



Republic of the Philippines
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE

Project: **ROAD TRANSPORT IT INFRASTRUCTURE PROJECT - PHASE II**

General Bid Bulletin No. 10-2015

TO ALL CONCERNED:

Please be informed that the Pre-qualified Bidder for the Project will be granted access to the Virtual Data Room (VDR) after compliance with the following:

1. The Pre-qualified Bidder has submitted a written request addressed to the Chairman of the Pre-qualification, Bids and Awards Committee (PBAC) of the Project requesting access to the VDR and setting out the names, contact numbers, and email addresses of the persons who will access the VDR on its behalf; and
2. The Pre-qualified Bidder has duly executed and submitted the Form of Confidentiality Undertaking for the individuals requesting access to the VDR, attached as Annex "A"; and
3. The Pre-qualified Bidder has duly executed and submitted the Form of Confidentiality Undertaking for the consortium, attached as Annex "B".

The above shall be submitted to the following:

Office of the PBAC Secretariat
Unit 153, 15th Floor, The Columbia Tower
Ortigas Avenue, Barangay Wack- Wack, Mandaluyong City

Advance copies should likewise be emailed to bacsec@dotc.gov.ph and roadtransportit.itpb@ppp.gov.ph.

For your guidance and information.

Issued this 23rd day of December 2015.

ATTY. WINSTON M. GINEZ

Vice Chairman, Pre-qualification, Bids and Awards Committee
and Chairman, Land Transportation Franchising and Regulatory Board

FORM OF CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking (**Undertaking**) is executed in favor of the Department of Transportation and Communications (**DOTC**) and the Land Transportation Franchising and Regulatory Board (**LTFRB**) by [Name of Individual] (the “**Recipient**”), who is a [designation] of [name of Bidder], an interested bidder in the Project (the “**Prospective Bidder**”).

1. CONFIDENTIAL INFORMATION

- (a) The Recipient is interested in obtaining information from the DOTC and the LTFRB, in furtherance of the Road Transport IT Infrastructure Project – Phase II (hereinafter the “Project”). The selection process will be undertaken through a public bidding in accordance with the Philippine BOT Law (Republic Act No. 6957, as amended by Republic Act No. 7718), and its Revised Implementing Rules and Regulations. By reason of such interest of the Recipient, the DOTC and the LTFRB propose to disclose certain Confidential Information (as defined below) to the Recipient. The Recipient acknowledges that the DOTC and the LTFRB have the exclusive right to determine what information it may furnish to the Recipient.
- (b) As used herein, “*Confidential Information*” means all information concerning the DOTC and/or the LTFRB or its assets, liabilities or obligations furnished to the Recipient directly by any of the DOTC’s and/or the LTFRB’s officials, employees, and legal, technical, financial advisors, agents or other representatives (“**DOTC/LTFRB Representatives**”), including:
 - a. information obtained by the Recipient:
 - i. during the due diligence process;
 - ii. through site visits to the DOTC, the LTFRB, their offices and facilities (including any regional office); or
 - iii. through any management presentation by the DOTC and/or the LTFRB;
 - b. information contained in any other written material furnished or otherwise made available to the Recipient;
 - c. information furnished to the Recipient electronically;
 - d. information presented to the Recipient or its advisors orally, whether presented in a management presentation or another forum;
 - e. all analyses, compilations, forecasts, studies or other documents prepared by the Recipient or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information, and

- f. any other information or document which is confidential by its nature or which the Recipient knows, or ought reasonably to know, is confidential.
- (c) Notwithstanding the foregoing, information disclosed by any of the DOTC and/or the LTFRB which would otherwise be Confidential Information will not be deemed Confidential Information to the extent that it can be proven by written records that said information is:
- a. already part of the public domain without violation of this Undertaking; or
 - b. disclosed pursuant to administrative or judicial action, provided, that, the Recipient must use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and must, immediately after getting knowledge or receiving notice of such action, notify the DOTC and the LTFRB thereof and give the DOTC and the LTFRB the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence.

If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information will be excluded from the use and disclosure restrictions of this Undertaking.

