex QD-2A or QD-2B). Annex QD-6 shall be supported by a Secretary's Certificate stating that the authorized representative has been duly appointed by the board of directors.

Prospective Bidder	
Entity which fulfills the requirement	
Relationship to Prospective Bidder	

Republic of the Philippines)
) s.s.

Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Construction Requirements of, the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the Construction of the South ITS Terminal

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of Consortium Member / Construction Contractor)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby declare for and on behalf of *(name of Consortium Member / Construction Contractor)* that:

1. *(name of Consortium Member / Construction Contractor)* is willing to participate, through the *(name of Prospective Bidder)* in the bidding for the South Integrated Transport System Project (hereinafter referred to as the "Project") in accordance with the Instruction to Prospective Bidders.
2. *(name of Consortium Member / Construction Contractor)* has the required experience and capacity to undertake the construction requirements for the Project in accordance with the terms and conditions of the Invitation Documents.

3. Based on my personal knowledge or authentic documents, the information provided in Annexes QD-4 and QD-5 are true and correct.

4. If selected by (*name of Prospective Bidder*), (*name of Consortium Member / Construction Contractor*) shall formally enter into a contract with the Project Proponent to undertake the Construction of the Project in accordance with the terms and conditions of the Concession Agreement.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

(Name)
(Designation)

SUBSCRIBED AND SWORN TO before me this (__) day of (*month and year*) at (*place*), affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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ANNEX QD-7: Operation and Maintenance Experience

NOTE: To be submitted by each entity which fulfills the O&M Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Required Attachments:

1. Secretary's Certificate stating that the authorized representative has been duly appointed by the board of directors.
2. Notarized certification of project completion or that the project is ongoing or in operation, from the project's owner or a copy of the original certificate of project completion or certificate that the project is ongoing or in operation accompanied by a notarized certification issued by an officer of the entity proposed to meet the O&M Experience that such copy is a true and faithful reproduction of the original certificate
3. If the project was completed by an Affiliate of the entity which fulfills the O&M Experience Requirement, evidence of such affiliation

1. Entity which fulfills the O&M Experience Requirement, as identified in the Business Structure (Annex QD-2A or QD-2B).

Prospective Bidder	
Entity which fulfills the O&M Experience Requirement	
Relationship to Prospective Bidder	<i>(Prospective Bidder / Consortium Member / O&M Contractor)</i>

2. Project/s demonstrating local or international experience in the operation and maintenance of –
 - 2.1 one or more bus terminals with a cumulative bus parking capacity for at least Eighty (80) passenger buses, and a minimum parking capacity of at least Twenty (20) passenger buses in each bus terminal; or
 - 2.2 one or more commercial complexes, shopping malls, airport terminals, parking complexes (either stand alone or as a part of any building/project), freight terminals with a cumulative parking capacity of at least three hundred twenty (320) parking

bays for land surface transport vehicles with four (4) or more wheels, but excluding rail, and a minimum parking capacity of at least eighty (80) parking bays for land surface transport vehicles with four (4) or more wheels, excluding rail, in each commercial complex, shopping mall, airport terminal, parking complex, freight terminal,

for a period of at least three (3) full consecutive years, within the last ten (10) years prior to the Qualification Documents Submission Date.

Name of Project	
Location	
Description	
Capacity of the Project (specify number of parking bays for various categories of vehicles)	
Date of Contract	
Total Number of Years of Operation by Proposed Entity	
Start Date of Operation By Proposed Entity	
End Date of Operation By Proposed Entity	
Nature of Involvement	
Client	
Cost of Contract	
Name of Entity that Completed the Project**	

**Must be the entity identified in #1 or an Affiliate. If an Affiliate, please attach evidence of such affiliation.

[Note: If more than one project is submitted, replicate table above.]

For and on behalf of (Name of Entity)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Signature of Authorized Representative)

(Name)

(Designation)

(Name)

(Designation)

ANNEX QD-8: Notarized Statement of Willingness to Participate In, and Capacity to Undertake the O&M Requirements of, the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the O&M of the South ITS Terminal or to Provide Technical Support to the Concessionaire in the O&M of the South ITS Terminal

Note: To be submitted by each Consortium Member or O&M Contractor proposed by the Prospective Bidder to fulfill the O&M Experience, as identified in the Business Structure (Annex QD-2A or QD-2B). Annex QD-8 shall be supported by a Secretary's Certificate stating that the authorized representative has been duly appointed by the board of directors.

Prospective Bidder	
Entity which fulfills the O&M Experience	
Relationship to Prospective Bidder	

Republic of the Philippines)
) s.s.

Notarized Statement of Willingness to Participate In, and Capacity to Undertake the O&M Requirements of, the Project, and Commitment to Enter into an Agreement with the Concessionaire to Undertake the O&M of the South ITS Terminal or to Provide Technical Support to the Concessionaire in the O&M of the South ITS Terminal

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of Consortium Member / O&M Contractor)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby declare for and on behalf of *(name of Consortium Member / O&M Contractor)* that:

1. *(name of Consortium Member / O&M Contractor)* is willing to participate, through the *(name of Prospective Bidder)* in the bidding for the South Integrated Transport System Project in accordance with the Instructions to Prospective Bidders.

2. *(name of Consortium Member / O&M Contractor)* has the required experience and capacity to undertake the O&M requirements for the Project in accordance with the terms and conditions of the Invitation Documents.
3. Based on my personal knowledge or authentic documents, the information provided in Form QD-4 and QD-7 are true and correct.
4. If selected by *(name of Prospective Bidder)*, *(name of Consortium Member / O&M Contractor)* shall formally enter into a contract with the Project Proponent to undertake the operation and maintenance of the South ITS Terminal or to provide technical support to the Concessionaire in the operation and maintenance of the South ITS Terminal should the Concessionaire decide to operate the ITS Terminal itself.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

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ANNEX QD-9: Key Personnel

Name of Prospective Bidder:

- 1. Individual with local or international experience in the planning, direction, coordination, integration, implementation, and administration of design and construction activities for at least two (2) Eligible Projects.

Name	
Employer	
Position	
Nationality	
Date of Birth	

1.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

1.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

- 2. Individual with local or international experience in the coordination of operations and maintenance activities for at least two (2) Eligible Projects

Name	
Employer	
Position	
Nationality	
Date of Birth	

2.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

2.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

3. Individual with local or international experience in the supervision/implementation of at least two (2) Eligible Projects

Name	
Employer	
Position	
Nationality	
Date of Birth	

3.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

3.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

- 4. Individual with local or international experience in the design of at least two (2) Eligible Projects, including site planning, landscaping and the architectural design of building structures

Name	
Employer	
Position	
Nationality	
Date of Birth	

4.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

4.2 Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

If selected by (*name of Prospective Bidder*), (*name of Concessionaire*) undertakes to use the above-named key personnel in the implementation of the South Integrated Transport System Project.

For and on behalf of (Name of Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Name, Title, and Date)

ANNEX QD-10: Notarized Statement of Financial Capability

Note: To be submitted by the entity which fulfills the Financial Capability Qualification Requirements, as identified in the Business Structure (Annex QD-2A or QD-2B).

Required Attachments:

1. Certified true copies of the latest audited financial statements and latest income and business tax returns, which must be for a fiscal period ending in any month in 2013 or 2014, whichever is applicable and certified true copy of the latest unaudited quarterly financial statements for the quarter ending prior to the month of the Qualification Documents Submission Date, and provided that the audited financial statements must be stamped “received” by the Bureau of Internal Revenue (“BIR”) or any Bureau of Internal Revenue authorized agent bank, or for foreign entities, the appropriate government agency equivalent to the Bureau of Internal Revenue in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. In the event that the laws of the foreign country where the foreign entity is registered do not require the submission of an audited financial statements to the government agency equivalent to the BIR but to another government agency that is mandated to incorporate companies and regulate businesses to ensure compliance with business registration and corporate legislation, the PBAC will accept the audited financial statements acknowledged/received by the latter government agency. The certification may be issued by an officer of the entity proposed to meet the Financial Capability Qualification Requirements, in which case the certification must be under oath and notarized, provided that the certification relating to the unaudited quarterly financial statements must be issued by the entity’s chief financial officer. If there is a discrepancy between the financial statements, the entity must submit the relevant supporting documents to explain the discrepancy.
Furthermore, the corporate secretary or authorized representative of the foreign entity can issue the certification that a copy of the audited financial statements (acknowledged received by the relevant government agency) is a true copy. If a foreign entity is not required to submit its audited financial statements to any government office, the audited financial statements, certified by the corporate secretary or authorized representative, must be submitted.
2. Letter(s) from the potential lenders of the entity proposed to meet the Financial Capability Qualification Requirements expressing their willingness to lend it, or the Concessionaire, at least two billion one hundred million Philippine Pesos (Php2,100,000,000). Such a letter or letters should come from financial institutions licensed to lend money in the country where it is registered for creation or recognition of its juridical personality or capacity (for financial institutions incorporated in the Philippines, the license to lend must come from the Bangko Sentral ng Pilipinas).

3. If an Affiliate of the Prospective Bidder or the Lead Member is proposed to comply with the Financial Capability Qualification Requirements, attach evidence of such affiliation.

Prospective Bidder	
Entity Proposed which fulfills the Financial Capability Qualification Requirements	
Relationship to Prospective Bidder	

Republic of the Philippines)
) s.s.

Notarized Statement of Financial Capability

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of entity)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation /registration)*, after having been duly sworn according to law, hereby certify for and on behalf of *(name of entity)* that the information stated in this Notarized Statement of Financial Capability is true and that the attached documents are genuine and true copies of the original.

1. *(name of entity)* has a minimum net worth equivalent to at least nine hundred million Philippine Pesos (PhP900,000,000) or its equivalent as of its audited financial statements which must be for a fiscal period ending in any month in 2013 or 2014, whichever is applicable, a certified true copy of which is attached to this certificate.
2. The financial summary of *(name of entity)* from *(most recent fiscal year)* is as follows:

Financial Information	<i>(Most Recent Fiscal Year)</i>
(indicate last day of accounting year)	
1. Total assets	
2. Total liabilities	
3. Total net worth	
4. Profits before taxes	
5. Profits after taxes	

3. *(name of entity)*, which is a Prospective Bidder/Lead Member/Consortium Member, is a client in good standing in the following financial institutions (provide the names of at least two financial institutions):

Name of Financial Institution		
Address		
Contact Person		

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this (____) day of (*month and year*) at (*place*), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

Notary Public

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SCHEDULE 1: Template for Queries and Comments on Bidding Documents

NAME OF BIDDER:

DATE:

1. INVITATION TO PRE-QUALIFY AND BID

Reference No.*	Section No./ Annex No.	Question or Comment

* Leave blank.

2. INSTRUCTIONS TO PROSPECTIVE BIDDERS

Reference No.*	Section No. / Annex No.	Question or Comment (including proposed revised language, if any)

* Leave blank.

3. PROJECT INFORMATION MEMORANDUM

Reference No.*	Section No. / Annex No.	Question or Comment