

Republic of the Philippines  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

LAGUNA LAKE EXPRESSWAY-DIKE PROJECT (LLEDP)

AMENDED AND RESTATED

INSTRUCTIONS TO PROSPECTIVE BIDDERS

~~25 July~~ 13 November 2014

## DISCLAIMER

“DPWH Supplied Information” means any information, data, representation, statement, document or other material (whether written or otherwise) contained in:

- (a) this Amended and Restated Instructions to Prospective Bidders;
- (b) the other Invitation Documents;
- ~~The~~(c) any other information—contained in these Instructions to Prospective Bidders and the other Invitation Documents— or, data, representation, statement, communication, document or other material subsequently provided to ~~all~~ Prospective Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Department of Public Works and Highways (~~“DPWH” or any of its~~), the Government of the Republic of the Philippines or any other agency, instrumentality or entity of the Government of the Republic of the Philippines (including without limitation the LLDA, the PPP Center and the SBAC) or any local government unit (each a “Governmental Authority”) or any of their employees or advisors; in connection with the pre-qualification of Prospective Bidders to bid for the Project, including, without limitation, the Additional Information Documents; and
- (d) any other information, data, representation, statement, communication, document or other material incorporated by reference or otherwise deemed to form a part of any of them.

The DPWH Supplied Information is provided to the Prospective Bidder(s) on the terms and conditions set out in the Invitation Documents and such other terms and conditions subject to which such information is provided. Capitalized terms not otherwise defined herein will have the meanings ascribed to them in Section 17.

The ~~Invitation Documents are not agreements and are~~DPWH Supplied Information is not an agreement and is neither ~~offers~~an offer nor ~~invitations~~invitation by the DPWH ~~or any other Governmental Authority~~ to the Prospective Bidders or any other person. The purpose of the ~~Invitation Documents is~~DPWH Supplied Information is solely to provide interested parties with information that may be useful to them in making their offers pursuant to the Invitation Documents. The ~~Invitation Documents include statements, which reflect~~DPWH Supplied Information reflects various assumptions and assessments arrived at by the DPWH in relation to the Project, ~~as defined herein~~. Such assumptions, assessments and statements do not purport to contain all the information that each Prospective Bidder may require. The ~~Invitation Documents~~DPWH Supplied Information may not be appropriate for all persons, and it is not possible for the DPWH, its employees or advisors to consider, and they have not considered, the investment objectives, financial situation and particular needs of each party who reads or uses the ~~Invitation Documents~~DPWH Supplied Information. The assumptions, assessments, statements and information contained in the ~~Invitation Documents and associated documents~~DPWH Supplied Information may not be complete, accurate, adequate or correct and have not been verified by the DPWH or any other Governmental Authority, its employees or advisers. Each Prospective Bidder ~~should—therefore, conduct~~acknowledges its obligations under the Invitation Documents (including this Disclaimer) and represents that it has conducted its own investigations and analysis ~~and~~

~~should check, checked~~ the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the ~~Invitation Documents and obtain~~ DPWH Supplied Information, and obtained independent advice from appropriate sources. Where the DPWH Supplied Information includes any information, data, representation, statement, communication, document or other material prepared by a third party, such DPWH Supplied Information is merely passed onto the Prospective Bidders.

Information provided in the ~~Invitation Documents~~ DPWH Supplied Information to the Prospective Bidder(s) 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 or conclusive account of statutory requirements, and should not be regarded as a complete or authoritative statement of law. ~~The~~ Neither the DPWH nor any other Governmental Authority accepts ~~no~~ any responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

Without limiting the above, there may be additional information, data, representations, statements, communications, documents or other material in the possession of DPWH or other Governmental Authorities or their respective employees or advisors (or to which any of them have access) which may be relevant to the Project or to the Bidding Process and which has not been included in the DPWH Supplied Information.

DPWH may, in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the DPWH Supplied Information.

The DPWH, ~~its~~ each other Governmental Authority, and their respective employees and advisors make no representation or warranty, and shall have no liability to any person, including any Prospective Bidder, under any law, statute, ~~rules or regulations, principles~~ rule or regulation, principle of restitution or unjust enrichment or otherwise (including as a result of any negligence), for any loss, damages, cost or expense which may arise from or ~~be incurred or suffered on account of~~ in connection with:

- (a) anything contained in the ~~Invitation Documents~~ DPWH Supplied Information or otherwise, or any party's reliance thereon, including the accuracy, adequacy, correctness, completeness or reliability of the ~~Invitation Documents and~~ DPWH Supplied Information, any assessment, assumption, statement or information contained therein or deemed to form part of the ~~Invitation Documents or arising in any way for participation in the Bidding Process.~~ DPWH Supplied Information;
- (b) any party's participation in the Bidding Process; or
- (c) any failure by DPWH each other Governmental Authority, and their respective employees and advisors to:
  - (i) disclose or make available any other information, data, representation, statement, communication, document or other material;
  - (ii) amend, update, or supplement the DPWH Supplied Information; or
  - (iii) provide any information data, representation, statement, communication or document regarding any incompleteness, inaccuracy, inadequacy, incorrectness, unreliability or unsuitability in the DPWH Supplied Information.

The issuance of the DPWH Supplied Information does not imply that the DPWH or any

other Governmental Authority 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 DPWH reserves the right to reject all or any of the Prospective Bidders or Bids without assigning any reason whatsoever.

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

Each Prospective Bidder shall bear all its costs associated with or relating the Bidding Process (including the preparation and submission of any application for pre-qualification and any Bid (including but not limited to preparation, copying, postage, delivery fees, and expenses associated with any demonstrations or presentations which may be required by DPWH or any other costs incurred in connection with or relating to the Bidding Process). All such costs and expenses will remain with the Prospective Bidder and neither DPWH nor any other Governmental Authority shall be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Prospective Bidder in its participation in the Bidding Process, regardless of the conduct or outcome of the Bidding Process.

Republic of the Philippines  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
**LAGUNA LAKE EXPRESSWAY-DIKE PROJECT (LLEDP)**

**AMENDED AND RESTATED INSTRUCTIONS TO PROSPECTIVE BIDDERS**

**Introduction**

The Department of Public Works and Highways (“DPWH”) invites Prospective Bidders to apply to pre-qualify to bid to finance, design, construct, operate, and maintain the Laguna Lake Expressway-Dike Project or LLEDP (the “Project”). [These Amended and Restated Instructions to Prospective Bidders amend and restate, in their entirety, the Instructions to Prospective Bidders, dated 25 July 2014, and previously issued by DPWH.](#)

The LLEDP involves the provision of the following infrastructure facilities:

- Project Component A: Expressway-Dike- Provision of an approximately 47-kilometer (km) flood control dike on top of which is a six-lane expressway, on a mainly off-shore alignment at least 500 meters (m) from the shoreline, including bridges, interchanges, access roads, pumping stations and floodgates. It will start at Taguig City, where it will interface with Circumferential Road C-6, pass through Calamba City, and end at Los Banos, Laguna.
- Project Component B: Reclamation- Rawland Reclamation and Horizontal Development of approximately 700 hectares of foreshore and offshore areas, about 450 m wide and 16 km long, in Taguig City and Muntinlupa City, intended for mixed land uses (the “Reclaimed Area”). The Reclaimed Area will be separated from the existing shoreline by a waterway or channel with a width of about 100-150 ~~m~~meters and will abut the western edge of the Expressway-Dike.

The LLEDP will be implemented through ~~an alternative~~ PPP scheme under the Build-Operate-Transfer (“BOT”) Law, ~~using~~[namely a BTO-BT hybrid modality, as approved by the NEDA Board pursuant to Section 2.9 of the Revised IRR \(as defined below\).](#)

- ~~the Build-Transfer-Operate (BTO) modality for the Expressway-Dike Component, and~~
- ~~the Build-Transfer (BT) modality for the Reclamation Component.~~

The Project involves the following contractual rights and obligations of the winning bidder/ Concessionaire under the Concession Agreement:

- Financing of the Design and Construction of the Project, covering the Expressway-Dike and Reclamation Components.
- Preparation of the Detailed Engineering Design (“DED”) of the Project according to the prescribed Minimum Performance Standards and Specifications (“MPSS”).

- Construction of the Project, covering the Expressway-Dike and Reclamation Components, according to the MPSS, which includes the Proponent's DED as approved by the DPWH.
- Transfer of the Expressway-Dike under the Project to the DPWH upon the issuance of the Certificate of Completion of Construction.
- Operations and Maintenance (O&M) of the Expressway as a toll facility over the 30-year concession period, including the collection of authorized tolls, under a Toll Operation Certificate issued by the TRB; and O&M of the flood control facilities.
- Right to own and dispose 66.5% of the Reclaimed Area, subject to certain conditions to be provided under the Concession Agreement.

These [Amended and Restated](#) Instructions to Prospective Bidders (the ITPB) provide the procedures and requirements, as well as basic information, which Prospective Bidders must be aware of and follow in preparing and submitting their pre-qualification applications. The documents which describe the Project and govern the process to be followed for pre-qualification are the following:

- a. The Invitation to Pre-Qualify to Bid; [and](#)
- b. The ITPB and its Annexes.
- ~~c. The Information Memorandum~~

References to the "Invitation Documents" shall mean these three documents collectively, and any supplemental notices and [special](#) bid bulletins issued by the Special Bids and Awards Committee ("SBAC") from the date of the first publication of the Invitation to Pre-Qualify to Bid until the Qualification Document Submission Date. [In addition, as set forth in Special Bid Bulletin No. 03, dated 07 October 2014, the SBAC has provided copies of the Feasibility Study Report and the Business Case Study Report \(together, the "Additional Information Documents"\) to Prospective Bidders that purchased the Invitation Documents.](#)

Capitalized terms used herein shall have the meanings provided under Section 17 of the ITPB. Capitalized terms not otherwise defined under Section 17 of the ITPB shall have meanings ascribed to them under the Information Memorandum.

## 1. Bidding Process

### 1.1. The Special Bids and Awards Committee (SBAC)

The SBAC for Public Private Partnership Projects of the DPWH created by DPWH Special Order No. 68, Series of 2011 dated 28 March 2011, as amended, shall administer the Pre-Qualification and Bidding for this Project.

### 1.2 Bidding Documents

- a. The Bidding Documents, to be ~~issued~~[made available](#) by the SBAC ~~to~~[for](#)

purchase by the Pre-Qualified Bidders, shall set out the rules and procedures applicable to the Bidding Process. They consist of the following documents:

- (1) Instructions to Bidders and its Annexes; and
- (2) Draft Concession Agreement and its Annexes, including the Minimum Performance Standards and Specifications (“MPSS”).

~~(3) Information Memorandum.~~

- b. The Concession Agreement and its Annexes will be the principal document governing the relationship among the DPWH (as Main Implementing Agency), the LLDA (as Cooperating Agency) and the Concessionaire.
- c. In case of conflict among any of the Bidding Documents, the provisions of the Concession Agreement shall prevail.
- d. General Rules of Interpretation
  - (1) In case of ambiguities or discrepancies within these Instructions to Prospective Bidders, the following rules of interpretation shall apply:
    - (a) Between two or more Sections of these Instructions to Prospective Bidders, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections.
    - (b) Between the Sections of these Instructions to Prospective Bidders and the Annexes, the Sections shall prevail.
    - (c) Between any two Annexes, the Annex relevant to the issue shall prevail.
    - (d) Between any value written in numerals and that in words, the latter shall prevail.

### 1.3 Indicative Project Schedule

An indicative timeline for the procurement and implementation of the Project is shown in Table 1:

**Table 1. Indicative Procurement and Implementation Schedule**

Activity	Party Responsible	Target Date
Publication of Invitation to Pre-Qualify and Bid	DPWH	03, 08, and 15 August 2014
Issuance of Instructions to Prospective Bidders and Information Memorandum	DPWH	02 August 2014
Investors’ Forum	DPWH, <u>LLDA</u> , Prospective Bidders	<del>16 August 2014</del> <u>03 October 2014</u>
Pre-Qualification Conference	DPWH, <u>LLDA</u> , Prospective Bidders	<del>19 August 2014</del> <u>02 December 2014</u>
Qualification Documents Submission	Prospective Bidders	<del>16 October 2014</del> <u>14 January 2015</u>
Notice to Pre-Qualified Bidders	DPWH	<del>05 November 2014</del> <u>08 February</u>

		<u>2015</u>
Issuance of Bidding Documents	<u>DPWH</u>	<del>06 November 2014</del> <u>09 February 2015</u>
Pre-Bid Conference	DPWH, Pre-Qualified Bidders	<del>08 December 2014</del> <u>To be announced</u>
Bid Proposals Submission	Pre-Qualified Bidders	06 July 2015
Notice of Award	DPWH	05 August 2015
Concession Agreement Signing	DPWH, Winning Bidder/ Concessionaire	04 September 2015
Detailed Engineering Design (By Phase)	Concessionaire	September 2015-May 2016
Right-of-Way Delivery (By Phase)	DPWH	December 2015-May 2016
Financial Closure ((By Phase)	Concessionaire	December 2015- June 2016
Construction (By Phase)	Concessionaire	December 2015- December 2021

The actual schedule may be changed by the DPWH at any time; at its discretion without incurring any liability to the Prospective Bidders and the Bidders. The Prospective Bidders and the Bidders shall be notified by the SBAC of any changes in the indicative schedule through special bid bulletins.

All references to dates shall refer to Philippine Standard Time.

#### 1.4. Outline of the Bidding Process

The international competitive public Bidding for the Project will be conducted in accordance with the procurement rules and procedures for public bidding set out in Republic Act No. 6957, as amended by Republic Act No. 7718 (“BOT Law”) and its Revised Implementing Rules and Regulations of 2012 (“Revised IRR”); ~~the applicable provisions of which are incorporated herein by reference.~~

~~The~~ It is anticipated that the general procedure for the Bidding will be as follows:

- a. The SBAC will conduct a Pre-Qualification of Prospective Bidders. Prospective Bidders shall apply to pre-qualify to bid by submitting their Qualification Documents, as described in greater detail in this document, not later than ~~16 October 2014~~ 14 January 2015, the Qualification Documents Submission Date. After reviewing the documents, it is anticipated that the SBAC will determine which Prospective Bidders fulfill the requirements to pre-qualify within twenty (20) days after the Qualification Documents Submission Date, and inform all Prospective Bidders who are pre-qualified within ~~10~~ five (5) days ~~after the Qualification Documents Submission Date~~ thereafter. Only Pre-Qualified Bidders will be invited and allowed to submit a Bid for the Project.
- b. On 03 October 2014, the SBAC conducted an Investors’ Forum with the Prospective Bidders who purchased the Invitation Documents and other



interested parties to discuss queries or concerns regarding the submission of the Qualification Documents. Prior to the Qualification Documents Submission Date, the SBAC will hold a Pre-Qualification Conference with the Prospective Bidders who ~~have~~ purchased the Invitation Documents and other interested parties to discuss any additional queries or concerns regarding the submission of the Qualification Documents:

- c. After Pre-Qualification is completed, the SBAC will announce the Bid Proposals Submission Date, which ~~will~~ is anticipated to be no less than ninety (90) days after Prospective Bidders are notified of their pre-qualification. 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, and other supporting documents on the Bid Proposals Submission Date.

~~The~~ It is anticipated that the SBAC 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. ~~The~~ It is anticipated that the SBAC will also make arrangements for Pre-Qualified Bidders who wish to have one-on-one discussions.

The SBAC will ~~issue~~ make available the Instructions to Bidders (the ITB) ~~to~~ for purchase by all Pre-Qualified Bidders. The ITB ~~shall~~ is anticipated to provide in detail the form and required contents of the Bid Proposals, and the detailed procedures to be followed for submission, bid evaluation, and post-bid requirements.

The draft Concession Agreement shall likewise be provided to all Pre-Qualified Bidders to give each the opportunity to comment on the draft. The SBAC may consider these comments in refining the draft Concession Agreement until the issuance of its final version on which the Pre-Qualified Bidders must base their bids. This requirement will ensure that binding unconditional bids are submitted on the basis of the final Concession Agreement.

A copy of the final execution version of the Concession Agreement ~~shall~~ is anticipated to be provided to the Pre-Qualified Bidders no later than thirty (30) days before the Bid Proposals Submission Date. The Bid Proposals Submission Date is scheduled on 06 July 2015. No changes to the draft Concession Agreement shall be made after the Bid Proposals Submission Date.

- d. After submission of Bid Proposals, the SBAC will first review and evaluate the Pre-Qualified Bidders' Technical Proposals ~~and evaluate them on a pass/fail basis~~. Pre-Qualified Bidders will be informed as to whether their Technical Proposals were rated passed. The SBAC will return the Financial Proposals and Bid Securities of Pre-Qualified Bidders whose Technical Proposals did not pass the technical requirements.
- e. The Financial Proposals of Pre-Qualified Bidders whose Technical Proposals were rated passed will be opened and evaluated at a later date, which

evaluation will be based on the ~~financial bid parameter~~parameters and criteria to be specified by the SBAC in the ITB. The Pre-Qualified Bidder whose Technical Proposal is rated passed and who submits the best ~~Financial Bid~~ Proposal, as defined in the ITB, will be determined. The statements, information and documents provided by such Pre-Qualified Bidder in its pre-qualification and bid submissions will then be verified for accuracy and authenticity. If the accuracy and authenticity of its submissions is established, such Bidder will be designated as the Winning Bidder and, it is anticipated that within ~~seven~~three (3) days from the completion of the evaluation of ~~its~~the Financial Proposal, the SBAC will recommend to the DPWH Secretary the issuance of a Notice of Award (NOA) to the Winning Bidder. ~~Within seven~~ It is anticipated that within three (3) days from the SBAC recommendation, the DPWH Secretary shall approve the award and, that within five (5) days of such approval, the DPWH Secretary will issue the NOA to the Winning Bidder. The NOA shall indicate the requirements that have to be submitted before the signing of the Concession Agreement.

- f. The Winning Bidder shall comply with all the requirements stated in the NOA within twenty (20) days of receipt of the NOA. Failure to submit the requirements within the prescribed twenty (20-) day period will result in the forfeiture of the Bid Security and the cancellation of the NOA. ~~Within~~It is anticipated that within five (5) days from the receipt by DPWH of all the requirements of the NOA, the DPWH Secretary shall determine and notify the Winning Bidder of its compliance with all the requirements of the NOA. Immediately thereafter, the Winning Bidder ~~through a newly incorporated special purpose corporation~~ shall enter into the Concession Agreement with DPWH and LLDA. Failure to enter into the Concession Agreement will result in the forfeiture of the Bid Security and the cancellation of the NOA.

Notwithstanding the foregoing, the Bidding Process shall be carried out in accordance with the BOT Law and its Revised IRR and, in the event of any conflict between this Section 1.4 and the BOT Law and its Revised IRR, the provisions of the BOT Law and its Revised IRR shall prevail.

## 1.5 Revisions and Clarifications to the ~~Bidding~~Bidding Invitation Documents

The SBAC reserves the right to amend, revise, modify, or clarify any section of the ~~Bidding~~Bidding Invitation Documents at any stage of the Bidding Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated in writing to all parties who purchased the ~~Bidding~~Bidding Invitation Documents through special bid bulletins issued by the SBAC. Upon the issuance of a special bid bulletin, the same shall automatically be incorporated into and made an integral part of the relevant ~~Bidding~~Bidding Invitation Document. Failure of a Bidder to secure the special bid bulletins shall constitute a waiver of its right to be informed thereof.

## 1.6 Responsibility of Prospective Bidders

Notwithstanding any information given in the ~~Invitation—Documents~~DPWH Supplied Information and any additional communication from the DPWH, the SBAC or any other party, including supplemental notices and special bid bulletins,

it is the sole responsibility of any interested party and Prospective Bidder to:

- a. be fully acquainted with the laws, requirements, terms, and conditions of the Bidding Process;
- b. examine all the Invitation Documents and other DPWH Supplied Information, including all instructions, forms, schedules, terms, specifications, and drawings;
- c. familiarize itself with all existing laws, decrees, acts, rules, and ordinances of the Philippines, whether national or local, which may affect the Project; and
- d. ~~Determine~~determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions related to the Project; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.

The Prospective Bidders (including any Consortium Members, proposed Construction Contractors or O&M Contractors or Affiliates) shall not be entitled to and shall not make any claim against the DPWH, the LLDA, the PPP Center, or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the grounds:

- a. of any misunderstanding or misapprehension in respect of the Invitation Documents, the Additional Information Documents and the Project; or
- b. that incorrect or insufficient information relating to the Invitation Documents, the Additional Information Documents and the Project was given to them by the DPWH, the LLDA, the PPP Center, or any other associated party.

By submitting Qualification Documents, a Prospective Bidder ~~shall be presumed to have fully~~acknowledges, and warrants that it has fully discharged, its responsibilities above and contained elsewhere in the Invitation Documents and that it has examined and accepted all the terms and conditions in all of the Invitation Documents and other DPWH Supplied Information.

## 1.7 Costs and Expenses of Participation

Interested parties and Prospective Bidders shall bear all costs associated with their participation in the Bidding Process including the preparation and submission of their Qualification Documents, and all possible losses or damages resulting thereto. The DPWH shall not be held responsible or liable in any way for such costs regardless of the results of the Bidding Process.

~~Prospective~~Pre-Qualified Bidders must pay ~~PhP200,000.00 for the Pre-Qualification~~a fee for the Bidding Documents that will be announced in a special bid bulletin, payable in cash or manager's check issued by a bank in the Philippines to the DPWH, which payment shall be non-refundable. The person

duly authorized by a Prospective Pre-Qualified Bidder to purchase the Bidding Documents must present to the Chairman of the SBAC ~~Secretariat~~, as identified in Section 1.8 (Queries and Comments on Bidding Documents), his authorization from the Prospective Bidder. Upon receipt of payment for the Bidding Documents, the Prospective Pre-Qualified Bidder will be issued an official receipt and given copies of the Bidding Documents.

## 1.8 Queries and Supplemental Notices

- a. All parties who purchase the Invitation Documents may send any queries on any aspect of these documents in writing, by personal delivery, electronic mail and/or fax, to the Chairman of the SBAC. ~~Delivery of queries to the SBAC Chairman may be done either by personal delivery, electronic mail, or fax to all the persons indicated in Section 6.1 of the ITPB.~~ A copy must concurrently be sent each to the DPWH Public-Private Partnership (“PPP”) Service and the Public-Private Partnership Center (“PPP Center”) at the following addresses, e-mail addresses and fax numbers:

### ~~DPWH Special Bids and Awards Committee for PPP Projects~~

#### DPWH SBAC Chairman:

Attention : Undersecretary Rafael C. Yabut  
Address : DPWH-SBAC Chairman  
2<sup>nd</sup> Floor DPWH Building Bonifacio Drive, Port Area, Manila  
E-mail : ~~yabut.rafael@dpwh.gov.ph~~ yabut.rafael@dpwh.gov.ph  
yabutpye@yahoo.com  
Telephone : (+63 2) 304 3596  
Fax : (+63 2) 304 3595

### ~~DPWH Build Operate Transfer Project Management Office (BOT-PMO)~~ Public-Private Partnership (PPP) Service:

Attention : ~~Gil R. Villanueva~~ Ariel Angeles  
Address : PPP Service, DPWH, 3<sup>rd</sup> Floor, DPWH Building, Bonifacio Drive Port Area, Manila 1018  
E-mail : ~~vllanueva~~ angeles.gilariel@dpwh.gov.ph  
Telephone : (+63 2) 304 3148/49  
Fax: (+63 2) 304 3140

#### Public-Private Partnership Center

Attention : Cosette V. Canilao  
Address : Public-Private Partnership Center  
NEDA sa QC, EDSA, Diliman, Quezon City  
E-mail : evcanilao@ppp.gov.ph cvcanilao@ppp.gov.ph  
Telephone : (+63 2) 9900721 loc. 2002  
Fax : (+63 2) 929 8592

Prospective Bidders must use the template below for all of their queries/comments:

Date:	[Insert Date of Submission]		
Prospective Bidder's Name:	[Insert Prospective Bidder Name]		
Topic	Section	Query/Comment	Proposed Language (if any)

- b. While the SBAC will attempt to respond to all reasonable queries received up to ten days before the Qualification Documents Submission Date, it is under no obligation to do so. Responses to queries and any modifications to the Invitation Documents will be done in writing through supplemental notices or [special](#) bid bulletins issued by the SBAC, and sent to all parties that purchased the Invitation Documents. Such [special](#) bid bulletins may also be found at the websites of the PPP Center ([ppp.gov.ph](http://ppp.gov.ph)) and the DPWH ([dpwh.gov.ph](http://dpwh.gov.ph)).

### 1.9 Ownership of Documents

All documents submitted in response to the ~~Invitation to Pre-Qualify to Bid~~ [ITPB](#), including Qualification Documents and their attachments, shall become the property of the DPWH, and any information obtained by the DPWH from such documents may be reasonably used by ~~them~~ [the DPWH](#) subject to the confidentiality clause in Section ~~1.12~~ [1.13](#) (*Confidentiality*).

### 1.10 Language and Foreign Documents

- a. The Qualification Documents and all submission to the SBAC in relation to the Pre-Qualification shall be prepared and written in the English language. Any document written in a foreign language shall be accompanied by an English translation and authenticated by a Philippine consular official. The authentication of such document should follow the authentication rules of the relevant Philippine consular office. In case of conflict, the English translation shall prevail.
- b. All documents issued by foreign authorities and any [and](#) all documents executed outside of the Philippines which are required to be notarized shall be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue or execution. The authentication must comply with the authentication procedures of such Philippine consulate.

If the foreign document submitted is a foreign law or regulation, that the Prospective Bidder should also submit: (a) a certified true copy of such law or regulation issued by the competent government authority, or (b) a certification from the embassy or consular office of the relevant foreign country in the Philippines that such law is an accurate copy of the foreign law.

If the document was issued by a foreign authority, the Prospective Bidder should also submit a certified true copy of such document issued by the same authority, in addition to the authentication by the relevant Philippine consular official.

All documents which are executed abroad but are not required to be notarized are not required to be consularized or authenticated before a Philippine

consular official at a Philippine consulate.

- c. For purposes of the Pre-Qualification, the SBAC will accept foreign documents that are not yet notarized and/or authenticated, subject to the following conditions:
- (1) The notarized and/or authenticated foreign documents must be submitted to the SBAC no later than 30 days before the Bid Proposals Submission Date.
  - (2) The notarized and/or authenticated foreign documents must be identical to the documents that were submitted by the Prospective Bidder on the Qualification Documents Submission Date.
  - (3) The authorized officer of the Prospective Bidder must submit a notarized certification using the form in Annex QD-12.
- d. If a Bidder undertakes to submit notarized and/or authenticated documents no later than 30 days before the Bid Proposals Submission Date, it may be provisionally qualified if, based on the Qualification Documents it submits on the Qualification Documents Submission Date, it meets all of the Qualification Requirements. As a provisionally Pre-Qualified Bidder, it shall be allowed to purchase the Bidding Documents. However, a provisionally Pre-Qualified Bidder shall be automatically disqualified if:
- (1) it fails to submit the notarized and/or authenticated documents within the prescribed period; or
  - (2) there are differences between the documents submitted on the Qualification Documents Submission Date and the subsequently notarized and/or authenticated documents.

A ~~provisionally-qualified~~Pre-Qualified Bidder that is disqualified under the above circumstances shall not be entitled to a reimbursement of the purchase costs for the Bidding Documents.

## 1.11 Investors' Forum

The DPWH conducted an Investors' Forum for interested parties and Prospective Bidders on 03 October 2014 to clarify the Invitation Documents and to answer any relevant questions from interested parties and Prospective Bidders.

### ~~1.11.12~~ 1.12 Pre-Qualification Conference

The DPWH will conduct a Pre-Qualification Conference for any interested parties and Prospective Bidders to further clarify ~~any part of~~ the Invitation Documents and to answer any ~~relevant~~additional questions from interested parties and Prospective Bidders. Details of the Pre-Qualification Conference are:

Date: ~~19 August~~02 December 2014

Time: ~~2:00 p.m.~~

Location: ~~Procurement Service Conference~~Ops Room, 2<sup>nd</sup> Floor

### **1.121.13 Confidentiality and Non-Reliance**

The DPWH Supplied Information is being made available to Prospective Bidders only in connection with the Project and may not be disclosed or used other than for the purposes of the Prospective Bidder preparing Pre-Qualification Documents. Information relating to the examination, clarification, evaluation and comparison of Pre-Qualification Documents shall not be disclosed to any of the Prospective Bidders or other persons not officially involved in the Bidding Process; provided that the DPWH, including the SBAC, shall not have the obligation to keep any information submitted by a Prospective Bidder confidential after award of the Project.

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

### **1.131.14 Waiver of Rights to Enjoin Project**

By participating in the Pre-Qualification and the Bid Process, Bidders thereby irrevocably waive any right they may have to seek and obtain a writ of injunction or prohibition or restraining order, or any other similar remedy or course of action intended to have similar effect, in any jurisdiction, against the DPWH ~~or,~~ the SBAC or any other agency and, in each case, their respective employees and advisors, to prevent or restrain the holding of a bidding, or the conduct or finalization of the Bidding Process, or any proceedings or procedures related thereto, the negotiation, award and execution of ~~the contract to~~ any agreement with the Winning Bidder, and the carrying out of the awarded Concession Agreement. Such waiver ~~shall,~~ however, shall 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.

### **1.141.15 Pre-Bid Conference and One-On-One Meetings**

The SBAC shall conduct a Pre-Bid Conference to clarify ~~any part~~ certain aspects of the Bidding Documents and/or the Bidding Process and to answer ~~any relevant~~ questions from Bidders regarding the Bidding Documents, or ~~such~~ address other

relevant issues that the Bidders may raise. The details of the Pre-Bid Conference will be announced through a ~~Bid Bulletin~~ special bid bulletin.

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

The SBAC shall arrange for at least two (2) rounds of one-on-one meetings with Bidders on scheduled dates, which will be announced through a special bid bulletin. A Bidder scheduled for a one-on-one meeting ~~is~~ may be requested to submit its questions and/or comments in writing at least ~~three~~ five (35) calendar days prior to such meeting, following the same procedures indicated in Section 1.8 (Queries and Supplemental Notices).

## 2. Qualification Requirements

Prospective Bidders must fulfill all of the ~~Legal, Technical, and Financial Capability~~ Qualification Requirements listed below.

The ~~corporate~~ entity which obtains the Invitation Documents must be ~~the~~ (1) the Prospective Bidder itself, (2) a Consortium Member, (3) a Contractor, (4) an Affiliate of the Prospective Bidder, Consortium Member or Contractor, or (5) an authorized representative or agent of any of ~~these~~ the foregoing entities.

### 2.1 Legal Requirements

The Prospective Bidder must be:

- a. A partnership ~~or~~, corporation or other legal entity registered with the Philippine Securities and Exchange Commission (SEC) (if required) or, in case of a foreign entity, the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~ legal personality or capacity. The Prospective Bidder must certify that he and his Affiliates whose projects and experience/s are being submitted as evidence of fulfillment of the requirements in Section 2.2 have no Unsatisfactory Performance Record; or
- b. A Consortium (either established as a special purpose entity or a contractual consortium, as evidenced by a consortium agreement) whose members must be partnerships or corporations registered with the SEC or in case of a foreign entity, the appropriate government agency substantially equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~ legal personality or capacity. Each Consortium Member must certify that it and its Affiliates whose projects and experience/s are being submitted as evidence of fulfillment of the requirements in Section 2.2 have no Unsatisfactory Performance Record. If the Prospective Bidder is a contractual Consortium and becomes the Winning Bidder, it will have to ~~show~~ establish a partnership, corporation or other legal entity and deliver to DPWH proof of incorporation or other establishment prior to signing the Concession Agreement.



There will be no restrictions imposed on the shareholding structure of a Prospective Bidder which is a corporation. However, if the Prospective Bidder proposes an Affiliate to meet any of the Qualification Requirements, such Affiliate must remain as an Affiliate of such Bidder until the execution of the Concession Agreement and thereafter, in the case of the Concessionaire, as provided by the Concession Agreement.

A Prospective Bidder that is a corporation, partnership, limited liability company or other legal entity may not form a new corporation, partnership, limited liability company or other legal entity to replace it, unless such new ~~corporation is 100%~~entity is wholly-owned or Controlled by such Prospective Bidder.

Only the Winning Bidder which is a ~~consortium~~Consortium is required to form a special purpose ~~company~~legal entity prior to signing of the Concession Agreement.

A Prospective Bidder which is a single corporate entity is not required to form a special purpose company, but may do so provided that the special purpose company is ~~100%~~-wholly-owned by such Prospective Bidder.

Under Sections 2.2-a(2) and 2.2-b(2) of the ITPB, the Technical Qualification Requirements for a Prospective Bidder which is a corporation may be complied with by contractors and/or Affiliates of the Prospective Bidder. Under Section 2.3.b of the ITPB, the Financial ~~Qualification~~Capability Requirements may be complied with by Affiliates of the Prospective Bidder.

Any Prospective Bidder which is a Consortium must have a Lead Member that (i) holds the highest percentage of interest in the Consortium, which should not be less than 33% and (ii) is designated in writing as the Consortium leader by the other Consortium Members.

With respect to any Prospective Bidder that is a Consortium, the Consortium Members shall execute an undertaking in favor of DPWH that, if selected as the Winning Bidder, such Consortium Members shall bind themselves to be jointly and severally liable for the obligations of the Concessionaire under the Concession Agreement; provided that if such Consortium is organized as a corporation or other legal entity registered under Philippine laws, such entity shall execute an undertaking binding itself to be liable for the obligations of the Concessionaire under the Concession Agreement in lieu of the undertaking by the Concession Members.

There is no minimum equity interest requirement for a Consortium Member ~~which will~~that is not proposed to fulfill any Technical Qualification Requirements or Financial Capability Requirements.

Two (2) or more Pre-Qualified Bidders cannot eventually form a Consortium for purposes of bid submission.

Until the Bid Proposals Submission Date, no restrictions shall be imposed on the ownership structure of a Prospective Bidder which is a corporation, partnership or

other legal entity. However, from Bid Proposals Submission Date to the signing of the Concession Agreement, no changes may be made in the ownership structure or Control of a Winning Bidder who is a corporation, partnership or other legal entity. Nothing herein shall be construed to prevent a Winning Bidder, whether a Consortium or a single corporate entity, from forming a qualified entity to specifically undertake any ~~nationalized~~-activity under the Project that is subject to nationality restrictions.

Applicable nationality requirements on the different project components shall be ~~observed~~considered.

## 2.2 Technical Requirements

To qualify to bid for the Project, the Prospective Bidder must meet the following technical requirements:

### a. Construction Experience

- (1) The Prospective Bidder or a related entity must have local or international experience in successfully completing the construction of the following projects similar to the LLEDP with the minimum costs or magnitudes as shown in Table 2:

**Table 2. Minimum Construction Experience Requirement**

Category of Completed Similar Projects	Minimum Cumulative Cost or Magnitude of Completed Projects	Minimum Cost or Magnitude of Single Biggest Completed Project
Col. (1)	Col. (2)	Col. (3)
A. Flood control dikes/dams with gates and pumps	<del>PPhP 13,853 Million (50% of construction cost of LLEDP flood control of P27,706M)</del>	<del>PPhP 554 Million (2% of construction cost of LLEDP flood control) involving a dike/dam at least 3 m high</del>
B. Expressways/highways/viaducts/bridges/flyovers	<del>PPhP 13,853 Million (50% of construction cost of LLEDP expressway of P27,706M)</del>	<del>PPhP 554 Million (2% of construction cost of LLEDP expressway) with a length of at least 5 km</del>
C. Reclamation with horizontal development	<del>PPhP 12,555 Million (25% of cost of LLEDP reclamation of P 50,222M) or 175 hectares (area of one island)</del>	<del>PPhP 2,511 Million (5% of reclamation cost) or 50 hectares (50% of area of one island)</del>

The costs of the completed similar projects shall be converted to their equivalent prices in 2014 by applying the official inflation rates of the countries where the projects are located and the foreign exchange rates prevailing as of the Qualification Documents Submission Date. In submitting past project values to meet the above criteria, each Prospective Bidder shall submit both the relevant original contract prices and its methodology for determining the equivalent prices in 2014.

- (2) The entity which fulfills this requirement may be:

- (a) If the Prospective Bidder is a partnership or corporation:

- i. The Prospective Bidder itself; and/or

- ii. A Construction Contractor for ~~each~~one or more of the categories of similar projects A, B, and C in Table 2 above, nominated under Annex QD-1A or QD-1B,

such that, taken together, the Prospective Bidder and the Construction Contractors meet the minimum experience requirements of all three categories of similar projects.

(b) If the Prospective Bidder is a Consortium:

- i. A Consortium Member ~~must meet the minimum construction experience requirement for either or a combination~~for one or more of the categories of similar projects A, B, and C in Table 2 above; ~~such that, taken together, the Consortium Members meet the minimum construction experience requirements of all three categories of similar projects;~~ and/or

- ii. A Construction Contractor for ~~each~~one or more of the categories of similar projects A, B, and C in Table 2 above, nominated under Annex QD-1A or QD-1B,

such that, taken together, the Consortium Members and Construction Contractors meet the minimum experience requirements of all three categories of similar projects.

The required minimum cumulative cost (or magnitude) of completed similar projects (Column 2 of Table 2) may be met by aggregating or adding the cumulative costs (or magnitude) of similar projects completed by the Bidder and its Affiliates, Members of the Consortium, and their Construction Contractors ~~and Subcontractors~~ for each of the three categories of projects.

The required minimum cost (or magnitude) of the single biggest completed similar project (Column 3 of Table 2) for each of the three categories of projects must be met by at least one of the Bidder or its Affiliate or one Consortium Member or one Construction Contractor ~~or Subcontractor~~. The costs of the single biggest completed similar projects cannot be added for purposes of complying with this particular Construction ~~experience requirement~~Experience Requirement.

- (3) For the expressway component (Project category B in Column 1 of Table 2), the Consortium Member (if any) that meets the Construction ~~experience requirement~~Experience Requirement for the single biggest similar project (Column 3 of Table 2) must have at least a 10% interest in the Consortium. For the LLEDP flood control or reclamation component (Project Categories A and C), no such 10% interest in the Consortium is required of the Consortium Member.

- (4) A Construction Contractor ~~or Subcontractor~~ shall be a single ~~judicial~~legal entity registered with the SEC or equivalent body in case of foreign entities.

A Prospective Bidder may propose up to five (5) Construction Contractors in accordance with [this](#) Section 2.2-a(4) ~~of the ITPB~~. If the Prospective Bidder is declared the Winning Bidder and signs the Concession Agreement, it may engage the services of up to the five (5) proposed Construction Contractors, provided that each Construction Contractor engaged must have pre-qualified as a construction contractor or subcontractor of the Prospective Bidder for the LLEDP during the Bidding Process.

A Construction Contractor ~~or Subcontractor~~ fulfilling the Construction Experience Requirement need not have any equity participation in the Prospective Bidder that is a Consortium.

If the Prospective Bidder nominates a Construction Contractor to meet the Construction Experience Requirement—2

- (a) the proposed Construction Contractor must provide a statement of its willingness to participate in, and capacity to undertake the requirements of the Project; and
  - (b) after pre-qualifying, the proposed Construction Contractor may be asked to reiterate its willingness to participate in, and capacity to undertake, the requirements of the Project at the time that Bid Proposals are submitted.
- (5) ~~The~~[Each](#) entity whose completed projects are being submitted to fulfill the Construction Experience Requirement, whether the Prospective Bidder, a Consortium Member, or a Construction Contractor or any of their Affiliates:
- (a) must certify that they have no Unsatisfactory Performance Record; and
  - (b) must possess the following:
    - i. A valid license issued by the Philippine Contractors Accreditation Board (PCAB) for Large B Classification/License Category AAA, in the case of a Filipino Construction Contractor; or 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 Bidder is awarded the Project; and
    - ii. A valid International Organization for Standardization ("ISO") 9001:2000 certification, or an "equivalent" as set forth below.

The certified true copies of the PCAB license (or its equivalent in the case of a foreign entity) and the ISO 9001 certification (or its equivalent) must be issued by the relevant body issuing such license/certification. However, for the Pre-Qualification, the SBAC will accept copies of the PCAB

license (or its equivalent) and the ISO 9001 certification (or its equivalent), accompanied by a notarized certification issued by the relevant officer of the entity required to submit these documents that such copies are true and faithful reproductions of the original license/certification. If the Bidder is pre-qualified, it shall be required to submit the certified true copies of the license/certification issued by the relevant body issuing such license/certification on or before the Bid Proposals Submission Date.

For purposes of the Pre-Qualification, in lieu of the ISO certifications, the entity proposed to meet any of the Technical Qualification Requirements may submit a document which is an “equivalent” of the required ISO certifications. Such an equivalent could be a notarized certification from the competent regulatory authority stating that:

- (a) it is the regulatory authority in the country where the entity being proposed to meet a particular Technical Qualification Requirement was registered for creation of recognition of its ~~juridical~~legal personality or capacity and it has jurisdiction over such entity;
- (b) the laws in such country do not require entities like the entity being proposed to meet a particular Technical Qualification Requirement to secure ISO certifications;
- (c) the entity proposed to meet a particular Technical Qualification Requirement is in compliance with the relevant policies, procedures and programs required by applicable laws, rules and regulations of such country; and
- (d) the entity being proposed to meet a particular Technical Qualification Requirement has in place internal procedures and processes equivalent to those required under the ISO 9001 certification.

Together with this notarized certification, the entity being proposed to meet a particular Technical Qualification Requirement must prove that it has substantially equivalent internal procedures as those required for ISO 9001, evidenced by the submission of a notarized document describing the entity’s approved internal quality and environmental management system.

- (6) The entity or entities proposed to meet the Construction Experience Requirement which are pre-qualified by the SBAC will be identified in the Concession Agreement. The Concessionaire may use the entity or entities which are identified in the Concession Agreement without need for further consent from the DPWH. The use of any Construction Contractors other than those identified in the Concession Agreement will require the prior written consent of the DPWH, and will be subject to the Concessionaire’s demonstration that the proposed Construction Contractor meets the requirements in this Section 2.2 a.
- (7) In sum, to pass the Construction Experience Requirement for prequalification to bid for the LLEDP, the Prospective Bidder, on its own, thru its Affiliates, or the Consortium Members, and Construction

Contractors ~~and Subcontractors~~, must meet all of the Construction Experience Requirements prescribed in Table 2 for all of Project categories A, B and C, and no partial prequalification, e.g., for one Project category only, shall be considered.

b. Operation and Maintenance Experience

(1) The Prospective Bidder or a related entity must have local or international experience in the operation and maintenance (O&M) of the following facilities similar to the LLEDP for a period of at least three (3) years, as shown in Table 3:

**Table 3. Minimum O&M Experience Requirement for at Least 3 Years**

Similar Facility Operated and Maintained	Minimum Requirements
A. Flood control dike/dam with gates and pumps	Operated a flood control dike/dam at least 3 m high with a capital cost of at least <del>PPhP 554M (2% of construction cost of LLEDP flood control of P 27,706M)</del> <u>Million</u>
B. Toll expressway	Operated a toll expressway at least 5 km long
C. Developed <del>reclaimed</del> land	Managed at least 35 hectares of <del>reclaimed</del> land <del>(5% of LLEDP reclamation area of 700 hectares);</del> <u>for purposes of this requirement, “managed” means the supervision, maintenance, protection, security and administrative use of, and protection of public safety on, land entrusted to the care of such party.</u>

(2) The entity which fulfills this requirement may be:

(a) If the Prospective Bidder is a partnership or corporation:

- i. The Prospective Bidder itself; and/or
- ii. An O&M Contractor for ~~each one or more~~ of the categories of similar projects A, B, and C in Table 3 above, nominated under Annex QD-1A or QD-1B,

such that, taken together, the Prospective Bidder and the O&M Contractors meet the minimum ~~experience requirements~~ Operation and Maintenance Experience Requirement of all three categories of similar projects.

(b) If the Prospective Bidder is a Consortium:

- i. A Consortium Member with at least 10% interest in the Consortium. ~~A Consortium Member must meet the minimum O&M experience requirement for either or a combination for one or more~~ of the categories of similar projects A, B, and C in Table 3 above; ~~such that, taken together, the Consortium Members meet the minimum O&M experience requirements of all three categories of~~

~~similar projects;~~ and/or

- ii. An O&M Contractor for ~~each one or more~~ of the categories of similar projects A, B, and C in Table 3 above, nominated under Annex QD-1A or QD-1B,

such that, taken together, the Consortium Members and O&M Contractors meet the minimum ~~O&M experience requirements~~ Operation and Maintenance Experience Requirement of all three categories of similar projects.

~~The O&M Contractor fulfilling the O&M Experience Requirement need not have any equity participation in the Prospective Bidder that is a Consortium.~~

- (3) The Prospective Bidder shall be allowed to propose not more than three entities, including itself, to meet the ~~O&M~~ Operation and Maintenance Experience Requirement for each of Project Categories A, B and C in Table 3. Each entity nominated should meet the entire ~~O&M~~ Operation and Maintenance Experience Requirement described in Section 2.2**~~b-ib(1)~~** and Table 3. For each Project category, if at least one of the entities proposed meets the ~~O&M~~ Operation and Maintenance Experience Requirement, the Prospective Bidder shall be deemed to have met this particular Qualification Requirement. Thus, the O&M experiences of the Prospective Bidder/Consortium Members and Affiliates and O&M Contractors shall not be counted cumulatively to meet the minimum O&M requirement.
- (4) For Project Category A – flood control - the Prospective Bidder will be deemed as fulfilling the ~~O&M~~ Operation and Maintenance Experience Requirement if either (a) the entity nominated to undertake the O&M of the LLEDP flood control or (b) the key O&M personnel of that entity possess the minimum experience of having operated a flood control dike/dam at least 3 m high or similar facility whose capital cost is at least ~~PPhP 554 Million (2% of the construction cost of the LLEDP flood control of P 27,706 Million)~~. For Project Category B – toll expressway - the Prospective Bidder will be deemed as fulfilling the ~~O&M~~ Operation and Maintenance Experience Requirement if either (a) the entity nominated to undertake the O&M of the LLEDP toll expressway or (b) the key O&M personnel of that entity possess the minimum experience of having operated a toll expressway at least 5 km long.
- (5) If the Prospective Bidder nominates an O&M Contractor to meet the ~~O&M~~ Operation and Maintenance Experience Requirement—~~—~~,
  - (a) the proposed O&M Contractor must provide a statement of its willingness to participate in, and capacity to undertake the requirements of the Project; and
  - (b) after pre-qualifying, the proposed O&M Contractor may be asked to reiterate its willingness to participate in, and capacity to undertake, the requirements of the Project at the time that Bid Proposals are submitted.

(6) The entity or entities whose O&M projects are being submitted to fulfill the O&M Operation and Maintenance Experience Requirement must certify that they have no Unsatisfactory Performance Record.

(7) The entity or entities proposed to meet the O&M Operation and Maintenance Experience Requirement which are pre-qualified by the SBAC will be identified in the Concession Agreement. The Concessionaire may use the entity or entities which are identified in the Concession Agreement without need for further consent from the DPWH. The use of any O&M Contractors other than those identified in the Concession Agreement will require the prior consent of the DPWH, and will be subject to the Concessionaire’s demonstration that the proposed O&M Contractor meets the requirements in this Section 2.2b.

(8) The Facility Operator may be any of the following:

(a) any of the entities qualified by the SBAC as having met the O&M Operation and Maintenance Experience Requirement.

(b) A third party entity, provided that at least 20% of such entity’s capital is owned by at least one of the entities which was qualified by the SBAC as having met the O&M Operation and Maintenance Experience Requirement for a period of five years from the issuance of the Toll Operation Certification for the Project, unless it obtains prior written consent form DPWH.

c. Qualified Key Personnel

The Prospective Bidder, its Consortium Members, proposed Construction Contractors, proposed O&M Contractors, or their Affiliates, must have among their personnel, individuals with the following required qualifications and experience:

**Table 4. Minimum Qualifications and Experience of Key Personnel**

<b>Position</b>	<b>Minimum Qualifications and Type of Experience Required</b>
1. Project Manager for the entire Project	Registered Civil Engineer with a minimum of 20 years experience, more than five years of which as a Project Manager of facilities similar to the LLEDP – e.g.,
2. Manager, Design, for the entire Project	Registered Civil Engineer with a minimum of 10 years experience, more than five years experience of which as Designer of expressways, flood control, reclamation, and/or other projects similar to the LLEDP.
3. Manager, Operation and Maintenance, for the entire Project	Must have been General or Operations Manager for at least 3 years, with at least one project involving the operation and maintenance of expressways, flood control, reclamation, and/or other facilities similar to the LLEDP.



The personnel identified in Section 2.2c may be employed or engaged by the Prospective Bidder, a Consortium Member or any of their proposed Contractors or Affiliates.

External experts with the relevant experience may also be used to meet the qualifications and experience required in Section 2.2c.

## 2.3 Financial Capability Requirements

- a. To qualify to bid for the Project, the Prospective Bidder or a related entity, as described below, must meet the following ~~Financial Capability~~financial capability requirements ~~for the Expressway Dike Component:~~

**Table 5. Minimum Financial Capability Requirements**

	<b>Minimum Amount Required</b>
Net Worth	<u>PhP 13,000 Million</u> <del>P 13,000 Million (20% of the Expressway Dike capital cost of P 64.9 Billion)</del>
Access to Credit	<u>PhP 51,900 Million</u> <del>P 51,900 Million (80% of the Expressway Dike capital cost of P 64.9 Billion)</del>
Total	<del>P</del> <u>PhP 64,900 Million</u>

- b. The entity which fulfills this requirement may be:
- (1) If the Prospective Bidder is a partnership ~~or~~, corporation or other legal entity:
    - (a) ~~The~~the Prospective Bidder itself; or
    - (b) ~~An~~an Affiliate of the Prospective Bidder; or
  - (2) If the Prospective Bidder is a Consortium, the Members of the Consortium, individually or collectively.
- c. The Net Worth submitted by the Prospective Bidder for purposes of this prequalification must be supported by the latest audited financial statements of the entities concerned, which must be dated not earlier than ~~31 December 2013~~30 June 2014, as prescribed in Section 3i(2)(a).
- d. The ~~Access to Credit~~evidence of access to credit submitted by the Prospective Bidder for purposes of this prequalification must, as prescribed in Section 3i(2)(b), be supported by letters from its potential lenders stating that they are willing to lend it amounts aggregating at least PhP 51,900,000,000 for the LLEDP. This amount can be reduced by the excess of the Prospective Bidder or related entity's ~~net worth~~Net Worth over PhP 13,000,000,000.
- e. The entity which fulfils these requirements must certify that it has no Unsatisfactory Performance Record, but only in relation to paragraphs (2) and (3) of Section 17(~~ff~~vv) of this ITPB.

### 3. Qualification Documents

On the Qualification Documents Submission Date, the Prospective Bidder must submit its Application to Pre-Qualify to Bid. The Application to Pre-Qualify to Bid consists of the following Qualification Documents, using the relevant forms in the Annexes:

- a. Business Structure (Using the form in Annex QD-1A for partnerships or corporations, or Annex QD-1B for Consortia). For Consortia, this document must show the Lead Member and all Consortium Members, and the total percentage interest of all Consortium Members must be 100%. The Business Structure must also indicate the entities which fulfill the Qualification Requirements in Sections 2.2 and 2.3, and any Affiliates of these entities whose projects, experience, or financial capability are being submitted to comply with the Qualification Requirements.
- b. Basic Information Sheet- using the form in Annex QD-2

- (1) To be submitted by all entities listed in all sections of the Business Structure (Form QD-1A or QD-1B).

- (2) Required attachment: For all entities submitting this form (including the entities proposed to fulfill the Construction ~~and O&M~~ Experience Requirements Requirement and Operation and Maintenance Experience Requirement):

- (a) Certified true copy of its latest General Information Sheet (GIS), stamped “received” by the SEC or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity.

The certification may come from either the SEC or its equivalent in a foreign country, ~~or~~ the entity’s corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity’s corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

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

- (b) Certified True Copy of SEC Certificate of Incorporation, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the

foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The SEC Certificate of Incorporation or the equivalent document for a foreign entity must be certified by the SEC, its equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly-authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue. If in a particular foreign jurisdiction the Certificate of Incorporation is issued by the registrar of the corporation, then the SBAC will accept a certified true copy of the Certificate of Incorporation issued by the registrar of the corporation.

- (c) Certified true copy of the Articles of Incorporation or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The Articles of Incorporation or the equivalent document for a foreign entity may be certified either by the SEC, its equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly-authorized to make such certification. If it comes from the entity's corporate secretary or duly authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.
- (d) Certified true copy of By-Laws or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The By-Laws or the equivalent document for a foreign entity may be certified either by the SEC, its equivalent in a foreign country, or the entity's corporate secretary, or any officer of the entity duly authorized to make such certification. If it comes from the entity's corporate secretary or duly-authorized officer, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.

The submission of one ~~document~~or more documents that ~~is~~are certified, notarized and authenticated, and which ~~serve~~serve as the equivalent of the four documents specified in this Section 3b(2), shall be considered sufficiently compliant with the requirements of Section 3b(2). However, the entity submitting ~~this document~~such document(s) should issue a notarized certification that such document ~~is~~or documents are equivalent to the four documents required under Section 3b(2).

If an officer other than the Corporate Secretary certifies the General Information Sheet, Certificate of Incorporation, Articles of Incorporation or By-Laws, a notarized certification authorizing such officer to certify the aforementioned documents must be submitted.

- c. Certification of Absence of Unsatisfactory Performance Record – using the form in Annex QD-3.

To be submitted by all entities listed in all sections of the Business Structure (Form QD-1A or QD-1B).

- d. Construction Experience – using the form in Annex QD-4

(1) To be submitted by the entity or entities which fulfill the Construction Experience Requirement in Section 2.2a, as identified in the Business Structure (Form QD-1A or QD-1B), item 3.

(2) Required ~~attachment~~attachments for each entity submitting this form:

- (a) Notarized Certificate of Project Completion from the project's owner. A copy of the original Certificate of Project Completion will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the project owner or the relevant officer of the Construction Contractor that such copy is a true and faithful reproduction of the original Certificate of Project Completion.
- (b) If the project was completed by an Affiliate of the entity which fulfills the Construction Experience Requirement, evidence of such affiliation.
- (c) Certified true copy of a valid license issued by the PCAB for Large B Classification/License Category AAA, in the case of a Filipino entity or, in the case of a foreign entity, an equivalent license issued by an equivalent accreditation institution in the foreign entity's country of origin, provided that such foreign entity must secure a license and accreditation from the PCAB after the Bidder is awarded the Project. The certified true copy of the PCAB license (or its equivalent in the case of a foreign entity) must be issued by the relevant body issuing such license/certification. A copy of the PCAB license (or its equivalent) will be accepted, *provided* that it is accompanied by a notarized certification issued by the relevant officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original license. If the bidder is pre-qualified, it shall be required to submit the certified true copy of the license issued by the relevant body issuing such license on the Bid Proposals Submission Date
- (d) Certified true copy of a valid ISO 9001:2000 certification. The certified true copy of the ISO 9001 certification (or its equivalent) must be issued by the relevant body issuing such certification. A copy of the ISO 9001:2000 certification (or its equivalent) will be accepted, provided that it is accompanied by a notarized certification issued by

the relevant officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original certification. If the bidder is pre-qualified, it shall be required to submit the certified true copy of the certification issued by the relevant body issuing such certification on the Bid Proposals Submission Date.

- e. Construction Contractor's Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Project – using the form in Annex QD-5.

To be submitted by any Construction Contractors proposed by the Prospective Bidder to fulfill the Construction Experience Requirement in Section 2.2 a, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 3.

- f. Operation and Maintenance Experience – using the form in Annex QD-6.

- (1) To be submitted by the entity or entities which ~~fulfills~~fulfill the Operation and Maintenance Experience Requirement in Section 2.2b, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 5.

- (2) Required ~~attachment~~attachments for each entity submitting this form:

- (a) Notarized Certificate of Project Completion or that the project is in operation from the project's owner. A copy of the original certificate of project completion will be accepted, provided that it is accompanied by a notarized certification issued by the relevant officer of the project owner or the relevant officer of the O&M Contractor that such copy is a true and faithful reproduction of the original certificate of project completion.

- (b) If the project was or is being undertaken by an Affiliate of the entity which fulfills the Operation and Maintenance Experience Requirement, evidence of such affiliation.

- g. O&M Contractor's Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Project –using the form in Annex QD-7.

To be submitted by any O&M Contractors proposed by the Prospective Bidder to fulfill the Operation and Maintenance Experience Requirement in Section 2.2b, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 4.

- h. Key Personnel – list of qualified key personnel who fulfill the requirements of Section 2.2c using the form in Annex QD-8

- (1) To be submitted by the Prospective Bidder.

- (2) More than one name can be submitted for each position; however, at least one must be submitted.

- i. Notarized Statement of Financial Capability – using the form in Annex QD-9.

(1) To be submitted by the entity which fulfills the Financial Capability requirement in Section 2.3, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 7.

(2) Required attachments:

(a) Certified true copy of latest audited financial statements which must be dated not earlier than ~~31 December 2013~~30 June 2014, stamped "Received" by the Bureau of Internal Revenue 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 recognition or creation of its ~~juridical~~legal personality or capacity. The certified true copy of the latest audited financial statements may be issued by the relevant officer of the entity which fulfills the Financial Capability requirement. However, such certified true copy must be stamped "received" by the Bureau of Internal Revenue (or the equivalent agency in the case of the foreign entity).

(b) Letters from the Prospective Bidder's potential lenders, in case the Prospective Bidder is a partnership or corporation, or the Lead Member's potential lenders, in case the Prospective Bidder is a Consortium, expressing their willingness to lend it, or the entity it will form if it becomes the Winning Bidder, at least PhP 51,900,000,000.00 for the LLEDP, in each case, in the form provided by the applicable lender. This amount can be reduced by the excess of the Prospective Bidder or related entity's net worth over PhP 13,000,000,000.00. Such a letter or letters should come from financial institutions licensed to lend money in the country where it is registered for recognition or creation of its ~~juridical~~legal personality or capacity (for entities incorporated in the Philippines, this must come from a financial institution licensed by the Bangko Sentral ng Pilipinas).

(c) If the Prospective Bidder will use an Affiliate or Affiliate of the Lead Member of the Consortium to comply with the Financial ~~Qualification~~Capability Requirements in Section 2.3, attach evidence of such affiliation in the Business Structure.

j. Notarized Application to Pre-Qualify to Bid – using the form in Annex QD-10. To be submitted by the Prospective Bidder.

k. Notarized Corporate Authorizations and Designation of Authorized Representative:

(1) For Partnerships or Corporations: Authority to Apply to Pre-Qualify and Designation of Authorized Representative, using the form in Annex QD-11A. To be submitted by the Prospective Bidder.

(2) For Consortia: Consortium Member's Authority to Participate in Consortium and Apply to Pre-Qualify, and Designation of Lead Member and Authorized Representative of Consortium, using the form in Annex

QD-11B. To be submitted by each Consortium Member.

1. For Consortia: Undertaking of Liability Under the Concession Agreement, using the form in Annex QD-13. To be submitted by each Consortium Member or, if the Consortium Members have organized themselves as a legal entity organized under Philippine laws, to be submitted by such entity.

#### **4. One Bidder, One Submission**

Each Prospective Bidder may submit only one Application to Pre-Qualify to Bid. A Prospective Bidder may not be a member of another Consortium, nor have an Affiliate which is a member of another Consortium. No Consortium Member may be a member of more than one 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 14.

These restrictions, however, do not cover or limit the participation of proposed Construction Contractors and O&M Contractors, which may be proposed by more than one Prospective Bidder provided such Contractors (1) are not themselves (or through their Affiliates) (i) Prospective Bidders, (ii) Consortium Members andor (iiii) Affiliates of any of the Prospective Bidders or Consortium Members and (2) comply with the applicable requirements set forth in Section 14(d) (Conflict of Interest) with regard to Construction Contractors and O&M Contractors.

#### **5. Format of Submission of Qualification Documents**

Each page of each Qualification Document, including any required attachments, shall be initialed on the right margin by the Prospective Bidder's authorized representative as identified in the form in Annex QD-11A or QD-11B.

Qualification Documents must be printed either in standard A4 or letter size (8 1/2" x 11") paper and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least font size twelve (12).

The requirements relating to paper and font size in Section 5 shall only apply to prescribed forms provided in this ITPB and to any other Qualification Documents which may be reasonably made to comply with these requirements.

Prospective Bidders shall submit the Qualification Documents in the following form:

- a. One complete original set, clearly marked on each page as "ORIGINAL"
- b. Nine photocopies, initialed on the right margin of every page of each set by the Prospective Bidder's authorized representative as identified in the form in Annex QD-~~14~~11A or QD-~~14~~11B clearly marked on each page as "COPY NO. \_\_\_"
- c. Five readable compact discs (CD-R), each containing electronic files of all the

Qualification Documents, in both Microsoft Word (.doc) and Portable Document Format (.pdf) formats, and electronic files of all of the attachment of each Qualification Documents in Portable Document Format (.pdf).

Each set of the Qualification Documents should contain a table of contents. Each set of the Qualification Documents must be placed in a separate envelope. The five CDs should also be placed in a separate envelope. Each of the ten envelopes containing the Qualification Documents and the envelope containing the five CDs must be sealed and appropriately addressed and marked as follows:

<p>DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS LAGUNA LAKE EXPRESSWAY-DIKE PROJECT (LLEDP) QUALIFICATION DOCUMENTS</p> <p>[ <i>NAME AND ADDRESS OF PROSPECTIVE BIDDER</i> ]</p> <p>ORIGINAL/COPY NO. ___/CD</p> <p>DO NOT OPEN UNTIL <del>14</del> <u>14</u> JANUARY, <del>2014</del> <u>2015</u></p>
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All the ten sets of Qualification Documents and the one envelope containing the CDs shall be placed in one, or more, if necessary, sealed outer envelope or box.

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

**6. Procedures for Submission and Opening of Qualification Documents by the Qualification Documents Submission Date**

On or before the Qualification Documents Submission Date, Prospective Bidders are required to submit their Qualification Documents to:

**Special Bids and Awards Committee for  
Public-Private Partnership Projects of the DPWH  
Laguna Lake Expressway-Dike Project (LLEDP)  
2nd Floor, DPWH Building, Bonifacio Drive, Port Area, Manila**

The Qualification Documents must be submitted between 9:00 a.m. and 1:00 p.m., Manila, Philippines time, on the Qualification Documents Submission Date. The date and time of submission shall be recorded through the use of an official clock designated by the SBAC for that purpose. The Bidders shall be responsible for synchronizing their timepieces with the official clock the day prior to the Qualification Documents Submission Date. Each set of the Qualification Documents submitted shall be numbered in the order received and stamped with the time of receipt. In addition, the receipt of each set of Qualification Documents will be recorded in a register in the order of receipt specifying the date, time and name of the Prospective Bidder submitting the same.

Qualification Documents submitted after 1:00 p.m., Manila, Philippines time, on the Qualification Documents Submission Date shall not be accepted.



Immediately after 1:00 p.m., Manila, Philippines time, on the Qualification Documents Submission Date, the SBAC will begin the opening proceedings by announcing the names of the Prospective Bidders who have submitted Qualification Documents and any such other details as the SBAC may consider appropriate. The SBAC will then proceed with opening the envelopes of each Prospective Bidder, one at a time, in the order in which the same were received. Each Prospective Bidder shall name a representative who shall have a written authorization from the Bidder or Lead ~~Consortium member~~Member to respond to the SBAC should it have any queries regarding the Qualification Documents. The representatives for each Prospective Bidder who attend the opening proceedings shall sign the register confirming their attendance.

## 7. Evaluation of Qualification Documents

The SBAC shall examine the Qualification Documents over a period of no longer than ~~ten~~twenty (20) days after the Qualification Documents Submission Date. The detailed evaluation of the compliance by the Prospective Bidder with the ~~Legal, Technical and Financial Capability~~Qualification Requirements for the Project shall be based solely upon the Qualification Documents submitted.

The SBAC reserves the right to seek clarification from Prospective Bidders on the form and contents of their Qualification Documents. The SBAC also reserves the right to make inquiries with any person, government authority, client organization, ~~consortium member~~Consortium Member, officer, director, employee or other agent of any Prospective Bidder for the purpose of clarifying any matter included in its Qualification Documents.

All submitted information and any clarifications requested by the DPWH shall be assessed against the criteria for qualification as set out in Section 2 and the documents required in Section 3 and rated on a “pass-or-fail” basis. The overall rating for the evaluation will be “qualified” if each criterion is rated “passed” and each required Qualification Document and attachment is completely submitted. The overall rating will be “disqualified” if any criterion is rated “failed” or if any required Qualification Document and attachment is missing.

In reviewing the Prospective Bidder’s compliance with the Construction Experience Requirement in Section 2.2a, if a Prospective Bidder submits the name of more than one Construction Contractor to fulfill this requirement, then as long as at least one Construction Contractor is “passed,” then the Prospective Bidder will be rated “passed” for that criterion.

Similarly, in reviewing the Prospective Bidder’s compliance with the Operation and Maintenance ~~requirement~~Experience Requirement in Section 2.2b, if a Prospective Bidder submits the name of more than one O&M Contractor to fulfill this requirement, then as long as at least one O&M Contractor is “passed,” then the Prospective Bidder will be rated “passed” for that criterion.

A Prospective Bidder may also be disqualified for any of the following reasons:

- a. ~~Late~~late submission of the Qualification Documents or any part thereof;<sub>2</sub>
- b. ~~Material~~material or willful misrepresentation in the Pre-Qualification process;<sub>2</sub>

- c. ~~any~~ Corrupt ~~practice, fraud, collusion, coercion, undesirable or restrictive practice~~Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice in the Pre-Qualification process as described in Section 13-;
- d. ~~Any~~any form of political or other lobbying with respect to the Pre-Qualification process-;
- e. ~~Illegal~~illegal conduct or attempt to influence the SBAC's evaluation of the Qualification Documents or the Pre-Qualification process-;
- f. ~~Any~~any Conflict of Interest that would give it any unfair advantage in the Pre-Qualification process as described in Section 14-;
- g. ~~Any~~any Outstanding Dispute with ~~government~~Government as described in Section 15-;
- h. ~~Failure~~failure to comply with any of the terms, conditions and instructions of the Invitation Documents-; or
- i. ~~Other~~other grounds for rejection or disqualification of Bidders under the ~~Philippine~~-BOT Law, the Revised IRR, ~~and all~~or any other applicable laws.

The grounds for disqualification above shall also apply to all Consortium Members (in case the Prospective Bidder is a Consortium); and any Contractors proposed by the Prospective Bidder to fulfil any of the Qualification Requirements.

## 8. Notification of Results of Evaluation of Qualification Documents

~~The~~It is anticipated that the SBAC will notify all Prospective Bidders as to whether they passed the qualification stage not later than ~~ten~~five (5) days after the ~~Qualification Documents Submission Date (“Notice of Pre-Qualification”)~~SBAC determines which Prospective Bidders are pre-qualified or disqualified. All Prospective Bidders which pass the qualification stage shall be known as Pre-Qualified Bidders.

If the Prospective Bidder proposed more than one Construction Contractor to fulfill the Construction Experience Requirement in Section 2.2a, the SBAC shall also notify each Prospective Bidders as to which of the Construction Contractors they proposed were passed. Similarly, if the Prospective Bidder proposed more than one O&M Contractor to fulfill the ~~O&M~~Operation and Maintenance Experience Requirement in Section 2.2b, the SBAC shall also notify each Prospective Bidders as to which O&M Contractors they proposed were passed.

It is anticipated that the Pre-Qualified Bidders will be allowed to purchase the ~~following~~below-listed Bidding Documents ~~immediately upon~~following notification that they have been pre-qualified:

- a. Instructions to Bidders, which will give detailed information about the requirements for the preparation of Bid Proposals and the relevant evaluation criteria.

- b. Draft Concession Agreement and its Annexes.
- c. Minimum Performance Standards and Specifications (MPSS), which will set out technical requirements for design, construction, operation, and maintenance of the project through the life of the concession period.
- d. Other technical documents prepared by or on behalf of DPWH.

## 9. Lock-Up Rules during the Bidding Process

The following rules (“**Lock-Up Rules**”) shall apply from the Qualification Documents Submission Date ~~to the Bid Proposals Submission Date~~ until the execution of the Concession Agreement (“**Qualification Period**”):

### a. Corporation and Partnership

- (1) For a Prospective Bidder which is a corporation ~~or~~, partnership or other legal entity, no restrictions shall be imposed on the ownership structure of such a Prospective Bidder.
- (2) However, if a Prospective Bidder which is a corporation ~~or a~~, partnership or other legal entity proposes an Affiliate to meet any of the Qualification Requirements, the proposed Affiliate must remain as such in accordance with the criteria for Affiliates as provided in Section ~~142.1~~ 42.1 of these Instructions to Prospective Bidders.

### b. Consortium

- (1) A Consortium Member, except for the Lead Member and the entity or entities (if aggregated) that ~~meets~~ meet(s) the Financial ~~Qualification~~ Capability Requirement, may leave the Consortium and not be replaced by any other entity (“**Withdrawal**”), subject to the following conditions and compliance with the requirements of Section 9.b.(4):
  - (a) A Consortium Member proposed to meet the Technical Qualification Requirements cannot Withdraw from the Consortium, except in the event of a Substitution as provided in paragraph ~~(b)(ii)~~ (b)(2) below.
  - (b) Any Consortium Member not proposed to meet the Technical or Financial ~~Qualification~~ Capability Requirements may withdraw from the Consortium.
  - (c) Withdrawing Consortium Members cannot join any other Bidder that has been pre-qualified to bid for the Project.
- (2) A Consortium Member, except for the Lead Member and the entity or entities (if aggregated) that ~~meets~~ meet(s) the Financial ~~Qualification~~ Capability Requirement, may be replaced by another entity not previously identified in the Consortium’s Business Structure (Annex QD-1B) (“**Substitution**”), subject to the following conditions and compliance with the requirements of Section 9.b.(4):

- (a) If the Consortium Member leaving the Consortium is the only entity which is proposed to meet a particular Technical Qualification Requirement, then the substitute should meet the particular Technical Qualification Requirement which such Consortium Member was proposed to meet and the Legal Qualification Requirements.
- (b) The substitute should not be ~~any of the~~ a Consortium Member (or an Affiliate of such entities) identified in Annex QD-1B (Business Structure) of another Pre-Qualified Bidder. ~~For the avoidance of doubt, Bidders shall include those Bidders that failed to pre-qualify to bid for the Project.~~
- ~~(c) Notwithstanding a Substitution, the Consortium Members originally identified in Annex QD-1B (Business Structure) should continue to commit to own not less than 80% of the outstanding voting shares of the Concessionaire.~~
- (3) A Consortium Member may increase or reduce its committed percentage equity interest in the Consortium, subject to the following conditions and compliance with the requirements of Section 9.b.(4):

Any Consortium Member can increase or reduce its committed percentage equity interest in the Consortium as specified in Annex QD-1B (Business Structure), provided that, the Consortium ~~Member~~Member(s) fulfilling the Construction Experience Requirement and/or the O&M Operation and Maintenance Experience Requirement, and/or ~~is~~as otherwise required, under the ITPB, to maintain a minimum percentage equity interest in the Consortium shall not be allowed to reduce its or their committed percentage equity interest in the Consortium to a level below the minimum required.

- ~~(4) The nominated Construction Contractor or Subcontractor fulfilling the Construction Experience Requirement may not leave the Consortium during the Lock-up Period.~~
- ~~(5) The nominated O&M Contractor fulfilling the O&M Experience Requirement may not leave the Consortium during the Lock-up Period.~~
- ~~(6)~~ (4) In the event of a Withdrawal, Substitution or change in equity interest in ~~the Concessionaire~~a Consortium, the following requirements must be met:

- (a) The Lead Member must—:
- i. maintain its commitment to own at least 33% of the ~~outstanding voting shares of the Concessionaire~~interest in the Consortium; and
  - ii. always own the highest percentage ~~of outstanding voting shares of the Concessionaire~~interest in the Consortium.
- (b) No Consortium Member, on its own or together with its Affiliates, shall own a greater percentage ~~of outstanding voting shares~~interest in

the ~~Concessionaire~~ Consortium than the Lead Member, on its own or together with its Affiliates.

- (c) The Consortium Member (if any) proposed to meet the ~~Technical Qualification and O&M Requirements for the Expressway Dike Component~~ Construction Experience Requirement for the expressway, as set forth in Section 2.2a(3) and/or Operation and Maintenance Experience Requirement, as set forth in Section 2.2b(2)(b) must always commit to own at least 10% of the outstanding voting shares of the Concessionaire.
- (d) Any change in the composition of the Consortium or ~~the shareholding~~ its ownership structure ~~of the Concessionaire~~ must be approved by the SBAC.
- (e) ~~A Bidder may only submit a single~~ An application ~~with the SBAC during the Qualification Period for all changes in the composition of the Consortium or in the proposed equity structure of the Concessionaire. The application~~ reflecting such change must be submitted to the SBAC no later than 45 days before the Bid Proposals Submission Date. Together with its application, the Prospective Bidder should submit the relevant Qualification Documents ~~which should be revised to reflect the proposed changes applied for.~~ The proposed changes applied for shall only be approved if the Prospective Bidder ~~still~~ still complies with all of the Qualification Requirements and the other terms and conditions in the Instruction to Prospective Bidders ITPB, and if such change does not delay the submission of Bid Proposals on the Bid Proposals Submission Date.
- (f) In the event of a Withdrawal, the Bidder must ~~only~~ only inform the SBAC ~~on~~ in writing in accordance with Section 1.8 on or prior to the Bid Proposals Submission Date.
- (g) If the proposed Consortium composition change is not approved by the SBAC in the SBAC's discretion, applying the criteria set forth in this Section 9, the applying Bidder may revert to the original Consortium composition or proposed ~~Concessionaire shareholding~~ Consortium ownership structure, as provided in its Qualification Documents.

(5) No change in Control of the Lead Member of a Consortium shall be permitted without the prior written approval of the SBAC.

c. Contractors

(1) Neither the nominated Construction Contractor(s) fulfilling the Construction Experience Requirement nor the nominated O&M Contractor(s) fulfilling the Operation and Maintenance Experience Requirement may withdraw from a Prospective Bidder during the Lock-up Period, unless:

- (a) If the Construction Contractor or O&M Contractor withdrawing from

the Prospective Bidder is the only entity which is proposed to meet a particular Technical Qualification Requirement, then the Prospective Bidder shall nominate a replacement Construction Contractor or O&M Contractor that meets or exceeds the particular Technical Qualification Requirement which such withdrawing Construction Contractor or O&M Contractor was proposed to meet.

(b) If the Construction Contractor or O&M Contractor withdrawing from the Prospective Bidder is not the only entity which is proposed to meet a particular Technical Qualification Requirement, then the other Construction Contractor(s) or O&M Contractor(s) proposed by the Prospective Bidder to meet the applicable Technical Qualification Requirement shall confirm in writing that they remain willing to participate in the Project with the applicable Prospective Bidder.

(c) An application reflecting such change must be submitted to the SBAC no later than 45 days before the Bid Proposals Submission Date. Together with its application, the Prospective Bidder should submit the relevant Qualification Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the Prospective Bidder complies with all of the Qualification Requirements and the other terms and conditions in the ITPB, and if such change does not delay the submission of Bid Proposals on the Bid Proposals Submission Date.

d. Additional Consortium Members and Contractors

Other than in connection with a Withdrawal or Substitution (as each such term is defined in clause (b) above) as provided in clause (b) above or the withdrawal of a Construction Contractor or O&M Contractor as provided in clause (c) above, in the event that any Prospective Bidder adds a Construction Contractor or O&M Contractor or any Consortium adds additional Consortium Members, an application reflecting such change must be submitted to the SBAC no later than 45 days before the Bid Proposals Submission Date. Together with its application, the Prospective Bidder should submit the relevant Qualification Documents revised to reflect the proposed changes. The proposed changes shall only be approved if the Prospective Bidder complies with all of the Qualification Requirements and the other terms and conditions in the ITPB, and if such change does not delay the submission of Bid Proposals on the Bid Proposals Submission Date.

ee. Consequence of Violation of Lock-Up Rules

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

## 10. Failure of Qualification 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 SBAC

may, in its sole discretion, declare the Pre-Qualification process ~~may be declared~~ a failure, and the Bidding Process may be cancelled, suspended or relaunched, at the SBAC's discretion.

## 11. Right to Reject Qualification Documents, Waive Minor Defects, and Not Proceed with the Bidding

The DPWH reserves the right to accept or reject all or any Application to Pre-Qualify to Bid without assigning any reason whatsoever.

The DPWH reserves the right to waive any minor defects in the ~~bids, and accept the offer it deems most advantageous to the Government~~ Qualification Documents of any Prospective Bidder.

At any time, the DPWH reserves the right not to proceed with the Bidding Process and the execution of the Concession Agreement without prior notice or liability, and without any obligation to give any reason not to proceed.

## 12. General Conditions and Prohibitions

By submitting Qualification Documents and participating in the pre-qualification process, the Prospective Bidder acknowledges and agrees that:

- a. it, including all Consortium Members, proposed Construction Contractors and O&M Contractors, their Affiliates, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process;
- b. it, including all Consortium Members, proposed Construction Contractors and O&M Contractors, their Affiliates, and their respective officers, employees, agents and advisers shall not commit any Corrupt ~~Fraudulent, Coercive~~ Practice, Fraud, Collusion, Coercion, Undesirable ~~and~~ Practice or Restrictive Practices Practice;
- c. it, including all Consortium Members, Proposed Construction and O&M Contractors, their Affiliates, and their respective officers, employees, agents and advisers, will not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process; ~~and~~
- d. it accepts all the terms and conditions of the Invitation Documents; and

~~The.~~ the SBAC has the right to amend, revise, modify or clarify any of the Invitation Documents at any time, ~~in accordance with Section 6.~~

## 13. Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, and Restrictive Practice

~~For the purposes of this Section, the~~ The following terms shall have the meaning hereinafter respectively assigned to them:

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

Aside from being disqualified from the Bidding, any person found to be engaging in any Corrupt Practice, Fraud, Collusion, Coercion, ~~or~~ Undesirable [Practice](#) or Restrictive ~~Practices~~[Practice](#) shall incur civil and criminal liability under the applicable laws and regulations and shall be prohibited from participating in any bidding conducted by the DPWH.

#### 14. Conflict of Interest

Prospective Bidders and Consortium Members, including their proposed/nominated ~~contractors~~[Construction Contractors, O&M Contractors](#) and Affiliates in the Project, must not have any Conflicts of Interest. Any of the following will be considered a Conflict of Interest:

- a. A Prospective Bidder, any of its Consortium Members, or any of their Affiliates (of either a Prospective Bidder or any of its Consortium Members) is



a member of another Consortium, or an Affiliate of a member of another Consortium.

- b. A Prospective Bidder, any of its Consortium Members, or any of their Affiliates (of either a Prospective Bidder or any of its Consortium ~~Member~~Members) is proposed/nominated as a Construction Contractor or O&M Contractor of another Prospective Bidder.
- c. A Prospective Bidder, any Consortium Member (if the Prospective Bidder is a Consortium), or any of their Affiliates (of either a Prospective Bidder or of the Consortium Member) has ownership interest of ~~at least~~ twenty percent (20%) or more in any other Prospective Bidder, any Consortium Member of any other Prospective Bidder, or any of its Affiliates that is nominated to fulfill any of the Qualification Requirements.
- d. A member of the board of directors, partner, officer, employee, or agent of a Prospective Bidder, any Consortium Member (if the Prospective Bidder is a Consortium), or any of their Affiliates, who is directly involved in any capacity related to the Bidding Process of such Prospective Bidder, any Consortium Member (if the Prospective Bidder is a Consortium), or any of their Affiliates is also directly involved in any capacity related to the Bidding Process for the Project for another Prospective Bidder, any Consortium Member of another Prospective Bidder, or any of their Affiliates.

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

The same conflict of interest arises ~~in case of~~ for consulting firms ~~engaged~~ acting as professional advisors, Construction Contractors and O&M Contractors, in each case, to the extent such entities are engaged by more than one Prospective Bidder in any capacity related to the Bidding Process, unless ~~the~~ said Construction Contractor, O&M Contractor or professional advisor discloses such fact in writing ~~and to each relevant Prospective Bidder,~~ submits a Conflict Management Plan to its client Prospective such Prospective Bidders, Grantor and the Public-Private Partnership Center. The and submits to DPWH copy furnished the PPP Center a written consent from each such Prospective Bidder stating that such Prospective Bidder: (a) Has been notified of the potential conflict of interest, has reviewed and approved the Conflict Management Plan prepared by such Construction Contractor, O&M Contractor or professional adviser and the parties consent to such Construction

Contractor, O&M Contractor or professional adviser's engagement by the other relevant Prospective Bidder(s).

Each affected Prospective Bidder must secure the written consent of ~~Grantor~~the DPWH stating that the Conflict Management Plan is sufficient prior to proposing or nominating such Construction Contractor or O&M Contractor in its Qualification Documents or seeking professional advisory services from ~~the~~said professional advisor.

e. ~~Any of the following shall be considered a Conflict of Interest because of engagement by the Grantor~~**Engagement of DPWH, LLDA or the PPP Center related entities or individuals** for the Project:

(1) ~~A~~Unless otherwise waived by the pertinent government agency, a 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 DPWH, LLDA or the PPP Center~~in the, within the year immediately preceding this issuance and for the purpose of preparation of any Bidding Documents or the design, or technical specifications of the Project or in connection with the Bidding Process~~and such consultant is in possession of proprietary or confidential data which are not generally available to the stakeholders of the Project.

(2) Unless otherwise waived by the pertinent government agency, a Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities, engages ~~any~~in relation to the Project (i) Any legal, financial, or technical ~~advisor~~consultant of the DPWH, LLDA or the PPP Center ~~in relation to~~who is currently involved in the Project; or ~~anyone~~(ii) Anyone who is or was an employee of the DPWH, LLDA or the PPP Center ~~less than one (1) year before his or her engagement in relation to the Project.~~

Provided that said individual engaged is currently or was, directly and materially involved in the Project, clothed with and exercising discretionary functions and such engagement provides such Bidder, Consortium Member, Contractors or Affiliate an undue advantage in the Bidding Process.

Provided further that, for purposes of determining direct and material involvement, mere processing of data, documents, other submissions and the like; performance of basic office or project management functions; drafting, enforcing or interpreting government or agency

procedures, regulations or laws; or briefing of abstract principles related to the Project or matters of law and other similar innocuous functions do not fall within the term material involvement.

~~by the~~ Provided finally that a cooling –off period of one year following the separation from the DPWH, LLDA or PPP Center of the former employee described in this clause (ii) shall be observed and after the lapse thereof, any such former employee may be engaged by a Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities in relation to the Project and such engagement shall not be a Conflict of Interest as defined herein.

If at any time prior to the signing of the Concession Agreement, any Prospective Bidder or Bidder, Consortium Member, ~~Proposed~~ Construction Contractor or O&M Contractor, or any Affiliate of any of these, is found to have a Conflict of Interest as defined in this Section, it shall be disqualified from further participating in the Bidding Process. ~~All bidders involve in any conflict of interest~~ Subject to Section 14(d), all Bidders involved in any Conflict of Interest shall be disqualified.

## 15. Outstanding Dispute with Government

For purposes of Section 15, an “Outstanding Dispute” with ~~government~~ Government” refers to any pending judicial, administrative or alternative dispute resolution proceeding, including suspension or blacklisting proceedings, between the Prospective Bidder, any Consortium Members or any Affiliates or contractors proposed by the Prospective Bidder, on the one hand, and the national ~~government~~ Government, any of its offices, agencies or instrumentalities, or any ~~government-owned~~ Government-owned or controlled corporation, arising out of, or in connection with any bidding, project or contract of the national ~~government~~ Government, any of its instrumentalities or any ~~government-owned~~ Government-owned or controlled corporation which is intended to provide a critical basic necessity and/or is of paramount public interest and importance, and where, in the opinion of the DPWH, such dispute would be an impediment to the successful implementation of the Project.

## 16. Governing Law and Rules

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

## 17. Definitions

The following words or terms shall have the following meanings in this Instructions to Prospective Bidders and other Invitation Documents:

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

- b. **“Bid”** means a valid offer to undertake the Project to be submitted by a Bidder.
- c. **“Bid Proposal”** means the bid letter, Bid Security, and additional requirements for Consortia with new members, Technical Proposal and Financial Proposal to be submitted by the Bidders pursuant to the Instructions to Bidders that will be released by DPWH after Pre-Qualification.
- d. **“Bid Proposals Submission Date”** means the day to be set by the DPWH for the submission of Bid Proposals.
- e. **“Bid Security”** means the instrument provided by the Bidder to guarantee that if it should win the Bidding it will enter into the Concession Agreement with the DPWH within the time prescribed.
- f. **“Bidder”** means any partnership, corporation, or Consortium which participates in the Bidding Process.
- g. **“Bidding Documents”** means the documents enumerated in Section 1.2 which may be purchased by Pre-Qualified Bidders.
- h. **“Bidding Process” or “Bidding”** means the process beginning from the publication of the Invitation to Pre-Qualify to Bid until the signing of the Concession Agreement, as described in Section 1.4.
- i. **“Build-Operate-and-Transfer Law” or “BOT Law”** means Republic Act No. 6957, otherwise known as “An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes, as amended by Republic Act No. 7718, and its Revised IRR.
- ~~j. **“BT”** means Build and Transfer, a contractual arrangement whereby the Project Proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the Agency which shall pay the Project Proponent on an agreed schedule its total investment expended on the project, plus a reasonable rate of return thereon.~~
- ~~k. **“BTO”** means Build Transfer and Operate, a contractual arrangement whereby the Implementing Agency contracts out the construction of an infrastructure facility to a private entity/Concessionaire such that the latter builds the facility on a turnkey basis, assuming cost overruns, delays, and specified performance risks. Once the facility is commissioned satisfactorily, the title is transferred to the Implementing Agency. The Concessionaire, however, operates the facility on behalf of the Implementing Agency under the Concession Agreement.~~
- l. **“Concession Agreement”** means the contract to be executed between the DPWH, the LLDA, and the Winning Bidder and/or any legal entity formed by the Winning Bidder, to the extent allowed under the ITPB.
- m. **“Concessionaire”** means the counter-party of the DPWH and the LLDA under the Concession Agreement which is a duly qualified and selected private entity

that shall undertake the Project under the Agreement.

- ml.** “*Conflict of Interest*” is defined in Section 14.
- mm.** “*Consortium*” means an unincorporated association of natural or ~~juridical~~legal persons bound by contract or law, solidarily undertaking by mutual written agreement a common enterprise which is to participate in the Bidding Process of the Project.
- en.** “*Consortium Member*” means any of the natural or ~~juridical~~legal persons or group of 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 corporation that will become the Concessionaire if the Consortium is awarded and accepts the Project.
- po.** “*Construction*” means all aspects of construction work and activities relating to the Project, as provided in the Concession Agreement.
- qp.** “*Construction Contractor*” means an entity which may be engaged by the Concessionaire to undertake the Construction, in accordance with the Concession Agreement, and which is not a Prospective Bidder or a Consortium Member or an Affiliate thereof.
- rq.** “*Construction Experience Requirement*” refers to the Technical Qualification Requirements that must be met by a Prospective Bidder, as provided in Section 2.2a.
- r.** “Control” (including, with correlative meanings, the terms “Controlling”, “Controlled by” and “under common Control with”) as used with respect to any corporation, partnership or other legal entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such corporation, partnership or other legal entity, whether through the ownership of voting securities, by agreement or otherwise.
- ~~s.~~ ~~“Control” means, for purposes of defining an Affiliate, the power to direct or cause the direction of the management policies of a body corporate whether through:~~
- ~~(i) ownership of at least 50% plus one share of the outstanding voting shares; or~~
  - ~~(ii) ownership of at least 20% of the outstanding voting shares, and (a) possession of the voting rights or other voting agreements entered into at least one year before the Qualification Documents Submission Date over a certain number of shares, such that the total number of shares owned and over which it has voting rights is equivalent to at least 50% plus one share of the outstanding voting shares, or (b) the ability to elect a majority of the members of the Affiliate’s board of directors; or~~
  - ~~(iii) any legal agreement entered into at least one year before Pre Qualification Documents Submission Date, which has an arrangement with similar effect as in (i) or (ii) above.~~
- ts.** “*Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, and*

*Restrictive Practice*” are each defined in Section 13.

- ut. “*day*” means a calendar day, unless otherwise specified.
- vu. “*Detailed Engineering Design*” means the Detailed Engineering Design for the Project, which shall be prepared by the Concessionaire pursuant to the Concession Agreement and the Minimum Performance Standards and Specifications.
- wv. “*DPWH*” means the Department of Public Works and Highways.
- xw. “*Facility Operator*” means the entity authorized by the Toll Regulatory Board to handle all aspects of the Operation and Maintenance of the Expressway facility under the LLEDP, and is either the Concessionaire or an entity engaged by the Concessionaire, and which must be a corporation organized under Philippine laws and at least 60% of (i) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors; and (ii) the total number of outstanding shares of stock entitled to vote in the election of directors; must be owned by Philippine citizens.
- x. “*Financial Capability Requirement*” refers to the qualification requirements that must be met by a Prospective Bidder, as provided in Section 2.3.
- y. “*Government*” means the Government of the Republic of the Philippines and any agency or instrumentality thereof.
- z. “*Invitation Documents*” means the Invitation to Pre-Qualify to Bid, this Instructions to Prospective Bidders, including its Annexes, the Information Memorandum, and any supplemental notices and special bid bulletins issued by the SBAC from the date of first publication of the Invitation to Pre-Qualify to Bid until the Qualification Document Submission Date.
- aa. “*ISO*” means the International Organization for Standardization.
- bb. “*Laguna Lake Expressway-Dike Project*” or “*LLEDP*” or the “*Project*” refers to the financing, design, construction, and operation and maintenance, under the BOT Law, of (a) an Expressway-Dike Component, about 47 kilometers (km) long, starting in Taguig City and ending in Los Banos, Laguna, and (b) a Reclamation Component covering about 700 hectares west of and adjoining the Expressway-Dike in Taguig City and Muntinlupa City.
- cc. “*Lead Member*” means, for a Bidder which is a Consortium, the Consortium Member having the highest percentage of interest in the Consortium, which should not be less than 33%, and which should be designated in writing as such by the other Consortium Members.
- dd. “*Legal Qualification Requirements*” refers to the ~~Qualification Requirements~~qualification requirements that must be met by a Prospective Bidder, as provided in Section 2.1.
- ee. “*LLDA*” means the Laguna Lake Development Authority.

- ff. **“Maintenance”** means the day to day upkeep and repair of the Project necessary or required for its safe and proper operation, including the provision of labor, materials, equipment, and supervision, in accordance with the Concession Agreement.
- gg. **“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 Project, and which is annexed to and made an integral part of the Concession Agreement.
- hh. **“Net Worth”** means with respect to any person, corporation, partnership or other legal entity, such person or entity’s total assets minus total liabilities calculated in accordance with generally accepted accounting principles.
- hhi. **“O&M Contractor”** means an entity identified by a Prospective Bidder to establish Operation and Maintenance Experience under the Instructions to Prospective Bidders, which is not a Prospective Bidder or a Consortium Member or an Affiliate thereof, and which entity may eventually be engaged as Facility Operator or have at least 20% interest in the Facility Operator.
- hij. **“Operation and Maintenance Experience Requirement”** refers to the Technical Qualification Requirements that must be met by a Prospective Bidder, as provided in Section 2.2 b.
- hk. **“Outstanding Dispute with Government”** is defined in Section 15.
- hjl. **“Pre-Qualification”** means the first stage of the Bidding Process involving the submission, opening and evaluation of the Qualification Documents submitted by the Prospective Bidders.
- hkm. **“Pre-Qualification Conference”** is defined in Section 1.11.
- hkn. **“Pre-Qualified Bidder”** means a Prospective Bidder which passed ~~Pre-Qualification~~Pre-Qualification and is, therefore, allowed to submit a Bid Proposal for the Project.
- hmo. **“Prospective Bidder”** means any partnership, corporation, other legal entity or Consortium which participates in the Bidding Process by applying to pre-qualify to Bid.
- hnp. **“Qualification Documents”** mean the documents required to be submitted by the Bidder during the Pre-Qualification stage as provided in Section 3.
- oqq. **“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 2, and includes Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability ~~Qualification~~ Requirements.

~~pprr~~. **“Reclaimed Area”** means the approximately 700 hectares of foreshore and offshore areas, about 450 m wide and 16 km long, in Taguig City and Muntinlupa City, which is to be reclaimed, developed, and utilized, in accordance with the Concession Agreement.

~~qqss~~. **“Reclamation Component”** means the Project Component B of the LLEDP pertaining to the Rawland Reclamation and Horizontal Development of the Reclaimed Area.

~~tt~~. **“SBAC”** means the Special Bids and Awards Committee for Public-Private Partnership Projects of the DPWH constituted under its Special Order No. 68, dated 28 March 2011, as amended, pursuant to the BOT Law.

uu. **“Technical Qualification Requirements”** refers to the qualification requirements that must be met by a Prospective Bidder, as provided in Section 2.12

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

- (1) Within the last five years prior to the Qualification Documents Submission Date by any entity whose experience is proposed by the Prospective Bidder to meet the Technical Qualification Requirements
  - (a) failure to satisfactorily perform any of its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
  - (b) expulsion from any project or contract;
  - (c) termination or suspension of any of its projects or contracts due to breach of its obligations thereunder; ~~or~~
  - (d) material violation of laws and/or regulations applicable to any of its projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;
- (2) Inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list of major international financial institutions such as the World Bank, ~~European~~European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank and African Development Bank Group, whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
- (3) involvement in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, ~~and~~ or Restrictive Practice or having Conflicts of Interest.

ttww. **“Winning Bidder”** means the Bidder whose Bid is determined by the



DPWH as the “Best Complying Post-Qualified Bid,” and, thus, granted a Notice of Award for the Project.

**ANNEX QD-1A: Business Structure**  
(for a Prospective Bidder which is a partnership or corporation)

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

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 the Construction Experience Requirement

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

Note:

~~a-~~ If this requirement is fulfilled by the Prospective Bidder proposing a Construction Contractor or Construction Contractors, list at least one and up to five Construction Contractors and provide the information above for each of them.

4. Affiliates, if any, of the Entity which fulfills the Construction Experience Requirement, whose completed projects are being submitted as evidence of that entity's construction experience.

Name	
Address	
Contact Person	
Telephone Number	
Email	

5. Entity which fulfills the Operation and Maintenance Experience Requirement

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

Note: If this requirement is fulfilled by the Prospective Bidder proposing an O&M Contractor or O&M Contractors, list at least one and up to three O&M Contractors and provide the information above for each of them.

6. Affiliate, if any, of the Entity which fulfills the Operation and Maintenance Experience Requirement whose experience is being submitted as evidence of that entity's operation and maintenance experience.

Name	
Address	
Contact Person	
Telephone Number	
Email	

7. Entity which fulfills the Financial Capability Requirement

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

- (h) Affiliate, if any, of the entity which fulfills the Financial Capability Qualification Requirement, whose financial capability is being submitted as evidence of that entity’s financial capability.

Name	
Address	
Contact Person	
Telephone Number	
E-mail	

For and on behalf of (Name of Prospective Bidder)

(Signature of Authorized Representative)  
(Name, Title, and Date)

Bidders

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**ANNEX QD-1B: Business Structure**  
 (for a Prospective Bidder which is a Consortium)

Name of Consortium:

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

1. Consortium Members

	Lead Member	Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation, partnership, etc.)				

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	

a. Consortium 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	

3. Entity which fulfills the Construction Experience Requirement

a. Name of Entity	
b. Consortium Member to which this entity is related	
c. Relationship to Consortium Member	
d. Address	
e. Website	
f. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note:

~~a.~~ If this requirement is fulfilled by the Prospective Bidder proposing a Construction Contractor or Construction Contractors, list at least one and up to five Construction Contractors and provide the information above for each of them.

4. Affiliates, if any, of the entity which fulfills the Construction Experience Requirement, whose completed projects are being submitted as evidence of that entity's construction experience.

Name	Address	Contact Person	Telephone No.	E-mail

5. Entity which fulfills the Operation and Maintenance Experience Requirement

a. Name of Entity	
-------------------	--

b. Consortium Member to which this entity is related	
c. Relationship to Consortium Member	
d. Address	
e. Website	
f. Contact Person	
Telephone	
Fax	
E-mail	

Note:

~~a.~~ If this requirement is fulfilled by the Prospective Bidder proposing an O&M Contractor or O&M Contractors, list at least one and up to three O&M Contractors and provide the information above for each of them.

6. Affiliate, if any, of the entity which fulfills the Operation and Maintenance Experience Requirement, whose experience is being submitted as evidence of that entity’s operation and maintenance experience.

Name	
Address	
Contact Person	
Telephone Number	
Email	

7. Entity which fulfills the Financial Capability Requirement

a. Name of Entity	
b. Relationship to	
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 Requirement, whose financial capability is being submitted as evidence of that entity’s financial capability.

Name	
Address	
Contact Person	
Telephone Number	
E-mail	

Bidders

Instructions to Prospective

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

(Signature of Authorized Representative)  
(Name, Title and Date)



**ANNEX QD-2: Basic Information Sheet**

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

- a. To be submitted by all entities listed in all sections of the Business Structure (Form QD-1A or QD-1B).
- b. Required attachment: For all entities submitting this form:
  1. a certified true copy of its latest General Information Sheet, stamped “received” by the Securities and Exchange Commission (SEC) or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The certification may come from either the SEC or its equivalent in a foreign country, or the entity’s corporate secretary. If it comes from the entity’s corporate secretary, the certification must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.
  2. Certified True Copy of SEC Certificate of Incorporation, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The SEC Certificate of Incorporation or the equivalent document for a foreign entity must be certified by the SEC or its equivalent in a foreign country. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue. If in a particular foreign jurisdiction the Certificate of Incorporation is issued by the registrar of the corporation, then the SBAC will accept a certified true copy of the Certificate of Incorporation issued by the registrar of the corporation.
  3. Certified true copy of Articles of Incorporation or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The Articles of Incorporation may be certified either by the SEC or its equivalent in a foreign country, or by the entity’s corporate secretary. All certifications by the entity’s corporate secretary must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue.
  4. Certified true copy of By-Laws or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency

equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its ~~juridical~~legal personality or capacity. The By-Laws may be certified either by the SEC or its equivalent in a foreign country, or by the entity’s corporate secretary. All certifications by the entity’s corporate secretary must be under oath and notarized. If the certification is issued or notarized outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate nearest the place of issue..

The submission of one ~~document~~or more documents that ~~is~~are certified, notarized and authenticated, and which ~~serves~~serve as the equivalent of ~~the~~ four documents ~~specified in clause b of this Basic Information Sheet~~, shall be considered sufficiently compliant with the requirements of ~~Section 3~~clause b ~~(ii)~~of this Basic Information Sheet. However, the entity submitting ~~this document~~such document(s) should issue a notarized certification that such document ~~is~~or documents are equivalent to the four documents required under ~~Section 3~~clause b ~~(ii)~~of this Basic Information Sheet.

1. Name of Entity	
2. Type of entity (please check one)	Partnership 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 QD-1A or QD-1B?	<input type="checkbox"/> Yes, Affiliate of
	<input type="checkbox"/> No
7. Place of Incorporation or Registration	
8. Year of Incorporation or Registration	
9. Principal Purposes or Businesses	

10. Shareholder or Partner Information

Name of Shareholder or Partner	Nationality	Percentage of shareholding or interest

(Insert rows as necessary)

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

Bidders

Instructions to Prospective

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Name of Beneficial Owner	Nationality	Percentage total of Beneficial ownership

(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)

(Name, Title, and Date)

(Signature of Authorized Representative)

(Name, Title, and Date)

**ANNEX QD-3: Notarized Certification of Absence of Unsatisfactory Performance Record**

- a. To be ~~accomplished~~submitted by the authorized representative of each of the Prospective Bidder and the entities listed in all sections of the Business Structure (Form QD-1A or QD-1B).

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

Republic of the Philippines )  
 ) s.s.

Certification of Absence of Unsatisfactory Performance Record

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

I, *(name)*,*(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation) of (name of company 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 company represented)*, that *(name of company represented)* does not have any record of unsatisfactory performance on any of its projects and contracts. “Unsatisfactory Performance” means any of the following:

- (1) within the last five years prior to the Qualification Documents Submission Date by any entity whose experience is proposed by the Prospective Bidder to meet the Technical Qualification Requirements:
  - ~~1.(a)~~ ~~Failure~~failure to satisfactorily perform any of ~~our~~its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
  - ~~2.(b)~~ ~~Expulsion~~expulsion from any project or contract;
  - ~~3.(c)~~ ~~Termination~~termination or suspension of any of its projects or contracts due to breach of its obligations thereunder;
  - (d) material violation of laws and/or regulations applicable to any of its projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;

- 4.(2) ~~Inclusion~~inclusion in a blacklist issued by any governmental agency; of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list of major international financial institutions such as the World Bank, European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank and African Development Bank Group, whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
- 5.(3) ~~Involvement~~involvement in any Corrupt, ~~Fraudulent, Coercive~~ Practice, Fraud, Collusion, Coercion, Undesirable; Practice or Restrictive Practice or having Conflicts of Interest.

*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-4: Construction Experience**

- a. To be submitted by the entity or entities which fulfill the Construction Experience Requirement in Section 2.2a as identified in the Business Structure (Form QD-1A or QD-1B), item 3.
- b. Required attachment for each entity submitting this form:
  - (i) ~~Notarized~~notarized Certificate of Project Completion from the project’s owner.
  - (ii) ~~If~~ the project was completed by an Affiliate of the entity which fulfills the Construction Experience Requirement, evidence of such affiliation.
  - (iii) certified true copy of a valid license issued by the PCAB for Large B Classification/License Category AAA, in the case of a Filipino entity, or in the case of a foreign entity, an equivalent license issued by an accreditation institution in the foreign entity’s country of origin, provided that such foreign entity must secure a license and accreditation from the PCAB after the Bidder is awarded the Project;~~and~~
  - (iv) certified true copy of a valid ISO 9001 certification; ~~(or its equivalent); and~~
  - (v) for each completed project referenced with respect to the satisfaction of the Construction Experience Requirement, the relevant original contract price and the methodology for determining the equivalent price in 2014.

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

1. Entity which fulfills the Construction Experience Requirement in Section 2.2a, as identified in item 3 of the Business Structure (Form QD-1A or QD-1B).

Prospective Bidder:	
Entity which fulfills the	
Relationship to Prospective Bidder:	<i>(Prospective Bidder / Consortium Member / Construction</i>

2. Project Completed:

Name of Project	
Location	
Description	
Date of Contract	
Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

3. Other Projects

a. Name of Project:

Location	
Description	
Date of Contract	
Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

b. Name of Project:

Location	
Description	
Date of Contract	
Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

c. Name of Project:

Location	
Description	
Date of Contract	
Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually	

completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

d. Name of Project

Location	
Description	
Date of Contract	
Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

e. Name of Project

Location	
Description	
Date of Contract	
Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

f. Name of Project

Location	
Description	
Date of Contract	



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Nature of Involvement	
Client*	
Cost of Contract	
Value of work actually completed	
Name of Entity which Completed the Project**	

\*Please attach Certificate of Project Completion

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

**Note:** Note: Completed projects cited must meet the following minimum requirements:

A.-		
B.-		
C.-		

Category of Completed Similar Projects	Minimum Cumulative Cost or Magnitude of Completed Projects	Minimum Cost or Magnitude of Single Biggest Completed Project
Col. (1)	Col. (2)	Col. (3)
<del>B.A.</del> Flood control dikes/dams with gates and pumps	<del>PPhP 13,853 Million (50% of construction cost of LLEDP flood control of P27,706M)</del>	<del>PPhP 554 Million (2% of construction cost of LLEDP flood control) involving a dike/dam at least 3 m high</del>
B. Expressways/ highways/ viaducts/ bridges/flyovers	PPhP 13,853 Million (50% of construction cost of LLEDP expressway of P27,706M)	PPhP 554 Million (2% of construction cost of LLEDP expressway) with a length of at least 5 km
C. Reclamation with horizontal development	PPhP 12,555 Million (25% of cost of LLEDP reclamation of P 50,222M) or 175 hectares (area of one island)	PPhP 2,511 Million (5% of reclamation cost) or 50 hectares (50% of area of one island)

For and on behalf of  
(Name of Entity)

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

(Signature of Authorized Representative)  
(Name, Title, and Date)

(Signature of Authorized Representative)  
(Name, Title, and Date)

**ANNEX QD-5: Construction Contractor’s Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of, the Project**

- a. To be submitted by any Construction Contractors proposed by the Prospective Bidder to fulfill the Construction Experience Requirement in Section 2.2a, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 3.

Prospective Bidder:	
<del>Entity which fulfills the requirement</del> <u>Name of</u>	
Relationship to Prospective Bidder:	

Republic of the Philippines )  
 ) s.s.

Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of, the Project

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

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

1. *(Name of Construction Contractor)* is willing to participate, through the *(Name of Prospective Bidder)* in the Pre-Qualification for the Laguna Lake Expressway-Dike Project (LLEDP) in accordance with the Instructions to Prospective Bidders.
2. *(Name of Construction Contractor)* has been provided with a copy of the Instructions to Prospective Bidders and the other Invitation Documents and has complied with, and will continue to comply with, the requirements thereof in respect of a Construction Contractor.
23. *(Name of Construction Contractor)* has the required experience and capacity to undertake the requirements for its services in the Project in accordance with the provisions of the Invitation Documents.
34. Based on my personal knowledge or authentic documents, that the information provided in form QD-4 to QD-5 ~~are~~is true and correct.
45. If selected by *(Name of Prospective Bidder)*, *(name of Construction Contractor)* shall formally enter into a contract with the Concessionaire to perform the obligations and assume the attendant liabilities as Construction Contractor for the Laguna Lake Expressway-Dike Project (LLEDP).

*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-6: Operation and Maintenance Experience**

- a. To be submitted by the entity or entities which ~~fulfills~~fulfill the Operation and Maintenance Experience Requirement in Section 2.2b, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 5.
- b. Required attachments for each project:
  - (i) Notarized Certificate of Project Completion or Ongoing Project from Owner.
  - (ii) If the project was or is being undertaken by an Affiliate of the entity which fulfills the Operation and Maintenance Experience Requirement, evidence of such affiliation.

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

- 1. Entity which fulfills the Operation and Maintenance Experience Requirement in Section 2.2b, as identified in item 5 of the Business Structure (Form QD-1A or QD-1B)

Prospective Bidder	
Entity which fulfills the requirement	
Relationship to Prospective Bidder	

- 2. Completed or ongoing Operation and Maintenance of a toll expressway withof at least five (5) kilometers in length, ~~using manual and/or automatic toll collection system,~~ for a period of at least three years

Name of Project	
Location	
Description	
Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement	
Client*	
Cost of Contract	
Name of Entity which constructed the Project**	

\*Please attach Certificate of Project Operation and Maintenance from Owner

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

Note: Please accomplish the above table for other O&M projects

[\[Insert if applicable:](#)

<u>Name of Key O&amp;M Staff</u>	
<u>Name of Project</u>	
<u>Location</u>	
<u>Description</u>	
<u>Start Date of Operation Period</u>	
<u>End Date of Operation Period</u>	
<u>Nature of Involvement</u>	
<u>Client*</u>	
<u>Cost of Contract</u>	
<u>Name of Entity which constructed the Project**</u>	

\*Please attach Certificate of Project Operation and Maintenance from Owner

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

Note: Please include the above table for other O&M projects and for other key O&M Staff as applicable.]

- Completed or ongoing Operation and Maintenance of a flood control dike/dam/~~floodgates/pumps or similar facilities~~, at least 3m high with a capital cost of at least ~~PPhP 554M (2% of construction cost of LLEDP flood control of P 27,706M)~~, Million over a period of at least three years

<u>Name of Project</u>	
<u>Location</u>	
<u>Description</u>	
<u>Start Date of Operation Period</u>	
<u>End Date of Operation Period</u>	
<u>Nature of Involvement</u>	
<u>Client*</u>	
<u>Cost of Contract</u>	
<u>Name of Entity which constructed the Project*</u>	

\*Please attach Certificate of Project Operation and Maintenance from Owner

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

Note: Please accomplish the above table for other O&M projects

[Insert if applicable:

<u>Name of Key O&amp;M Staff</u>	
<u>Name of Project</u>	

Location	
Description	
Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement	
Client*	
Cost of Contract	
Name of Entity which constructed the Project**	

\*Please attach Certificate of Project Operation and Maintenance from Owner

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

Note: Please accomplish include the above table for other O&M projects and for other key O&M Staff as applicable.

- Completed or ongoing management of ~~a reclaimed~~ at least 35 hectares of land development project, for a period of at least three years. For purposes of this Section, “management” means the supervision, maintenance, protection, security and administrative use of, and protection of public safety on, land entrusted to the care of such party.

Name of Project	
Location	
Description (including development cost and area in hectares)	
Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement	
Client*	
Cost of Contract	
Name of Entity which developed the Area**	

\*Please attach Certificate of Project Management from Owner

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

Note: Please accomplish the above table for other land management projects

For and on behalf of (Name of Entity)

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

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and Lead Member)

(Signature of Authorized Representative)  
(Name)(Designation)

(Signature of Authorized  
Representative)  
(Name)(Designation)

**ANNEX QD-7: O&M Contractor’s Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of, the Project**

- a. To be submitted by any O&M Contractors proposed by the Prospective Bidder to fulfill the Operation and Maintenance Experience Requirement in Section 2.2b, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 5.

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 Requirements of, the Project

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

I, *(name),(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation) of (name of O&M Contractor)*, 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 declare for and on behalf of *(name of O&M Contractor)*, that:

1. *(Name of O&M Contractor)* is willing to participate, through the *(Name of Prospective Bidder)*, in the Bid for the Laguna Lake Expressway-Dike Project (LLEDP) in accordance with the Instructions to Prospective Bidders.
2. *(Name of O&M Contractor)* has been provided with a copy of the Instructions to Prospective Bidders and the other Invitation Documents and has complied with, and will continue to comply with, the requirements thereof in respect of an O&M Contractor.
23. *(Name of O&M Contractor)* has the required experience and capacity to participate in the Project in accordance with the provisions of the Invitation Documents.
34. Based on my personal knowledge or authentic documents that the information provided in form QD-6 and QD-7 is true and correct.
45. If selected by *(Name of Prospective Bidder)*, *(Name of O&M Contractor)* shall formally enter into a contract with the Concessionaire to perform the obligations and assume the attendant liabilities as Facility Operator for the Laguna Lake Expressway-Dike Project (LLEDP), or own at least 20% of the Facility Operator which will be engaged by



Concessionaire, for at least five years starting from issuance of the Toll Operation Certificate for the Project.

*Date and Place of Execution.*

For and on behalf of *(Name of O&M Contractor)*

(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-8: Key Personnel**

Name of Prospective Bidder

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

1. Proposed Project Manager

a. Name	
b. Employer	
c. Position	
d. Nationality	
e. Date of Birth	

~~f.~~ Key Experience (add columns as necessary):

Employer	
Position	
Start Date	
End Date	
Description of Projects Undertaken	

~~g.~~ Educational Background:

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

2. Proposed Manager, Design

a. Name	
b. Employer	
c. Position	
d. Nationality	
e. Date of Birth	

~~f.~~ Key Experience (add columns as necessary):

Employer	
Position	
Start Date	
End Date	
Description of Projects Undertaken	

g. Educational Background:

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

3. Manager, Operation and Maintenance

a. Name	
b. Employer	
c. Position	
d. Nationality	
e. Date of Birth	

f. Key Experience (add columns as necessary):

Employer	
Position	
Start Date	
End Date	
Description of Projects Undertaken	

g. Educational Background:

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

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

(Signature of Authorized Representative)  
(Name, Title, and Date)

**ANNEX QD-9: Notarized Statement of Financial Capability**

- a. To be submitted by the entity which fulfills the financial capability requirement in Section 2.3, as identified in the Business Structure (Form QD-1A or Form QD-1B), item 7.
- b. Required attachments:
  - (i) Certified True Copy of audited financial statements for 2013, stamped “received” by the Bureau of Internal Revenue 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 recognition or creation of its ~~juridical~~legal personality or capacity. The certified true copy of the latest audited financial statements may be issued by the relevant officer of the entity which fulfils the Financial Capability requirement. However, such certified true copy must be stamped “received” by the Bureau of Internal Revenue (or the equivalent agency in the case of the foreign entity).
  - (ii) Letters from the Prospective Bidder or Lead Member’s banks or potential lenders expressing their willingness to lend it, or the entity it will form if it becomes the Winning Bidder, at least PhP 51,900,000,000.00. This amount can be reduced by the excess of the Prospective Bidder or related entity’s net worth over PhP 13,000,000,000.00.

Prospective Bidder:	
Entity which fulfills the requirement:	
Relationship to Prospective Bidder:	

Republic of the Philippines )  
 ) s.s.

Notarized Statement of Financial Capability

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

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. The Financial Summary of (Name of Entity) from 2011-2013 is as follows:

Financial Information	2013	2012	2011
(indicate last day of accounting year)			
1) Total Assets			
2) Total Liabilities			
3) Total Net Worth			
4) Profits before Taxes			
5) Profits after Taxes			

2. The Prospective Bidder or Lead Member is a customer in good standing in the following banks (provide the names of at least two banks):

Name of Bank	
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).

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- Qualification Documents without assigning any reason and to cancel the Bidding Process at any time, without incurring any liability, and accepts all the terms and conditions of the Instructions to Prospective Bidders and other Invitation Documents.
5. *(Name of Prospective Bidder)*, including 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, Coercive~~ Practice, Fraud, Collusion, Coercion, Undesirable, Practice or Restrictive ~~Practices~~ Practice, 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 DPWH to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Bidding Process.
  7. *(Name of Prospective Bidder)* acknowledges that the DPWH 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 that the DPWH will suffer serious and irreparable damage on account of any breach by *(Name of Prospective Bidder)* of these undertakings, and agree that the breach of these undertakings shall result in *(Name of Prospective Bidder)*'s automatic disqualification to bid for the Project.
  8. *(Name of Prospective Bidder)* certifies that it or any of its Consortium Members or its Affiliates or Consortium Members' Affiliates or any entity under its or its Affiliates, or Consortium Members' or their Affiliates' Control have any (or do not have any, *if none*) pending, litigated or arbitrated dispute, or disputes which have been decided with finality or settled within two (2) years from the Qualification Documents Submission Date, with the National Government and/or any of its agencies, involving an amount above Two Hundred Million Philippine Peso (PhP200,000,000.00).
  9. *(Name of Prospective Bidder)* certifies the completeness and accuracy of the following list of litigated or arbitrated disputes the Prospective Bidder/Consortium Members'/Affiliates or entity under its Control and the disputed amounts involved (*disregard if not applicable*). (*The list must include the Title and Number of the Case, the court or tribunal handling the dispute, the identity of the parties, the nature and amount of the claim, venue of litigation or arbitration, and status*)
  10. *(Name of Prospective Bidder)* acknowledges, and warrants that it has fully discharged, its responsibilities contained in the Invitation Documents, including without limitation Section 1.6 of the ITPB, and that it has examined and accepted all the terms and conditions in all of the Invitation Documents and other DPWH Supplied Information.
  11. *(Name of Prospective Bidder)* represents and warrants that (i) it has not relied and will not rely upon any of the DPWH Supplied Information as being proper, accurate, adequate, suitable or complete for any purpose; (ii) it has made its own independent evaluation, inspection and investigation of all DPWH Supplied Information and has fully satisfied itself as to any matter or thing disclosed by any DPWH Supplied Information in connection with the Project, including (but not limited to) the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, geotechnical investigations, opinions, recommendations, findings, summaries, design or other information; and (iii) it has not relied upon (or allowed any other person assisting or advising it to rely upon) the DPWH Supplied Information in connection with any aspect of the Bidding Process or the Project except to the extent that it has satisfied itself as to the accuracy, adequacy, suitability and completeness of such

[DPWH Supplied Information.](#)

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

(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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**ANNEX QD-11A: Authority to Apply to Pre-Qualify and Designation of Authorized Representative**

a. To be submitted by a Prospective Bidder which is a partnership or corporation

*[Letterhead]*

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 Prospective Bidder* (the “Prospective Bidder”), 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 Prospective Bidder, 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 *name of (Prospective Bidder)* (the “Proponent”) be, and is, authorized to participate in the Bidding Process for the financing, design, construction, operation and maintenance of the Laguna Lake Expressway-Dike Project (LLEDP) (hereinafter called the “Project”) and to apply for Pre-Qualification as Bidder for the Project;

RESOLVED FURTHER, that (*Name of Representative*) be and is hereby appointed as the authorized representative of the Prospective Bidder during Pre-Qualification, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Prospective Bidder;

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;
5. That 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-11B: Consortium Member’s Authority to Participate in Consortium and Apply to Pre-Qualify, and Designation of Lead Member and Authorized Representative of Consortium**

a. For a Prospective Bidder which 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 *Consortium Member* (the “Member”), 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 Member, held on (*date* and *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 Member be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and percentage interests in the Consortium, in the Bidding Process for the financing, design, construction, operation and maintenance of the Laguna Lake Expressway-Dike Project (LLEDP) (hereinafter called the “Project”) and to apply for Pre-Qualification of Prospective Bidders for the Project;

<b>Name of Consortium Member</b>	<b>Nationality</b>	<b>% Interest</b>

RESOLVED FURTHER, that *Name of Member’s Representative* be and is hereby appointed as the authorized representative of the Member, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Member;

RESOLVED FURTHER, that the Member 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 Pre-Qualification of Prospective Bidders for the Project;
- (b) authorizes (*Name of Authorized Representative*) of(*Name of Lead Member of Consortium*)as representative of the Consortium during the Pre-Qualification of Bidders for the Project, and for such purpose shall have the authority to execute, sign and receive documents for, and otherwise act in the name of the Consortium.

RESOLVED, FINALLY, that any and all acts done and/or performed by (*Name of Lead Member of Consortium*) and (*Name of Authorized 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 Member;
- 5. That the above resolutions are in accordance with the records of the Member.

*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*).

Notary Public

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

**Annex QD-12: Certificate Relating to Notarization & Authentication of Foreign Documents**

To be submitted by a Prospective Bidder which avails of the opportunity to submit the notarized and/or authenticated version of a foreign document after the Qualification Documents Submission Date in accordance with Section 8.3 of the Instruction to Prospective Bidders.

Prospective Bidder:	
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**Certification Relating to Notarization & Authentication of Foreign Documents**

I, *(name)*, *(citizen)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of Prospective Bidder)*, a [*(corporation/partnership)*] organized and existing under and by virtue of the laws of *(place of incorporation/registration)*] or [Consortium] hereby certify, for and on behalf of *(name of Prospective Bidder)*, that *(name of Prospective Bidder)* that –

1. The following foreign documents are being submitted by *(name of Prospective Bidder)* as part of Qualification Documents and such documents have not yet been notarized and/or authenticated as required under Section 8 of the Instruction to Prospective Bidders.

Name of Foreign Document	Parties/Issuing Body	Date of Execution	Qualification Document No.

2. The foreign documents enumerated in paragraph (1) have validly been executed and its contents are true and correct.
3. The exact same foreign documents enumerated in paragraph (1), duly notarized and/or authenticated shall be submitted by the *(name of Prospective Bidder)* on or before thirty (30) days before the Bid Proposals Submission Date.
4. Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

*Date and Place of Execution.*

For and on behalf of *(Name of Prospective Bidder)*

Instructions to Prospective  
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(Signature of Authorized Representative)

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(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 relevant notarial  
regulations*), issued at (*city*) on (*date*).

Notary Public

Doc. No.: \_\_\_\_\_

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**Annex QD-13: Undertaking of Liability Under the Concession Agreement**

To be submitted by a Prospective Bidder which is a Consortium.

Prospective Bidder: \_\_\_\_\_

**Undertaking of Liability Under the Concession Agreement**

Capitalized terms used herein and not otherwise defined shall have the meanings assigned such terms in the Amended and Restated Instructions to Prospective Bidders issued by the Department of Public Works and Highways and dated 13 November 2014.

[Each of the undersigned Consortium Members hereby undertakes in favor of DPWH that if their Consortium is selected as the Winning Bidder, each such Consortium Member shall bind itself to be jointly and severally liable for the obligations of the Consortium under the Concession Agreement.]

[or, if the Consortium is organized as a legal entity registered under Philippine laws, insert the following in lieu of the foregoing paragraph]

[(Name of legal entity), a (form of legal entity) duly organized and existing under and by virtue of the laws of the Republic of the Philippines hereby undertakes in favor of DPWH that if it is selected as the Winning Bidder, it shall be liable for the obligations of the Concessionaire under the Concession Agreement.]

Date and Place of Execution.

For and on behalf of (Consortium Member/corporation)

(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 relevant notarial regulations), issued at (city) on (date).

Notary Public

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<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 7.5.0.96 Document comparison done on 11/20/2014 4:29:05 PM</b>	
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<b>Intelligent Table Comparison:</b> Inactive	
<b>Original DMS:</b> iw://HKI/HKI/320307586/1	
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Table moves from	0
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Embedded Excel	0
Format Changes	0
<b>Total Changes:</b>	<b>1189</b>