2. NO REPRESENTATION

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

3. RECIPIENT'S OBLIGATIONS

- (a) Subject to clause 3(c) and unless the DOTC and the LTFRB gives its prior written authorization, the Recipient must, during a period of two (2) years from the date of disclosure of any Confidential Information hereunder:
 - a. not use the Confidential Information for any other purpose than for the Project;
 - b. protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
 - c. limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors,

agents or other representatives, or (as applicable) other persons, partnerships or corporations with whom the Recipient forms a consortium for purposes of submitting a bid in relation to the Project (collectively, the “Representatives”) who need to know such Confidential Information and only for the purpose of evaluating the Project and who have executed and delivered a confidentiality undertaking in the form of this Annex A (or other form acceptable to the DOTC and the LTFRB), in favor of the DOTC and the LTFRB covering the Confidential Information.

- (b) Confidential Information furnished in tangible form or on electronic media must not be duplicated by the Recipient except for purposes of evaluating the Project. Upon the request of the DOTC and/or the LTFRB, the Recipient must either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by the DOTC and/or the LTFRB, within ten (10) days of such request; *provided*, however, that the Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to the Recipient providing the DOTC and/or the LTFRB written notification of such regulatory purpose with details satisfactory to the DOTC and/or the LTFRB.
- (c) Without limiting the generality of the foregoing, in the event that the Recipient is not appointed to undertake the Project whether as the Winning Bidder or as part of a Consortium constituting the Winning Bidder, for any reason whatsoever, neither the Recipient nor its Representatives must use any of the Confidential Information for any purpose. The Recipient will be responsible for any breach of this Undertaking by its Representatives.
- (d) During the course of the Recipient’s evaluation, the Recipient must make all inquiries and other communications directly to the DOTC and the LTFRB in writing and addressed to the DOTC’s and the LTFRB’s representative at the address provided below. The Recipient agrees not to directly or indirectly contact or communicate with any other official or other employee of the DOTC and/or the LTFRB concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of the DOTC and/or the LTFRB.

4. COMMUNICATIONS WITH OTHER BIDDERS

Except as may be required by applicable law, the Recipient must not communicate, and must ensure that its Representatives do not communicate, directly or indirectly, with any Bidder about the Project, or about any subject related to the Project; *provided*, however, that the Recipient may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement in the form of this Annex A (or other form acceptable to the DOTC and the LTFRB), with the DOTC and/or the LTFRB covering the Confidential Information.

5. GOVERNING LAW AND VENUE

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

6. NO IMPLIED WAIVER

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

7. NO COMMITMENT

The Recipient acknowledges and agrees that:

- (a) the DOTC and the LTFRB have reserved the right to terminate or suspend, at any time and without cause, further participation in the investigation by the Recipient and to refuse to disclose any further Confidential Information to the Recipient;
- (b) this Undertaking does not constitute a solicitation of bids for the Project;
- (c) no contract or agreement providing for the Project will be deemed to exist between the Recipient and the DOTC and/or the LTFRB, as applicable, unless and until a definitive agreement has been executed and delivered by the Recipient and the Grantors.

8. SEVERABILITY

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

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

[NAME OF RECIPIENT]

(Designation and Name of Prospective Bidder)

Date: _____

Signed in the Presence of:

FORM OF CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking (**Undertaking**) is executed in favor of the Department of Transportation and Communications (**DOTC**) and the Land Transportation Franchising and Regulatory Board (**LTFRB**) by *[insert Name of Bidder]* (**Recipient**).

1. CONFIDENTIAL INFORMATION

- (a) The Recipient is interested in obtaining information from the DOTC and the LTFRB, in furtherance of the Road Transport IT Infrastructure Project – Phase II (hereinafter the “Project”). The selection process will be undertaken through a public bidding in accordance with the Philippine BOT Law (Republic Act No. 6957, as amended by Republic Act No. 7718), and its Revised Implementing Rules and Regulations. By reason of such interest of the Recipient, the DOTC and the LTFRB propose to disclose certain Confidential Information (as defined below) to the Recipient. The Recipient acknowledges that the DOTC and the LTFRB have the exclusive right to determine what information it may furnish to the Recipient.
- (b) As used herein, “*Confidential Information*” means all information concerning the DOTC and/or the LTFRB or its assets, liabilities or obligations furnished to the Recipient directly by any of the DOTC’s and/or the LTFRB’s officials, employees, and legal, technical, financial advisors, agents or other representatives (“**DOTC/LTFRB Representatives**”), including:
 - a. information obtained by the Recipient:
 - i. during the due diligence process;
 - ii. through site visits to the DOTC, the LTFRB, their offices and facilities (including any regional office); or
 - iii. through any management presentation by the DOTC and/or the LTFRB;
 - b. information contained in any other written material furnished or otherwise made available to the Recipient;
 - c. information furnished to the Recipient electronically;
 - d. information presented to the Recipient or its advisors orally, whether presented in a management presentation or another forum;
 - e. all analyses, compilations, forecasts, studies or other documents prepared by the Recipient or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information, and
 - f. any other information or document which is confidential by its nature or which the Recipient knows, or ought reasonably to know, is confidential.
- (c) Notwithstanding the foregoing, information disclosed by any of the DOTC and/or the LTFRB which would otherwise be Confidential Information will not be deemed

