



Republic of the Philippines  
**DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS**

**SPECIAL BIDS AND AWARDS COMMITTEE**

Project: **INTEGRATED TRANSPORT SYSTEM (ITS) PROJECT – SOUTH  
TERMINAL**

**General Bid Bulletin No.: 01-2014**

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**TO ALL PROSPECTIVE BIDDERS:**

Any entity that has purchased the Bidding Documents shall be allowed access to the Data Room for the Integrated Transport System (ITS) Project – South Terminal upon submission of the following documents to the Chairman of the Special Bids and Awards Committee (SBAC):

1. Written request setting out the e-mail addresses of the individuals who will access the Data Room; and,
2. Confidentiality Agreement following the form provided in Annex A of this General Bid Bulletin and executed by the proper corporate officer of the entity which has purchased the Bidding Documents.

For your guidance and information.

Issued this 6<sup>th</sup> day of August 2014.

  
**ATTY. JOSE PERPETUO M. LOTILLA**  
Chairman, Special Bids and Awards Committee  
and Undersecretary for Legal Affairs



## ANNEX A

### FORM OF CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking (the “**Undertaking**”) is executed in favor of the Department of Transportation and Communications (“**DOTC**”) by *[Name of Buyer of Bidding Documents]* (the “**Recipient**”), as represented herein by *[name of authorized representative of the Recipient]*, who is the *[designation]* of the Recipient.

#### 1. CONFIDENTIAL INFORMATION

Recipient is interested in obtaining information from DOTC, in furtherance of the South Integrated Transport System Project (“**Project**”) consisting of the finance, design, construction, operation and maintenance of the South Integrated Transport System Project. The selection process shall be undertaken through a public bidding in accordance with the Philippine BOT Law (Republic Act No. 6957, as amended by Republic Act No. 7718), and its Revised Implementing Rules and Regulations. By reason of such interest of the Recipient, DOTC proposes to disclose certain Confidential Information (as defined below) to the Recipient, as contained in the Data Room (as defined below). Recipient acknowledges that DOTC has the exclusive right to determine what information it may furnish to the Recipient.

As used herein, “**Confidential Information**” means all information concerning the DOTC or its assets, liabilities or obligations, or information concerning the Project, furnished to Recipient by any of DOTC’s officials, employees, and legal, technical, financial advisors, agents or other representatives (“**DOTC Representatives**”), or otherwise made available to the Recipient in the course of or in connection with the tender process for the Project, including: (i) information obtained by Recipient (a) during the due diligence process, (b) through site visits to DOTC or its offices and facilities or to the project site as described in the Project Information Memorandum, and (c) through any management presentation by DOTC; (ii) information contained in any other written material furnished or otherwise made available to Recipient; (iii) information furnished to Recipient electronically or through the Data Room; (v) information presented to Recipient or its advisors orally; and (iv) all analyses, compilations, forecasts, studies or other documents prepared by DOTC Representatives which contain or reflect any of the foregoing information.

As used herein, “**Data Room**” means the online repository of information in electronic format that will be used by the DOTC for the storing and distribution of Confidential Information to the Recipient.

Notwithstanding the foregoing, information disclosed by DOTC which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said information is (i) part of the public domain without violation of this Undertaking; or (ii) is or has been lawfully disclosed to the Recipient by a third party, not employed by or otherwise affiliated with the DOTC, who is not known by the

Recipient to be prohibited by any contractual, legal, or fiduciary obligation from disclosing the same; or (iii) disclosed pursuant to administrative or judicial action; *provided*, that, the Recipient shall use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify DOTC thereof and give DOTC the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Undertaking.

## **2. NO REPRESENTATION**

Recipient acknowledges and agrees that DOTC is not making any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information or that such information will remain unchanged. Recipient releases DOTC or any DOTC Representatives from any liability to the Recipient or any other person arising out of or related to the Confidential Information or any interpretations or conclusions made or drawn therefrom by the Recipient. Only those representations or warranties that are made to Recipient in a definitive agreement executed by DOTC in connection with the Project, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

## **3. RECIPIENT'S OBLIGATIONS**

Unless the DOTC gives its prior written authorization, the Recipient shall, during a period of one (1) year from the signing of the concession agreement for the Project:

- (a) not use the Confidential Information for any other purpose than for the Project;
- (b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
- (c) limit circulation of the Confidential Information to its directors, officers, employees, affiliates, advisors, agents, representatives, or clients, and only for purposes of evaluating and submitting a bid for the Project (collectively, the "**Representatives**").

Confidential Information furnished in tangible form or on electronic media shall not be duplicated by Recipient except for purposes of evaluating the Project. Upon the request of DOTC, Recipient shall either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by DOTC, within ten (10) days of such request; *provided*, however, that Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible

form for its corporate records if required for regulatory purposes, subject to Recipient providing DOTC with written notification of such regulatory purpose, with details thereof which are satisfactory to DOTC. Recipient will be responsible for any breach of this Undertaking by its Representatives.

During the course of Recipient's evaluation, Recipient shall make all inquiries and other communications directly to DOTC in writing and addressed to DOTC's representative at the address provided in the Instructions to Prospective Bidders. Recipient agrees not to directly or indirectly contact or communicate with any other official or other employee of the DOTC concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of DOTC.

#### **4. GOVERNING LAW AND VENUE**

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

#### **5. NO IMPLIED WAIVER**

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

#### **6. NO COMMITMENT**

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

Recipient also acknowledges and agrees that no contract or agreement in relation to the Project shall be deemed to exist between Recipient and DOTC, as applicable.

#### **7. SEVERABILITY**

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

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

[NAME OF RECIPIENT]

By: \_\_\_\_\_  
(Appropriate Corporate Officer of Recipient)  
Date: \_\_\_\_\_

Signed in the presence of:

\_\_\_\_\_

### ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES )  
\_\_\_\_\_ ) S. S.

BEFORE ME, a Notary Public for and in \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_  
20\_\_, personally appeared:

<u>Name</u>	<u>Government-Issued ID</u>	<u>Date/Place Issued</u>
[Name of Recipient]	_____	_____

known to me, through competent evidence of identity, to be the same person who executed the foregoing instrument and who acknowledged to me that the same is [his/her] own free and voluntary act and deed.

This instrument, consisting of \_\_\_\_ ( ) pages including this page whereon this acknowledgement is written, relates to a Confidentiality Undertaking, signed by the principal and the witnesses.

WITNESS MY HAND AND SEAL on the date and place above written.

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2014.