Confidential Information to the extent that it can be proven by written records that said information is:

- a. already part of the public domain without violation of this Undertaking; or
- b. disclosed pursuant to administrative or judicial action, provided, that, the Recipient must use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and must, immediately after getting knowledge or receiving notice of such action, notify the DOTC and the LTFRB thereof and give the DOTC and the LTFRB the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence.

If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information will be excluded from the use and disclosure restrictions of this Undertaking.

2. NO REPRESENTATION

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

3. RECIPIENT'S OBLIGATIONS

- (a) Subject to clause 3(c) and unless the DOTC and the LTFRB gives its prior written authorization, the Recipient must, during a period of two (2) years from the date of disclosure of any Confidential Information hereunder:
 - a. not use the Confidential Information for any other purpose than for the Project;
 - b. protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
 - d. limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives, or (as applicable) other persons, partnerships or corporations with whom the Recipient forms a consortium for purposes of submitting a bid in relation to the Project (collectively, the "Representatives") who need to know such Confidential Information and only for the purpose of

evaluating the Project and who have executed and delivered a confidentiality undertaking in the form of this Annex B (or other form acceptable to the DOTC and the LTFRB), in favor of the DOTC and the LTFRB covering the Confidential Information.

- (b) Confidential Information furnished in tangible form or on electronic media must not be duplicated by the Recipient except for purposes of evaluating the Project. Upon the request of the DOTC and/or the LTFRB, the Recipient must either return all Confidential Information received in written, electronic or other tangible form, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by the DOTC and/or the LTFRB, within ten (10) days of such request; *provided*, however, that the Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to the Recipient providing the DOTC and/or the LTFRB written notification of such regulatory purpose with details satisfactory to the DOTC and/or the LTFRB.
- (c) Without limiting the generality of the foregoing, in the event that the Recipient is not appointed to undertake the Project whether as the Winning Bidder or as part of a Consortium constituting the Winning Bidder, for any reason whatsoever, neither the Recipient nor its Representatives must use any of the Confidential Information for any purpose. The Recipient will be responsible for any breach of this Undertaking by its Representatives.
- (d) During the course of the Recipient's evaluation, the Recipient must make all inquiries and other communications directly to the DOTC and the LTFRB in writing and addressed to the DOTC's and the LTFRB's representative at the address provided below. The Recipient agrees not to directly or indirectly contact or communicate with any other official or other employee of the DOTC and/or the LTFRB concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of the DOTC and/or the LTFRB.

4. COMMUNICATIONS WITH OTHER BIDDERS

Except as may be required by applicable law, the Recipient must not communicate, and must ensure that its Representatives do not communicate, directly or indirectly, with any Bidder about the Project, or about any subject related to the Project; *provided*, however, that the Recipient may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement in the form of this Annex B (or other form acceptable to the DOTC and the LTFRB), with the DOTC and/or the LTFRB covering the Confidential Information.

5. GOVERNING LAW AND VENUE

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

6. NO IMPLIED WAIVER

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

7. NO COMMITMENT

The Recipient acknowledges and agrees that:

- (a) the DOTC and the LTFRB have reserved the right to terminate or suspend, at any time and without cause, further participation in the investigation by the Recipient and to refuse to disclose any further Confidential Information to the Recipient;
- (b) this Undertaking does not constitute a solicitation of bids for the Project;
- (c) no contract or agreement providing for the Project will be deemed to exist between the Recipient and the DOTC and/or the LTFRB, as applicable, unless and until a definitive agreement has been executed and delivered by the Recipient and the Grantors.

8. SEVERABILITY

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

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

[NAME OF BIDDER]

By: _____
(Authorized Representative)
Date: _____

Signed in the Presence of:

