

# Laguindingan International Airport (CGY) PPP Project

## Instructions to Challengers

Dated 14 May 2024

**Civil Aviation Authority of the Philippines**

**and**

**Department of Transportation**

<b>Disclaimer</b>	<b>1</b>
<hr/>	
<b>1 Instructions to Challengers</b>	<b>3</b>
1.1 The Pre-Qualification, Bids and Awards Committee	3
1.2 Documents to be Provided to Challengers	3
1.3 Indicative Milestone Dates	4
1.4 Challengers	5
1.5 Responsibility of Challengers	5
1.6 Costs and Expenses of Participation	6
1.7 Queries, Bid Bulletins, and Supplemental Notices	6
1.8 Ownership of Documents	8
1.9 Language and Foreign Documents	8
1.10 Bid Amount for Grantor Revenue Share	9
1.11 Rules of Interpretation	9
<hr/>	
<b>2 Site Visit</b>	<b>10</b>
<hr/>	
<b>3 Pre-Bid Conference</b>	<b>10</b>
<hr/>	
<b>4 Meetings with the PBAC</b>	<b>10</b>
<hr/>	
<b>5 Comparative Proponents shall note that the Concession Agreement is final and non-negotiable.</b>	<b>11</b>
5.1 Deadline for Submission	11
5.2 Format of Submission	11
5.3 Confidentiality	13
<hr/>	
<b>6 Qualification Requirements</b>	<b>13</b>
6.1 Legal Qualification Requirements	13
6.2 Technical Qualification Requirements	14
6.3 Financial Qualification Requirements	18
<hr/>	
<b>7 Comparative Proposals</b>	<b>19</b>
7.1 Envelope 1 - Qualification Documents	19
7.2 Envelope 2 - Technical Proposal	24
7.3 Envelope 3 - Challenger's Financial Proposal	24
7.4 Original Proponent's Financial Proposal	24
<hr/>	
<b>8 One Challenger, One Submission</b>	<b>25</b>
<hr/>	
<b>9 Bid Security</b>	<b>25</b>
9.1 Form of Bid Security	25
9.2 Validity and Purpose	25
9.3 Forfeiture of Bid Security	25
9.4 Return of Bid Security	26
<hr/>	
<b>10 Submission, Opening and Evaluation of Comparative Proposals</b>	<b>26</b>
Opening and Evaluation of Envelope 1 - Qualification Documents	26
Opening and Evaluation of Envelope 2 – Technical Proposal	27

Opening and Evaluation of Envelope 3 – Financial Proposal	28
Request for Clarifications, Motion for Reconsideration, and Appeal Process	29
<b>11 Notice of Award, Post-Award Requirements, and Execution of Concession Agreement</b>	<b>31</b>
11.1 Notice of Award and Post-Award Requirements	31
11.2 Execution of Concession Agreement	33
<b>12 Process to be followed for Non-Compliance of Post Award Requirements</b>	<b>33</b>
<b>13 Failure to Enter into Concession Agreement</b>	<b>34</b>
<b>14 General Conditions and Prohibitions</b>	<b>34</b>
<b>15 Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice</b>	<b>35</b>
<b>16 Conflict of Interest</b>	<b>35</b>
<b>17 Grounds for Disqualification</b>	<b>36</b>
<b>18 Lock-Up Rules</b>	<b>37</b>
<b>19 Outstanding Dispute with Government</b>	<b>37</b>
<b>20 Governing Law and Rules</b>	<b>38</b>
<b>21 Definitions</b>	<b>38</b>
<b>Annex QDC - Checklist of Qualification Documents</b>	<b>45</b>
<b>Annex BL-1: Form of Bid Letter</b>	<b>49</b>
<b>Annex BL-1A: Certification of Not Being an Airline-Related Entity</b>	<b>51</b>
<b>Annex BL-2A: Authority to Submit Comparative Proposal and Designation of Authorized Representative [for Challengers which are partnerships or corporations]</b>	<b>53</b>
<b>Annex BL-2B: Consortium Member’s Authority to Participate in the Consortium and Submit a Comparative Proposal and Designation of Lead Member and Authorized Representative of Consortium [for Challengers which are Consortia]</b>	<b>55</b>
<b>Annex QD-1A: Business Structure [for a Challenger which is a partnership or corporation or any other juridical entity]</b>	<b>58</b>
<b>Annex QD-1B: Business Structure [for a Challenger which is a Consortium]</b>	<b>60</b>
<b>Annex QD-2: Basic Information Sheet</b>	<b>63</b>
<b>Annex QD-3: Notarized Certification of Absence of Unsatisfactory Performance Record</b>	<b>66</b>

<b>Annex QD-4: Construction Experience</b>	<b>67</b>
<b>Annex QD-5: Certificate for Details of Eligible Projects for Construction Experience</b>	<b>69</b>
<b>Annex QD-6: Operations and Maintenance Experience</b>	<b>70</b>
<b>Annex QD-7: Certificate for the Details of Projects for Operations and Maintenance Experience</b>	<b>72</b>
<b>Annex QD-8: Designated Operator’s Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of, the Project</b>	<b>74</b>
<b>Annex QD-9: Key Personnel</b>	<b>76</b>
<b>Annex QD-10: Notarized Certification of Absence of Unsatisfactory Performance Record for Qualified Key Personnel</b>	<b>78</b>
<b>Annex QD-11: Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Project</b>	<b>79</b>
<b>Annex QD-12: Notarized Statement of Financial Capability</b>	<b>81</b>
<b>Annex QD-12A: Aggregate Financial Summary</b>	<b>84</b>
<b>Annex QD-13: Notarized Application to Submit a Comparative Proposal</b>	<b>86</b>
<b>Annex QD-14: Certificate for Establishing Affiliate Status</b>	<b>88</b>
<b>Annex TP-1: Form of Bid Security</b>	<b>89</b>
<b>Annex TP-2: Challenger’s Technical Proposal</b>	<b>93</b>
<b>Annex TP-3: Notarized Statement for Submission of Technical Proposal</b>	<b>94</b>
<b>Annex FP-1: Statement of Challenger on Bid Amount</b>	<b>96</b>
<b>Annex FP-2: Financial Model</b>	<b>97</b>
<b>Annex FP-3: Project Finance Plan</b>	<b>100</b>

# Instructions to Challengers

## Disclaimer

The information contained in these Instructions to Challengers [“ITC”] and other documents subsequently provided to all Challenger[s] [collectively, the “**Tender Documents**”], whether verbally or in documentary or any other form, by or on behalf of the Department of Transportation [“DOTr”], the Civil Aviation Authority of the Philippines [the “CAAP”] or any of their respective employees or advisors, is provided to the Challenger[s] on the terms and conditions set out herein and such other terms and conditions subject to which such information is provided.

The Tender Documents are not agreements and are neither offers nor invitations by the DOTr or CAAP to the Challengers or any other person. The DOTr, CAAP, and their respective employees and advisors, are not bound by any of the contents of these documents. The purpose of the Tender Documents is to provide interested parties with information that may be useful to them in preparing their Comparative Proposals. The Tender Documents include statements that reflect various assumptions and assessments arrived at by the DOTr and CAAP in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Challenger may require. The Tender Documents may not be appropriate for all persons, and it is not possible for the DOTr, CAAP or their respective employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses the Tender Documents. The assumptions, assessments, statements, and information contained in the Tender Documents and associated documents may not be complete, accurate, adequate or correct. Each Challenger should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the Tender Documents and obtain independent advice from appropriate sources.

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

The DOTr, CAAP and their respective employees and advisors make no undertaking, assurance, representation or warranty and shall have no liability to any person, including any Challenger, under any law, statute, rules or regulations, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in the Tender Documents, or other information provided to Challengers and Challengers, including their accuracy, adequacy, correctness, completeness or reliability of such documents, and any assessment, assumption, statement or information contained therein or deemed to form part of the Tender Documents or arising in any way for participation in the Tender Process.

The DOTr and CAAP also accept no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Challenger upon the statements contained in the Tender Documents.

The DOTr or CAAP may, in their absolute discretion, but without being under any obligation to do so, amend, update, or supplement the information, assessments or assumptions contained in the Tender Documents. However, the DOTr, CAAP, their employees, and

advisors, shall not be liable to any Challenger or Challenger in respect of any failure to (i) disclose or make available any information, documents, or data; (ii) amend, update, or supplement the Tender Documents; or (iii) provide any information regarding any inaccuracy, error, omission, defect, or inadequacy in the Tender Documents.

Each Challenger shall bear all its costs associated with or relating to the preparation and submission of its Comparative Proposal, including but not limited to preparation, copying, postage, delivery fees, and expenses associated with any demonstrations or presentations, which may be required by DOTr or CAAP, or any other costs incurred in connection with or relating to its Comparative Proposal. All such costs and expenses will remain with the Challenger or Challenger and the DOTr and CAAP shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Challenger or Challenger in the preparation or submission of its Comparative Proposal, regardless of the conduct or outcome of the comparative challenge process.

## 1 Instructions to Challengers

The Department of Transportation [“DOTr”] and the Civil Aviation Authority of the Philippines [“CAAP”] invite Challengers to submit their comparative proposals under a comparative challenge process to finance, design, construct, operate, and maintain, operation and maintenance the Laguindingan International Airport (CGY) Project [the “Project”] under a thirty (30) year concession, which terms are set in the draft Concession Agreement.

These Instructions to Challengers [the “ITC”] provide the procedures and requirements, as well as basic information, which Challengers must be aware of and follow in preparing and submitting their Comparative Proposals which shall be awarded through a competitive and comparative challenge process in accordance with Section 10(e) of the PPP Code and [Title VI, Chapter 1 and 3, and Title VII of the IRR.

The party which may obtain the Tender Documents are: [1] Challenger itself, [2] a Consortium Member, [3] a Contractor, [4] an Affiliate of the Challenger, Consortium Member or Contractor, or [5] an authorized representative or agent of any of these entities.

### 1.1 The Pre-Qualification, Bids and Awards Committee

The Pre-Qualifications, Bids and Awards Committee [“PBAC”] for the DOTr and its Attached Agencies’ Co-Granted Public-Private Partnership [“PPP”] Projects created pursuant to Department Special Order No. 2023-285, shall administer the Tender for this Project.

### 1.2 Documents to be Provided to Challengers

- (a) The Tender Documents shall govern the preparation, submission and evaluation of Comparative Proposals, and the selection and award of the Project to the Winning Challenger. They consist of:
  - (i) This ITC, which includes bid bulletins issued by the PBAC and documents incorporated by reference;
  - (ii) The draft Concession Agreement and its Annexes [the “Concession Agreement”] which include, among others, the Minimum Performance Standards and Specifications [the “MPSS”] for operation and maintenance as well as Minimum Technical Requirements for Design and Construction of the Project throughout the concession period; and
  - (iii) Other technical documents prepared by or on behalf of the DOTr and CAAP.

The draft Concession Agreement shall be the principal document governing the contractual relationship between the Special Purpose Corporation [“SPC”] that shall be formed by the Winning Challenger in accordance with Section 103 of the IRR; and the DOTr and CAAP in the implementation of the Project, including its termination and the effects thereof.

- (b) In addition to the Tender Documents, the following documents will be provided to Challengers solely to provide background information on the Project [“**Background Information Documents**”]. These documents can be accessed through the PPP Center of the Philippines’ Virtual Data Room (VDR). Neither the DOTr or CAAP nor any other associated party provides any warranty or assurance of the accuracy or reliability of the information contained in these documents. Neither the DOTr or CAAP nor any other associated party bound by any of the contents of the Project Information Memorandum.

The Challenger is responsible for verifying the correctness, completeness, accuracy, and reliability of the information contained in the Background Information Documents. The DOTr or CAAP or any other associated party do not provide any warranty or assurance of the correctness, completeness, accuracy or reliability of the information contained in the Background Information Documents. The DOTr or CAAP or any other associated party shall not be liable to any Challengers, the Winning Challenger or any other person for damages caused by that party’s reliance on the Background Information Documents regardless of any erroneous, absent, incomplete, inaccurate or unreliable information or documentation provided by the DOTr and CAAP, even if attended by gross negligence, nor shall such be a ground for the refusal to enter into or rescission of the Concession Agreement by the Winning Challenger.

### 1.3 Indicative Milestone Dates

The Tender for the Project will be conducted in accordance with the procurement rules and procedures for public Tender set out in the PPP Code and the IRR, the applicable provisions of which are incorporated herein by reference.

The Tender Process shall follow the indicative timetable below:

<b>Milestone</b>	<b>Party Responsible</b>	<b>Target Date</b>
Issuance of Tender Documents	DOTr and CAAP	[insert]
Pre-Bid Conference	DOTr, CAAP, Challengers	[insert]
Site Visit [if necessary] and meeting with the airport management team	CAAP	To be scheduled upon request
One-on-One Meetings with the Challengers [if necessary]	DOTr and CAAP	To be scheduled upon request
Last day for submission of queries	Challengers	[insert]
Comparative Proposals Submission Date / Opening of Envelope 1 [Qualification Documents]	Challengers / DOTr and CAAP	[insert]



<b>Milestone</b>	<b>Party Responsible</b>	<b>Target Date</b>
Notice of Qualified and Disqualified Challengers	DOTr and CAAP	[insert]
Opening of Envelope 2 [Technical Proposal]	DOTr, CAAP, Challengers	[insert]
Issuance of Notice for the Challengers whose Technical Proposal passed the evaluation	DOTr and CAAP	[insert]
Opening of Envelope 3[Financial Proposal]	DOTr and CAAP	[insert]
Notice of Winning Challenger	DOTr and CAAP	[insert]
Notice of results of comparative Bidding to the Original proponent	DOTr and CAAP	[insert]
Notice of Award Issuance (with challenger)	DOTr and CAAP	[insert]
Submission of Post-Award Requirements	Winning Challenger or Original Proponent	[insert]
Notification of Completion of Notice of Award Requirement	DOTr and CAAP	[insert]
Signing Date of Concession Agreement	DOTr, CAAP, Winning Challenger or Original Proponent	[insert]

The actual schedule may be changed by the DOTr and CAAP at any time. Challengers/Challengers shall be notified by the PBAC of changes in the indicative milestone dates through supplemental bid bulletins.

#### **1.4 Challengers**

Interested Parties who accomplished the required forms and pay a non-refundable fee of Two Hundred Fifty Thousand Pesos (PhP 250,000) payable in manager's check drawn on any Philippines Bank and payable to the order of Civil Aviation Authority of the Philippines will be allowed to participate in the Tender Process and submit their Comparative Proposals.

#### **1.5 Responsibility of Challengers**

(a) Notwithstanding any information given in the Tender Documents and any additional communication from the DOTr, CAAP, the PBAC or any other party, including supplemental notices and bid bulletins, it is the sole responsibility of any interested party and Challenger to:

(i) Be fully acquainted with the laws, requirements, terms, and conditions of the Tender Process.

- (ii) Examine all the Tender Documents, including all instructions, forms, schedules, terms, specifications, and drawings.
  - (iii) Familiarize itself with all existing laws, decrees, acts, rules, and ordinances of the Philippines, whether national or local, which may affect the Project.
  - (iv) 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; 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.
- (b) The Challenger including any Consortium Member, Designated Operator, or Affiliates, the Winning Challenger, and the special purpose corporation that it may form shall not be entitled to any claim against the DOTr, CAAP, the PBAC, or any other associated party, whether on the basis of contract, quasi-contract, delict, or quasi-delict, for damages, extensions of time or payments on the grounds:
- (i) Of any misunderstanding or misapprehension in respect of the Tender Documents and/or Background Information Documents; or
  - (ii) That incorrect or insufficient information relating to the Tender Documents and/or Background Information Documents was given to them by the DOTr, CAAP, the PBAC or any other associated party.
- (c) By submitting its Comparative Proposal, a Challenger shall be presumed to have fully examined and accepted all of the terms and conditions in all of the Tender Documents.

## **1.6 Costs and Expenses of Participation**

Challengers shall bear all costs associated with their participation in the Tender Process including the preparation and submission of their Comparative Proposals, and all possible losses or damages resulting from their participation in the Tender Process. The DOTr, CAAP, the PBAC or any other associated party shall not be held responsible or liable in any way for such costs or damages incurred by a Challenger whether incurred by them directly or by their advisers, contractors, affiliates, or other persons regardless of the results of the Tender Process.

## **1.7 Queries, Bid Bulletins, and Supplemental Notices**

- (a) Challengers may send queries and/or comments on any aspect of the Tender Documents. All queries and/or comments should be sent via the VDR.
- (b) Challengers must submit their queries and/or comments on or before the dates indicated in the Timetable in Section 1.3.
- (c) Challengers must use the template below (as applicable) for all queries and comments. Electronic copies of questions uploaded in the VDR must be sent in both Microsoft Excel and PDF format.

Date:	[insert date of submission of queries and comments]
Challenger Name:	[insert name of Challenger]

For queries and comments on this ITC and its Annexes:

Topic	ITC	Query / Comment	Proposed Revision (if any)
1.	[Indicate Section No. / Annex No.]		
2.	[Indicate Section No. / Annex No.]		

For queries and comments on the draft Concession Agreement and its Annexes:

Topic	Draft CA / Annex	Query / Comment
1.	[Indicate Section No. / Annex No.]	
2.	[Indicate Section No. / Annex No.]	

For queries and comments on the Background Information Documents:

Topic	VDR Document Reference No.	Name of Document & Section Ref.	Query/Comment
1.	[Indicate VDR Doc. Ref. No.]		
2.	[Indicate VDR Doc. Ref. No.]		

- (d) Queries on the Tender Documents must be concrete or clarificatory, and not purely hypothetical in nature.
- (e) The PBAC are open for public inquiries relating to the Tender Documents available publicly. Inquiries and/or concerns relating to documents such as the Concession Agreement and other technical documents will be only addressed by the PBAC for Challengers who purchased the Tender Documents.

- (f) The PBAC shall decide which queries it received should be responded to and is under no obligation to respond to any of the queries received. Responses to queries and any modifications to the Tender Documents will be made on a non- attributable basis, and shall be in writing, through supplemental notices or bid bulletins, and shall be sent to all Challengers. All supplemental notices and bid bulletins issued by the PBAC shall be deemed to be incorporated in and made an integral part of the ITC and/or the relevant Tender Documents.
- (g) No new bid documents, bid bulletins, supplemental notices, or changes thereto, shall be issued by the PBAC within thirty [30] days prior to Comparative Proposals Submission Date

## **1.8 Ownership of Documents**

All documents submitted by the Challengers to the PBAC pursuant to the ITC shall become the property of the DOTr and CAAP and any information obtained by the DOTr and CAAP from such documents may be reasonably used by it subject to the confidentiality clause in Section 5.3 of the ITC.

## **1.9 Language and Foreign Documents**

- (a) The Comparative Proposals and all correspondence and documents submitted to the PBAC in relation to the Tender Documents and Tender Process shall be prepared and written in the English language. The Challenger's submitted printed literature or document in a foreign language shall be accompanied by an English translation duly certified by a translator stating that the English translation is a complete and accurate translation of the original document. The Philippine Consular Office having jurisdiction over the place where the translator's certification is issued shall authenticate the certification or, as far as applicable, authenticated through an Apostille issued by competent government authority pursuant to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. Supporting materials, which are not translated into English, may not be considered. In case of conflict, the English translation shall prevail.
- (b) If a foreign authority issued the document, the Challenger should also submit a certified true copy of such document which must be authenticated before a Philippine consular official at the relevant Philippine consulate or, as far as applicable, authenticated through an Apostille at the relevant Apostille Office.
- (c) If the foreign document submitted is a foreign law or regulation, the Challenger should also submit: [a] a certified true copy of the applicable excerpt of such law with a citation of its source, issued by the competent government authority, without need of submitting a copy of the entire law or its translation unless subsequently required by the PBAC; 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.
- (d) Certified statements, regardless of the place of execution, must be notarized. For documents issued or executed outside the Philippines, notarization made separately before a notary public, civil officer, or other person authorized under foreign law to administer oaths or to authenticate/apostille signatures shall be allowed, provided that the notarized documents must be authenticated before a Philippine consular

official at the relevant Philippine consulate or apostilled at the relevant Apostille Office

- (e) For each instance in this ITC where authentication by a Philippine consular official is required, the form, including language, of the authentication shall be subject to the forms and rules applicable to the relevant Philippine office.
- (f) For purposes of exigency, a Challenger may submit a photocopy of the unauthenticated foreign document accompanied by a copy of the official receipt for payment of fees for the consularization / apostille of the foreign document, provided that the Challenger shall, as required under this ITC, submit the foreign documents duly authenticated before the relevant Philippine consular official or apostilled at the relevant Apostille Office, in the event it is declared the Winning Challenger.

### **1.10 Bid Amount for Grantor Revenue Share**

The Grantor Revenue Share that a Challenger may submit shall be expressed as a percentage with up to [two] decimal points ("**Bid Amount**").

### **1.11 Rules of Interpretation**

- (a) In case of ambiguities or discrepancies within the ITC, the following rules of interpretation shall apply:
  - (i) Between two or more Sections of the ITC, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections.
  - (ii) Between the Sections of the ITC and the Annexes, the Sections shall prevail.
  - (iii) Between any two Annexes, the Annex relevant to the issue shall prevail.
  - (iv) Between any value written in numerals and that in words, the latter shall prevail.
  - (v) In case of conflict among any of the Tender Documents, the provisions of the Concession Agreement shall prevail.
- (b) Unless the context otherwise requires:
  - (i) "Include", "includes", and "including" are deemed to be followed by "without limitation" or "but not limited to", whether or not actually followed by such words or words of like import.
  - (ii) References to any Annex or Schedule shall be deemed to include references to such document or agreement as amended, supplemented, novated, varied or replaced from time to time.
  - (iii) References to a person include his successor and permitted assigns.
  - (iv) References to any gender include all genders, and references to the singular include the plural, and vice versa.

- (v) References to Sections or Annexes which do not specify what document they are referenced to are Sections or Annexes of this ITC.
  - (vi) Headings are for convenience only and shall not affect the interpretation or construction of any provision of this ITC.
  - (vii) A “day” refers to a calendar day, a “month” refers to a calendar month, and a “year” refers to a period of time commencing on a particular date and ending on the day before the anniversary of such date.
- (c) The rule of interpretation that a document shall be strictly interpreted against the party who drafted the document shall not apply.

## 2 Site Visit

The PBAC may, upon the request of the Challengers, facilitate site visits as per the Site Visit Guidelines uploaded on the VDR on [date]. A Challenger may conduct its own site visit, which will be without assistance from the PBAC.

## 3 Pre-Bid Conference

The PBAC will conduct a Pre-Bid Conference for the Challengers for the Challengers to clarify any part of the Tender Documents and to answer any relevant question from the Challengers. No provision, term, or condition in the Tender Documents shall be modified by statements made at the Pre-Bid Conference unless these are stated in writing in a supplemental notice or bid bulletin issued by the PBAC. The Pre-Bid Conference shall be held [insert date] 2024 at the [insert address]. A summary of the pre-bid conference proceedings shall be issued to all Challengers. Attendance at the pre-bid conference is not mandatory.

## 4 Meetings with the PBAC

Upon request of the Challengers, the PBAC may hold one-on-one meetings. Challengers who wish to schedule such meetings may send their requests to the PBAC Secretariat via the VDR. A Challenger scheduled for one-on-one meeting is requested to submit in writing no later than three [3] working days prior to such meeting, its questions using the following template:

DATE:	[Insert Date of Submission]		
CHALLENGER NAME:	[Insert Name of Challenger]		
TOPIC	[NAME OF DOCUMENT SECTION # OF DOCUMENT]	QUERY/COMMENT	PROPOSED REDRAFT [IF ANY]

--	--	--	--

Challengers may submit marked/tracked sections of the Tender Documents in case they have any proposed drafting modifications. Challengers shall note that the draft Concession Agreement is final and non-negotiable.

---

## 5 Comparative Proponents shall note that the Concession Agreement is final and non-negotiable.

Comparative Proposals Submission

### 5.1 Deadline for Submission

Challengers shall submit their Comparative Proposals to:

Pre-qualification, Bids and Awards Committee  
 Department of Transportation  
 Unit 62, Columbia Tower, Ortigas Ave., Mandaluyong City, Metro Manila,  
 Philippines 1550

Comparative Proposals must be submitted from 8:30 a.m. until -2:00 P.M on the Comparative Proposals Submission Date. The date and time of submission shall be recorded through the use of an official clock designated by the PBAC for that purpose. The official clock shall be set up at the place of submission on the day prior to the Comparative Proposals Submission Date. Challengers are advised to synchronize their time with the official clock.

### 5.2 Format of Submission

The Challenger shall prepare and submit its Comparative Proposal in the following manner:

- (a) Bid forms must be printed either in standard A4 or letter size [8 ½"x 11"] paper, must be paginated, and text must be font size twelve [12]. These requirements relating to paper and font size shall only apply to prescribed forms provided in the ITC and to any other Tender Documents which may be reasonably made to comply with these requirements.
- (b) For the documents comprising Envelope 1, as prescribed in Section 7.1, the Challenger shall prepare and submit one [1] set of the original documents [the "**Original Set**"] and five [5] sets of clear photocopies ["**Photocopies**"]. The Original Set shall be placed in a sealed envelope marked with the Challenger's name, the name of the Project, and "Envelope 1-Original". The Original Set shall contain the initials of the Challenger's Authorized Representative on each page. Each of the five [5] sets of Photocopies shall be placed in a sealed envelope marked with the Challenger's name, the name of the Project, and "Envelope 1 – Copy 1...5", respectively.
- (c) The documents comprising Envelope 2, as described in Section 7.2, shall be prepared in the same way as the documents comprising Envelope 1.
- (d) For the documents comprising Envelope 3, as described in Section 7.3, the Challenger shall prepare one [1] set of the original documents. Envelope 3 shall be marked "Envelope 3". The Bid Amount shall be placed in a sealed

envelope marked “Envelope 3 – Bid Amount” and the supporting Financial Model together with the project financing plan must be placed in another sealed envelope marked “Envelope 3 – Supporting Financial Model & Project Financing Plan.”

- (e) Together with Envelopes 1, 2 and 3, the Challenger shall also include five [5] clear electronic copies of their contents which shall be contained in Compact Disc-Read Only Memory [CD-ROMs] and/or flash drives. The electronic copy of the documents comprising Envelopes 1 and 2 must be in Portable Document Format [PDF] files arranged in exactly the same sequence as those of the Original Set. Meanwhile, electronic copy of Envelope 3 shall be in pdf and excel (traceable) files, as the case may be. Each CD and its container [if any] or flash drive must be indelibly marked “E-Copy of Envelope 1, CD/flash drive No. 1 ... 5”, and E-Copy of Envelope 2, CD/flash drive No. 1 ... 5”, as the case may be, and placed in the relevant envelope.
- (f) In case of any conflict between the paper copies and the electronic copies, the paper copy shall prevail.
- (g) Each of the Original Sets placed in envelopes marked as “Envelope 1-Original”, “Envelope 2 – Original”, “Envelope 3 – Bid Amount,” and “Envelope 3 – Supporting Financial Model & Project Financing Plan” shall be placed in one [1] outer sealed envelope or box marked as follows:

DEPARTMENT OF TRANSPORTATION  
AND  
CIVIL AVIATION AUTHORITY OF THE PHILIPPINES  
PRE-QUALIFICATIONS, BIDS, AND AWARDS COMMITTEE  
DEPARTMENT OF TRANSPORTATION  
LAGUINDINGAN INTERNATIONAL AIRPORT PPP PROJECT  
COMPARATIVE PROPOSAL – ORIGINAL  
[NAME AND ADDRESS OF CHALLENGER]

- (h) Each of the five [5] sets of Photocopies placed in envelopes marked “Envelope 1 - Copy 1” and “Envelope 2 - Copy 1” shall each be placed in one [1] outer sealed envelope or box marked as follows:

DEPARTMENT OF TRANSPORTATION  
AND  
CIVIL AVIATION AUTHORITY OF THE PHILIPPINES  
PRE-QUALIFICATIONS, BIDS, AND AWARDS COMMITTEE  
DEPARTMENT OF TRANSPORTATION  
LAGUINDINGAN INTERNATIONAL AIRPORT PPP PROJECT  
COMPARATIVE PROPOSAL – COPY  
[NAME AND ADDRESS OF CHALLENGER]



- (i) If Bids are not sealed and marked as required, the PBAC shall assume no responsibility for the misplacement or premature opening of the Bids.

### **5.3 Confidentiality**

- (a) Information relating to the examination, evaluation, clarification, and comparison of Comparative Proposals and recommendations concerning the award of the Project shall be not be disclosed to any of the Challengers or other persons not officially concerned with the Tender Process; provided, that the DOTr, CAAP, and PBAC shall not have the obligation to keep any information submitted by a Challenger confidential after the signing of the Concession Agreement by the Winning Challenger or Original Proponent (as applicable) or special purpose corporation formed by the Winning Challenger or Original Proponent (as applicable); or the lapse of one hundred eighty [180] days after Comparative Proposals Submission Date, whichever comes earlier.
- (b) The PBAC will not return either the original or the copies of any Comparative Proposal submitted by a Challenger, other than specified in Section 10.

---

## **6 Qualification Requirements**

To qualify to submit a Comparative Proposal for the Project, Challengers must comply with all the Legal Qualification Requirements, Technical Qualification Requirements, and Financial Capability Requirement provided in this Section.

### **6.1 Legal Qualification Requirements**

- (a) If the Challenger is a partnership, corporation or any other juridical entity – in case of Philippine partnerships, or corporations created pursuant to the Revised Corporation Code of the Philippines, such partnerships or corporations must be registered in the Philippines with the Philippine Securities and Exchange Commission [“SEC”], or in case of foreign partnerships, corporations, or other juridical entities, the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.
- (b) If the Challenger is a Consortium whose members are partnership(s), corporation(s) or any other juridical entity(ies) – in case of Philippine partnerships, or corporations created pursuant to the Revised Corporation Code of the Philippines, such partnerships or corporations must be registered in the Philippines with the SEC, or in case of foreign partnerships, corporations, or other juridical entities, the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity (each person or entity forming part of the consortium, a “Consortium Member”).
- (c) The Challenger in the case of Section 6.1(a), and each Consortium Member in the case of Section 6.1(b), must certify that it and its Affiliates whose projects and experience are being submitted as evidence of fulfillment of the requirements in this Section have no Unsatisfactory Performance Record, as per format provided in Annex QD-3.
- (d) An Airline-Related Entity can participate in the Tender Process subject to the following:

- (i) If the Challenger is a partnership, corporation or any other juridical entity, the Challenger itself or its Affiliate cannot be an Airline-Related Entity.
  - (ii) If the Challenger is a Consortium and any Consortium Member or such Consortium Members' Affiliates is an Airline-Related Entity, then such Consortium Member cannot own or be proposed to own thirty-three percent (33%) or more interest in such Consortium.
  - (iii) If more than one (1) Consortium Member or such Consortium Member's Affiliates is an Airline-Related Entity, then such Consortium Members cannot comprise or be proposed to own an aggregate of thirty-three percent (33%) or more interest in such Consortium.
- (e) The Challenger, in case of a partnership, corporation or any other juridical entity, or each Consortium Member, in case of a Consortium, which is not an Airline-Related Entity, must certify that it is not an Airline-Related Entity, as per the format provided in Annex BL-1A.

## **6.2 Technical Qualification Requirements**

- (a) To qualify to submit a Comparative Proposal for the Project, the Challenger must meet the following technical requirements.
- Construction Experience Requirements
  - Operations and Maintenance Experience Requirements
- (b) Challengers must provide supporting documents, whenever applicable, as per the formats provided in Annexes QD-4 to QD-7 and QD-14, as evidence for meeting the technical requirements.
- (c) The Challenger is allowed, but not required, to nominate the same entity to fulfill the Construction Experience Requirements and Operations & Maintenance Experience Requirements, subject to the qualifications under Section 6.2(d) and Section 6.2(e), respectively. If the Challenger nominates the same entity to fulfill the Construction Experience Requirements and Operations & Maintenance Experience Requirements, such entity may cite the same project to fulfill the qualification requirements for both the Construction Experience Requirements and Operations & Maintenance Experience Requirements. Nothing in this ITC shall preclude the Challenger from citing the same project as reference to fulfill the Construction Experience Requirements and Operations & Maintenance Experience Requirements, so long as it is able to comply with the documentation requirements under Section 7 (*Qualification Documents*).
- (d) Construction Experience Requirements
- (i) The Challenger must have satisfactorily undertaken the development of Eligible Projects in terms of overall responsibility for designing, engineering and construction, as evidenced by a certification of [capital costs incurred/payments received] for such Eligible Projects during the Eligible Period, such that the sum total of the [capital costs incurred/payments received] for the Eligible Projects is at least PhP 2,661.5 million and there is at least one Eligible Project for which the [capital costs incurred/payments received] is at least PhP 1,102 million.

- (ii) The entity which fulfills the Construction Experience Requirements may be:
  - (A) If the Challenger is a partnership, corporation or any other juridical entity, the Challenger itself or its Affiliate; or
  - (B) If the Challenger is a Consortium, a Consortium Member having at least thirty-three and one third percent (33 1/3%) interest in the Consortium, or such Consortium Member's Affiliate.
- (iii) To satisfactorily establish its claim, the entity whose Construction Experience is being submitted to fulfill this requirement – whether the Challenger or a Consortium Member or any of their Affiliates should submit:
  - (A) Details of the project being submitted as reference to fulfill the entity's Construction Experience, following the format provided in Annex QD-4;
  - (B) A Certificate for Details of Eligible Projects for Construction Experience, following the format provided in Annex QD-5.
  - (C) A valid license issued by the Philippine Contractors Accreditation Board (PCAB) for Large B Classification/License Category AAA, or in 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 Winning Challenger that proposed the foreign entity is awarded the Project.

In case the entity that is being proposed for Construction Experience is a foreign entity, and there is no accreditation institution and/or accreditation/licensing system in such foreign entity's country of origin that is equivalent to the PCAB or the accreditation/licensing system established under Republic Act No. 4566 ("Contractor's License Law"), as the case may be, then the Challenger proposing such foreign entity must submit the following:

- (1) A sworn certification from the Corporate Secretary or authorized representative of the foreign entity stating that there is no accreditation institution and/or accreditation/licensing system in the foreign entity's country of origin that is equivalent to the PCAB or the accreditation/licensing system established under the Contractor's License Law, which certification must be authenticated before a Philippine Notary Public or Consular Official; and
- (2) A certificate from an Auditor or Corporate Secretary or authorized representative of the foreign entity certifying that the foreign entity meets the qualifications for securing a PCAB license for Large B Classification/License Category AAA,

Provided, that the foreign entity must obtain the required PCAB license and accreditation after the Winning Challenger that proposed such foreign entity is awarded the Project.

- (iv) The entity whose experience is being submitted in fulfillment of this requirement must certify that it has no Unsatisfactory Performance Record as per the format provided in Annex QD-3.
- (e) Operations & Maintenance (O&M) Experience Requirements
  - (i) The Challenger must have expertise and experience in either:
    - (A) the operation and maintenance of an International Airport for a period of at least three (3) consecutive calendar years anytime within the Eligible Period, with such International Airport having handled an Annual Passenger Throughput of at least five (5) million passengers per annum within such three (3)-year period; OR
    - (B) the operation and maintenance of more than (1) International Airport, each for a period of at least three (3) consecutive calendar years anytime within the last five (5) years of the Eligible Period, with such airports having handled a cumulative annual passenger throughput of at least five (5) million passengers per annum for at least three (3) consecutive calendar years within the last five (5) years of the Eligible Period, with at least one (1) of such airports having handled an annual passenger throughput of at least three (3) million passengers per annum for a period of at least three (3) consecutive calendar years anytime within the last 5 years of the Eligible Period.

For purposes of this Section 6.2(e), operating and maintaining an airport means managing the day-to-day operations of the airport (landside and airside), dealing with relevant government authorities, investing, and maintaining the related infrastructure (landside and airside). A ground handling operator is not considered as an entity that “operates and maintains” an airport, since it only provides services to airlines.

- (ii) The entity which fulfills the O&M Experience requirement may be:
  - (A) If the Challenger is a partnership, corporation, or any other juridical entity, the Challenger itself or its Affiliate;
  - (B) If the Challenger is a Consortium, a Consortium Member having at least ten percent (10%) interest in the Consortium, or such Consortium Member’s Affiliate; or
  - (C) A Designated Operator or its Affiliate. The Designated Operator must confirm willingness to enter into a technical service agreement with the Challenger.
- (iii) To satisfactorily establish its claim, the entity whose O&M Experience is being submitted to fulfill this requirement – whether

the Challenger or a Consortium Member or any of their Affiliates or the Designated Operator or any of its Affiliates – should submit:

- (A) Details of the project being submitted as reference to fulfill the entity's O&M Experience Requirements, following the format provided in Annex QD-6;
  - (B) A Certificate for Details of Projects for Operations and Maintenance Experience, following the format provided in Annex QD-7.
- (iv) The entity whose O&M Experience is being submitted to fulfill this requirement must certify that it has no Unsatisfactory Performance Record, following the format provided in Annex QD-3.
- (v) Qualified Key Personnel

The Challenger and/or the Consortium Members must have, among them and their Affiliates or Designated Operator's collective personnel, the required qualifications and experience described below.

<b>Sr. No.</b>	<b>Experience Required</b>	<b>Minimum Years Experience</b>
1	At least one (1) person, having had the overall responsibility for the development (i.e. planning, coordination, integration and/ or implementation of the designing, engineering and construction) of at least (3) Eligible Projects, each with a project cost of at least PHP 500 million, with at least one (1) of such projects having a project cost of at least PHP 1 billion, and with at least one of such projects being an airport. For the purpose of this requirement, holding (2) or more different positions with respect to the same Eligible Project shall be considered as having been involved in two (2) or more projects	10
2	At least one (1) person, having been responsible for the coordination of the operations and maintenance of at least 1 airport (landside and airside facilities) with an annual passenger throughput of at least 3 million passengers per annum for a period of at least 3 consecutive calendar years anytime within the Eligible Period. For the purpose of this requirement, responsibility for landside and airside facilities may be separately accrued from different airports or from different periods in the same airport.	10
3	At least one (1) person responsible for the commercial development and marketing of an airport, having experience in commercial management (aeronautical and non-aeronautical) at an airport with an annual passenger throughput of at least 3 million	10

	passengers per annum for a period of at least 3 consecutive calendar years any time within the Eligible Period.	
--	---	--

- (A) In order to meet the qualifications and experience required above, a Challenger may propose persons who are employed or engaged by the Challenger itself, a Consortium Member, or any of their Affiliates or the Designated Operator (as applicable). The Challenger must propose at least one (1) person, and a maximum of three (3) persons, for each of the above key personnel. Each of the above key personnel qualifications must be met by different individuals.
- (B) Any person nominated by a Challenger to fulfill any of the required qualifications as a Key Personnel may not be nominated by another Challenger for the same or a different Qualified Key Personnel position.
- (C) In the event that it is selected as the Winning Challenger, the Challenger must undertake to assign these key personnel to implement the Project.
- (D) In case any of these key personnel is no longer available or no longer connected with the Challenger at the time of implementation by the Winning Challenger of the Project, they may be replaced as provided in the Concession Agreement.
- (E) The person whose experience is being submitted in fulfillment of this requirement must certify that s/he has no Unsatisfactory Performance Record, following the format provided in Annex QD-10.

### 6.3 Financial Qualification Requirements

- (a) To be financially qualified to submit a Comparative Proposal for the Project, a Challenger must meet the following Financial Qualification Requirements:
  - (i) A Challenger must have [i] a Net Worth of at least Three Billion Eight Hundred Million Pesos (PhP 3,800,000,000), or its foreign currency equivalent, as of the Challenger's latest audited financial statements, which must be for a financial year ending not earlier than 31 December 2022. In case of a Consortium, the Net Worth of Consortium Members who have an equity share of at least twenty-five percent (25%) each in the Consortium may be added together.
  - (ii) It is anticipated that the Challenger will need to arrange for funding the estimated cost of the Project using a combination of debt and equity. The Challenger shall provide a letter testimonial from a domestic universal/commercial bank or an international bank authorized by the Bangko Sentral ng Pilipinas (BSP) to transact in the Philippines attesting that the Challenger and/or members of the Consortium, or their Affiliates, are banking with them, and that they are in good financial standing and are qualified to obtain credit accommodations from such banks to finance the Project equivalent

to the value of the debt requirement in their proposal. The sum of the maximum debt amounts specified in the letter testimonial for said entity/ entities should add up to at least Eight Billion Nine Hundred Million Pesos (PhP 8,900,000,000). For guidance, Challengers may make reference to the BSP's list of universal and commercial banks at: <https://www.bsp.gov.ph/SitePages/FinancialStability/DirBanksFIList.aspx>

- (b) The entity or entities which fulfill the Financial Qualification Requirements may be:
  - (i) If the Challenger is a partnership, corporation or any other juridical entity, the Challenger itself, or its Affiliate; and
  - (ii) If the Challenger is a Consortium: a Consortium Member or Members, each with at least twenty-five per cent (25%) equity interest in the Consortium, or such Consortium Member or Members' Affiliates.
- (c) Each entity which is proposed to meet the Financial Qualification Requirement must also submit a Certification of Absence of Unsatisfactory Performance Record, following the format provided in Annex QD-3, but only in relation to the last two paragraphs of the definition of "Unsatisfactory Performance" which deal with:
  - (i) inclusion in a blacklist, current as of the Comparative Proposals Submission Date, 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, but not limited to, the World Bank, European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank, African Development Bank Group, and the Asian Infrastructure Investment Bank, whether as an individual contractor, partnership, corporation, or any other juridical entity, or as a member of a joint venture or consortium; and
  - (ii) involvement in any Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practice or having Conflicts of Interest.

---

## **7 Comparative Proposals**

### **7.1 Envelope 1 - Qualification Documents**

Envelope 1 shall contain the Qualification Documents of the Challengers comprised of the following:

- (a) Checklist of Qualification Documents, using form in Annex QDC.
- (b) Bid Letter, using the form in Annex BL-1.
- (c) Notarized Certification of Not Being an Airline-Related Entity, using the form in Annex BL-1A.

- (d) Notarized authority to Submit Comparative Proposal and Designation of Authorized Representative;
  - (i) For Challengers that are partnerships or corporations: Authority to Submit Comparative Proposal and Designation of Authorized Representative, using the form in Annex BL-2A; and
  - (ii) For Challengers that are Consortia: Consortium Member's Authority to Participate in the Consortium and Submit a Comparative Proposal and Designation of Lead Member and Authorized Representative of Consortium, using the form in Annex BL-2B, to be submitted by each Consortium Member.
- (e) Business Structure using the form in Annex QD-1A for partnerships or corporations, or Annex QD-1B for Consortia.
  - (i) The Business Structure must indicate the entities that fulfill the Technical Qualification Requirements and the Financial Capability Qualification Requirements, and any Affiliates of these entities whose projects, experience, or financial capabilities are being submitted to comply with such Qualification Requirements.
  - (ii) For Consortia, the Business Structure must indicate the Lead Member and all Consortium Members, and the proposed equity interest of each Consortium Member in the Consortium, and the total percentage interest of all Consortium Members must be one hundred percent [100%].
  - (iii) If an Affiliate will be used to comply with any of the Technical Qualification Requirements or the Financial Qualification Requirements, evidence of affiliation must be submitted.
- (f) Basic Information Sheet, using the form in Annex QD-2:
  - (i) To be submitted by all entities identified in the Business Structure [Form QD-1A or QD-1B],
  - (ii) For all entities submitting this form [including the entities nominated to fulfil the Construction and O&M Experience Requirements]:
    - (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 personality or capacity.

The certified true copy may be issued by either the SEC or its equivalent in a foreign country, or the entity's corporate secretary. If it is issued by 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 having jurisdiction over the place of issue.



- (B) Certified true copy of its SEC Certificate of Incorporation, or for a foreign entity, the equivalent document issued 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 personality or capacity.

The certified true copy of the SEC Certificate of Incorporation or the equivalent document for a foreign entity, must be issued by the SEC, or the equivalent in a foreign country.

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

The certified true copy of the Articles of Incorporation and By-Laws may be issued either by the SEC or its equivalent in a foreign country, or the entity's corporate secretary. If the certified true copies are issued by 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 having jurisdiction over the place of issue.

- (g) Notarized Certification of Absence of Unsatisfactory Performance Record [using the form in Annex QD-3]. To be submitted by all entities identified in the Business Structure [Form QD-1A or QD-1B].

- (h) Construction Experience [using the form in Annex QD-4]

- (i) To be submitted by the entity or entities nominated to fulfil the Construction Experience Requirement in Section [6.2(g)] as identified in the Business Structure [Form QD-1A or QD-1B], item 3.

- (ii) Required attachment for each entity submitting this form:

- (A) Certificate for Details of Eligible Projects for Construction Experience from an Authorized Issuer using the form prescribed in Annex QD-5.

- (B) If the project was completed by an Affiliate of the entity which fulfills the Construction Experience Requirement, evidence of such affiliation using the form prescribed in Annex QD-14.

- (C) A valid license issued by the Philippine Contractors Accreditation Board (PCAB) for Large B Classification/License Category AAA, or in 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 Winning

Challenger that proposed the foreign entity is awarded the Project.

In case the entity that is being proposed for Construction Experience is a foreign entity, and there is no accreditation institution and/or accreditation/licensing system in such foreign entity's country of origin that is equivalent to the PCAB or the accreditation/licensing system established under Republic Act No. 4566 ("Contractor's License Law"), as the case may be, then the Challenger proposing such foreign entity must submit the following:

- (3) A sworn certification from the Corporate Secretary or authorized representative of the foreign entity stating that there is no accreditation institution and/or accreditation/licensing system in the foreign entity's country of origin that is equivalent to the PCAB or the accreditation/licensing system established under the Contractor's License Law, which certification must be authenticated before a Philippine Notary Public or Consular Official; and
- (4) A certificate from an Auditor or Corporate Secretary or authorized representative of the foreign entity certifying that the foreign entity meets the qualifications for securing a PCAB license for Large B Classification/License Category AAA,

Provided, that the foreign entity must obtain the required PCAB license and accreditation after the Winning Challenger that proposed such foreign entity is awarded the Project.

- (i) Operations and Maintenance Experience [using the form in Annex QD- 6].
  - (i) To be submitted by the entity nominated to fulfil the Operations and Maintenance Experience Requirement in Section 6.2(e), as identified in the Business Structure [Form QD-1A or Form QD1B], item 4.
  - (ii) Required attachments for each project cited as reference:
    - (A) Certificate for Details of Projects for Operations and Maintenance Experience using the form prescribed in Annex QD-7.
    - (B) If the project was completed by an Affiliate of the entity which fulfills the Operations & Maintenance Experience Requirement, evidence of such affiliation using the form prescribed in Annex QD-14.
  - (iii) Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of, the Project, [using the form in Annex QD-8]. To be submitted by the Designated Operator

proposed by the Challenger to fulfil the Operations and Maintenance Experience Requirement in Section 6.2(e), as identified in the Business Structure [Form QD-1A or Form QD-1B], item 4.

- (j) List of Key Personnel [using the form in Annex QD-9].
  - (i) Notarized Certification of Absence of Unsatisfactory Performance Record for all Qualified Personnel, using the form prescribed in Annex QD-10.
  - (ii) Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Projects, using the form prescribed in Annex QD-11.
- (k) Notarized Statement of Financial Capability [using the form in Annex QD-12].
  - (i) To be submitted by the entity or entities nominated to fulfil the Financial Capability Requirement in Section 6.3, as identified in the Business Structure [Form QD-1A or Form QD-1B], item 5.
  - (ii) Required attachments:
    - (A) Certified true copy of latest audited financial statements which must be dated not earlier than 31 December 2022, 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 personality or capacity.
    - (B) Letter testimonial from a domestic universal/commercial bank or an international bank authorized by the Bangko Sentral ng Pilipinas (BSP) to transact in the Philippines attesting that the Challenger and/or members of the Consortium, or their Affiliates, are banking with them, and that they are in good financial standing and are qualified to obtain credit accommodations from such banks to finance the Project equivalent to the value of the debt requirement in their proposal. The sum of the maximum debt amounts mentioned in the letter testimonial for said entity/ entities should add up to at least Eight Billion Nine Hundred Million Pesos (PhP 8,900,000,000).
    - (C) If the financial qualification of the Affiliate is used to fulfill this requirement, evidence of such affiliation using the form prescribed in Annex QD-14.
    - (D) If more than one entity is nominated to fulfil the Financial Capability Requirement, aggregate financial summary of all of such entities using the form prescribed in Annex QD-12A.
- (l) Notarized Application to Submit Comparative Proposal [using the form in Annex QD-13]. To be submitted by the Challenger.
- (m) Notarized Corporate Authorizations and Designation of Authorized Representative:

- (i) For Partnerships or Corporations: Authority to Submit Comparative Proposal and Designation of Authorized Representative, using the form in Annex BL-2A. To be submitted by the Challenger.
- (ii) For Consortia: Consortium Member's Authority to Participate in Consortium and to Submit a Comparative Proposal, and Designation of Lead Member and Authorized Representative of Consortium, using the form in Annex BL-2B. To be submitted by each Consortium Member.

## **7.2 Envelope 2 - Technical Proposal**

Envelope 2 shall contain the Challenger's Technical Proposal and shall include the following documents:

- (a) Bid Security as provided for in Section 9, without modification from the form provided for in Annex TP-1.
- (b) Challenger's Technical Proposal including the components enumerated in Annex TP-2.
- (c) Notarized Statement for Submission of Technical Proposal using the form in Annex TP-3

## **7.3 Envelope 3 - Challenger's Financial Proposal**

Envelope 3 shall contain the Challenger's Financial Proposal which should include the following documents:

- (a) The Bid Amount, as described in Section 1.10, using the form in Annex FP-1, which should be a fixed number expressed as a percentage stated in both words and figures, which shall be indicated up to two [2] decimal points. If there is a discrepancy between the words and figures, the amount in words will prevail.
- (b) Supporting Financial Model, using the format in Annex FP-2, to be submitted in both hard copy and electronic form in a CD or flash drive, in Microsoft Excel format, showing all relevant formulas; and
- (c) Project Financing Plan, using the format in Annex FP-3, which must show that the proposed financing plan can adequately meet the construction cost, right-of-way acquisition cost, as well as the operation and maintenance costs required for the Project and still enable the Concessionaire to service its debt obligations and fulfil its covenants with its lenders, and meet equity investors' return requirements.

All amounts must be stated in Philippine Pesos.

## **7.4 Original Proponent's Financial Proposal**

For purposes of the Challenger's Financial Proposal, it should be noted that the Original Proponent's Financial Proposal provides that the Grantor's Revenue Share is [*insert figure*].

---

## **8 One Challenger, One Submission**

Each Challenger may submit only one Application to submit a Comparative Proposal. A Challenger 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 Tender, there are restrictions on the extent of affiliation and ownership between Challengers and members of different Consortia. These are described in greater detail in Section 16.

---

## **9 Bid Security**

### **9.1 Form of Bid Security**

The Bid Security required to be submitted as part of the Comparative Proposal must be in the form of an Irrevocable Standby Letter of Credit ["Letter of Credit"] in the amount of Two Hundred Two Million Five Hundred Thousand Pesos [PhP 202,500,000.00]. The Letter of Credit must be issued by a domestic universal bank/commercial bank or an international bank authorized by the BSP to transact in the Philippines.

### **9.2 Validity and Purpose**

The Bid Security shall remain valid for one hundred eighty [180] calendar days from the Comparative Proposals Submission Date. The Bid Security shall guarantee that a Challenger complies with certain conditions for its participation in this Tender Process as provided in Section 9.3.

### **9.3 Forfeiture of Bid Security**

The Bid Security shall be subject to forfeiture in its entirety in favor of the DOTr and CAAP upon the occurrence of any of the following events:

- (a) The Challenger withdraws its Comparative Proposal at any time after Comparative Proposals Submission Date; and before issuance of the Notice of Award or lapse of 180 day-period from the Comparative Proposals Submission Date, whichever is earlier;
- (b) The Challenger, any Consortium Member, any proposed Designated Operator, or any Affiliates of any of these entities, or any of their respective officers, employees, agents, and advisers [i] commits any Corrupt Practice, Fraud, Collusion, Coercive, Undesirable Practice, or Restrictive Practice, [ii] has a Conflict of Interest or [iii] violate the Lock-Up Rules, regardless of the stage of the Tender Process when the violation existed or was committed, and regardless of whether the Challenger has already been designated as the Winning Challenger which is issued a Notice of Award, in which latter case the Construction Performance Security in the place at the time of discovery shall be subject to forfeiture;

- (c) The Challenger is disqualified due to a material misrepresentation in any statement made or document submitted as part of its Comparative Proposal;
- (d) The Winning Challenger which is issued a Notice of Award fails to comply with the Post-Award Requirements within twenty [20] days from receipt of such Notice of Award, or within any extension period granted by the PBAC;
- (e) The special purpose corporation formed by the Winning Challenger which is issued a Notice of Award (or the Winning Challenger itself if the special purpose corporation is not yet formed) fails to sign the Concession Agreement within five [5] days from receipt by the Winning Challenger which is issued a Notice of Award of notice from the PBAC that all of the conditions stated in the Notice of Award have been complied with; or
- (f) Other events as described in the ITC and the PPP Code that are causes for forfeiture of the Bid Security.

#### **9.4 Return of Bid Security**

- (a) Challengers that do not withdraw their Comparative Proposals prior to one hundred eighty [180] days after the Comparative Proposals Submission Date, but who lose in the Tender, or who are disqualified reasons other than those that result in the forfeiture of the Bid Security as provided in Section 9.3, will have their Bid Security returned to them without interest within ten [10] days from receipt of written notice of their disqualification.
- (b) Within ten [10] days after the signing of the Concession Agreement by the Winning Challenger which is issued a Notice of Award or one hundred eighty [180] days after the Comparative Proposals Submission Date, whichever comes earlier.
- (c) The Bid Securities of all Challengers whose Bid Securities have not been forfeited or returned will be returned without any interest, except for that of a Winning Challenger which is issued a Notice of Award whose deadline for complying with the Post-Award Requirements has not yet expired.
- (d) Any Challenger that has not been disqualified may extend the validity of its Bid Security provided that an extension of validity of Bids is considered as necessary. Challengers shall be requested in writing to extend the validity of their Bids before the expiration date. However, Challengers shall not be allowed to modify or revise their Bids apart from the validity of their Bids. Challengers shall have the right to refuse to grant such an extension without forfeiting their Bid Security, but those who are willing to extend the validity of their Bids shall also be required to extend the validity of their bid securities by twenty-eight [(28)] days beyond the deadline of the extended bid validity period in accordance with the requirements of the IRR.

---

## **10 Submission, Opening and Evaluation of Comparative Proposals**

### **Opening and Evaluation of Envelope 1 - Qualification Documents**

- (a) Immediately after 2:00 p.m. on the Comparative Proposals Submission Date, the PBAC will begin the opening proceedings by announcing the names of

the Challengers that have submitted Comparative Proposals and any other matters as the PBAC may consider appropriate.

- (b) Challengers who do not send a representative to witness the opening of Envelope 1 shall be deemed to have waived the opportunity to witness the opening of these envelopes.
- (c) The PBAC shall then open Envelope 1 of each Challenger, one at a time, in the order in which the Comparative Proposals were received, in a public session and in view of all attending Challengers. The PBAC shall examine the contents of Envelope 1 to determine the completeness of the documents and whether they are substantially responsive to the requirements prescribed in Section 7.1. If Envelope 1 is found to be incomplete in any material aspect or nonresponsive, the PBAC shall automatically disqualify the entire Tender and immediately return the unopened Envelopes 2 and 3 to the Challenger concerned.
- (d) The PBAC shall conduct a detailed evaluation of the Qualification Documents of all Challengers whose Envelope 1 were not rejected over a period not exceeding ten [10] calendar days from the date the proposals are opened, in order to determine whether the Challengers have submitted Qualification Documents which are responsive in accordance to the Legal, Technical and Financial Capability Requirements. Accordingly, the PBAC shall duly inform the Challengers who have been pre-qualified within five (5) calendar days after approval thereof.

The PBAC shall determine the qualified and disqualified Challengers and notify them of the result. The Qualified Challengers shall be informed of the date, time and venue for the opening of the Envelope 2. Disqualified Challengers shall be informed of the reasons for their disqualification and their Envelope 2 and 3 will be returned unopened.

### **Opening and Evaluation of Envelope 2 – Technical Proposal**

- (e) The PBAC shall then open Envelope 2 of the Challengers whose Qualification Documents were not rejected, one at a time, in the order in which the Comparative Proposals were received, in a public session and in view of all attending Challengers. The PBAC shall conduct a preliminary examination of the Technical Proposal to determine the completeness of the documents. The first document to be evaluated for Envelope 2 shall be the Bid Security, which should be submitted without any change or deviation from the form as provided for in Annex BL-3.
- (f) The PBAC shall complete the evaluation of the Technical Proposals of all the Qualified Challengers, within thirty [30] calendar days from the date Envelope 2 of the Challengers are opened, in order to determine whether the Challengers have submitted Technical Proposals which are responsive, focusing particularly on whether the Technical Proposal includes all the components mentioned in 7.2 (b) and that they conform to the MPSS.
- (g) To assist in the examination and evaluation of the contents of a Qualified Challenger's Technical Proposal, the PBAC may, at its discretion, request such Qualified Challenger to clarify certain portions of its Technical Proposal. The PBAC shall make all requests for clarification in writing. Clarifications shall be limited to providing explanations and/or supporting documentation for information included as part of the Qualified Challenger's Technical Proposal and shall not include the submission of additional

elements to the Technical Proposal, nor its modification in any way. Any clarification by the Qualified Challenger that is not in response to the request by the PBAC shall not be considered.

- (h) If the PBAC determines that the Qualified Challenger has complied with all the requirements for the Technical Proposal, the Qualified Challenger shall be rated “**Complying**”, otherwise, it shall rate the Challenger as “**Non-Complying**”.
- (i) If the Bid Security has been evaluated to have been modified or if Envelope 2 is found to be incomplete in any material aspect, the PBAC shall rate the entire Bid as non-complying, and immediately return the unopened Envelope 3 to the concerned Challenger.
- (j) Qualified Challengers with Non-Complying Technical Proposals shall be informed of the reason/s why their Technical Proposals were considered as “Non- Complying.”
- (k) All Challengers whose Technical Proposals were found to be “Complying” shall be considered on equal footing insofar as the Technical Proposals are concerned. Hence, the Winning Challenger shall be determined exclusively on the basis of the Bid Amount.

### **Opening and Evaluation of Envelope 3 – Financial Proposal**

- (l) The PBAC shall inform the Qualified Challengers with Complying Technical Proposals within five [5] working days from the completion of the review. The PBAC shall return to the Qualified Challengers with Non-Complying Technical Proposals their unopened Envelope 3 and Bid Security, unless the reason for the disqualification constitutes a ground for forfeiture of the Bid Security as provided in Section 9.3, in which case Envelope 3 shall be retained and the Bid Security shall be forfeited.
- (m) The PBAC shall inform the Qualified Challengers with Complying Technical Proposals of the date, time, and venue for the opening of Envelope 3 and invite them to witness the same. All Qualified Challengers with Complying Technical Proposals may send a representative to observe the opening of Envelope 3, and those that do not send a representative are deemed to have waived the opportunity to witness the opening of Envelope 3.
- (n) The PBAC shall then open Envelope 3 of each Qualified Challenger with Complying Technical Proposal, in the order in which the Comparative Proposals were received, in a public session and in view of all attending Challengers. The PBAC shall examine the contents of Envelope 3 to determine completeness of the documents and whether they are substantially responsive to the requirements prescribed in Section 7.3. If Envelope 3 is found to be incomplete in any material respect or non-responsive, the PBAC shall automatically disqualify the entire Bid and immediately return the unopened Envelope 3-Bid Amount to the Challenger concerned.
- (o) The PBAC shall then open Envelope 3 – Bid Amount of the Challengers whose proposals were not rejected, in the order in which the Comparative Proposals were received, in a public session and in view of all attending Challengers. The PBAC shall determine if the Bid Amount submitted by each Qualified Challenger with Complying Technical Proposal and whose



Financial Proposals are deemed complete and substantially responsive to the requirements in Section 7.3, is “complying”, i.e. must be in accordance with the requirements in Section 1.10. If the Bid Amount is not in accordance with the requirements in Section 1.10, the Financial Proposal shall be rated as “non-complying” and shall be disqualified.

- (p) The PBAC shall then rank the Bid Amounts of the Challengers with “complying” Financial Proposals and the Challenger that offers the highest Grantor Revenue Share shall, if such offer is higher than the Grantor Revenue Share offered by the Original Proponent, be considered the best complying Proposal and the Challenger declared the Winning Challenger.
- (q) In the event of a tie, the Challengers who have tied for the best complying Proposal shall be requested to resubmit their Financial Proposals within three [3] hours from the time the PBAC declares the tie on the price proposal. Immediately upon the resubmission of the Financial Proposals of the tied Challengers, the revised Financial Proposals shall be opened and ranked by the PBAC, and the best complying Proposal shall be determined in the same manner provided in Section 10(p). The same procedure shall be followed until the tie is broken.
- (r) In the case that two [2] Challengers with the same offer did not submit within three [3] hours from the opening of the financial proposal, the PBAC shall then proceed to the flipping of coin and the Challenger who predicted correctly the face of the coin will be declared as the Winning Challenger.
- (s) The PBAC shall review and verify the Supporting Financial Model & Project Financing Plan of the Challenger with the best complying Proposal to determine whether the Supporting Financial Model & Project Financing Plan are responsive to the formal requirements under Section 7.3 within a period not to exceed within 15 calendar days from the date when Envelope 3 was opened. Upon confirmation by the PBAC that the Supporting Financial Model & Project Financing Plan of the Challenger with the best complying Proposal are responsive to the formal requirements under Section 7.3, the PBAC shall declare such Challenger as the Winning Challenger and issue the corresponding notice to the Winning Challenger, a copy of which shall be furnished to the Original Proponent

### **Request for Clarifications, Motion for Reconsideration, and Appeal Process**

- (t) During the examination and evaluation of the Comparative Proposals, the PBAC reserves the right to, at its discretion:
  - (i) Request Challengers to submit clarifications on the form and contents of any documents in their Comparative Proposals;
  - (ii) Make inquiries with any person, government authority, client organization, consortium member, officer, director, employee or other agent of any Challenger for the purpose of clarifying any matter included in its Comparative Proposal;
  - (iii) Invite Challengers to a meeting[s] to provide clarifications and/or confirmations; or
  - (iv) Request Challengers to verify the submitted documents.

The PBAC shall make all requests clarifications, meetings, confirmations, or verifications in writing. Clarifications by a Challenger shall be limited to providing explanations and/or supporting documentation for information already included as part of the Comparative Proposal but shall not add elements to or modify any aspect of its Comparative Proposal. Responses received from the relevant Challenger shall be included as part of its Comparative Proposal with a clear reference to the section of the Comparative Proposal for which the clarification/verification is provided. All submitted information and any clarifications requested by the CAAP shall be assessed against the criteria for qualification and rated on a “pass-or-fail” basis. The overall rating for the evaluation for each Qualification Document will be “qualified”, and for each Technical Proposal document and Financial Proposal document will be “complying” if each criterion is rated “passed” and each required document and attachment is completely submitted. The overall rating will be “disqualified” if any criterion is rated “failed” or any required document and attachment is missing.

- (u) If no Comparative Proposal or no complying Proposal is received by the CAAP, the PBAC shall recommend to the DOTr Secretary and the CAAP Governing Board that the Original Proponent be issued a Notice of Award. If no other Comparative Proposal or complying Proposal is determined to be better than that of the Original Proponent, the Notice of Award shall be issued to the Original Proponent. In the event that the CAAP receives a comparative proposal and declares a Winning Challenger, the Original Proponent shall be given thirty [30] calendar days from receipt of notice of the results of the Tender within which to submit written notice to the CAAP of its willingness to match the percentage of Grantor Revenue Share offered by Winning Challenger (and submit a revised financial model based on the revised percentage of the Grantor Revenue Share). If the Original Proponent fails to match the percentage of the Grantor Revenue Share offered by the Winning Challenger within the foregoing thirty [30] calendar day period, then the PBAC shall recommend to the DOTr Secretary and the CAAP Governing Board that the Winning Challenger be issued a Notice of Award. On the other hand, if the Original Proponent matches the percentage of the Grantor Revenue Share offered by the Winning Challenger within the foregoing thirty [30] calendar day period (with the submission of a revised financial model), then the PBAC shall recommend to the CAAP Secretary that the Original Proponent be issued a Notice of Awards.
- (v) Within five [5] calendar days from receipt of the written notice of PBAC resolution for disqualification or failure to comply with the bidding requirements, the aggrieved Challenger may file a Motion for Reconsideration of such PBAC resolution with the PBAC. The PBAC shall render a decision within five [5] calendar days upon receipt of the Motion for Reconsideration. No party shall be allowed a second motion for reconsideration for the decision of the PBAC. Upon receipt of the decision on the Motion for Reconsideration, the aggrieved Challenger may opt to appeal the PBAC’s decision on the Motion for Reconsideration by filing an appeal in accordance with Sections 82.2 and 82.3 of the IRR upon payment of a non-refundable appeal fee of (*insert amount in words* ) Million pesos, [PhP (*insert amount in figures*)].

---

## 11 Notice of Award, Post-Award Requirements, and Execution of Concession Agreement

### 11.1 Notice of Award and Post-Award Requirements

- (a) Immediately upon approval of the award by the DOTr Secretary and the CAAP Governing Board, the Notice of Award shall be issued to the Original Proponent or Winning Challenger, as the case may be. The Notice of Award shall prescribe that, within twenty [20] calendar days from receipt of the Notice of Award, the Original Proponent or Winning Challenger, as the case may be, shall submit the following documents to the PBAC as conditions precedent for the execution and signing of the Concession Agreement:
- (i) Notice of Award signed by the authorized representative of the Original Proponent or Winning Challenger, as the case may be.
  - (ii) Operation Performance Security, to replace the Bid Security.
  - (iii) In the case of the Winning Challenger, evidence of the formation of a special purpose corporation which will be the Concessionaire, consisting or certified true copies issued by the SEC of the certificate of incorporation, articles of incorporation, and by-laws of the Concessionaire and the Registration Data Sheet or a photocopy of the page[s] showing entries in the Concessionaire's stock and transfer book, certified true by the corporate secretary, wherein the shareholders of the Concessionaire and their respective percentage shareholdings should be the same as those provided in Annex BL-2B and BL-4. A Winning Challenger that is a corporation shall not be required to form a special purpose corporation if: [a] such Winning Challenger was incorporated no earlier than six [6] months prior the Comparative Proposals Submission Date; and [b] the PBAC is satisfied that the Winning Challenger was incorporated specifically for participation in the Project. In such case, the Winning Challenger shall be considered the "special purpose corporation" that will be the Concessionaire for the Project. If the Winning Challenger has not formed yet the special purpose corporation which will be the Concessionaire, the Winning Challenger is to execute the Concession Agreement and have the special purpose corporation accede to the Concession Agreement upon incorporation as per the terms of the Concession Agreement as set out in Section 11.2.
  - (iv) Certified true copies issued by the authorized officer of the Concessionaire, duly notarized, of resolutions adopted by the board of directors of the Concessionaire: [a] attesting that the Concessionaire conducted an organizational meeting of its stockholders and elected its regular board of directors and corporate officers and [b] authorizing the execution, delivery and performance of the Concession Agreement and the Transaction Documents [as this term is defined in the Concession Agreement]; and
  - (v) Letters of intent from reputable financial institutions that they will provide sufficient credit facilities to the Concessionaire.
  - (vi) If the Winning Challenger is a corporation: (i) a treasurer's affidavit attesting to the actual paid-up capital of the Concessionaire and (ii) subscription agreement between the Winning Challenger and the

Concessionaire or shareholders agreement between the Winning Challenger and the Concessionaire.

- (vii) Submission of Certified true copy of a valid Tax Clearance Certificate ["TCC"], issued by the appropriate office in the Bureau of Internal Revenue ["BIR"], pursuant to Executive Order No. 398 (series of 2005), as implemented by Revenue Regulations No. 3-2005, of the Winning Challenger, or in case of a Consortium, of each Consortium Member; provided that if the Challenger or Consortium Member is a foreign entity without previous or on-going commercial activities in the Philippines, or which otherwise does not derive income from Philippine sources, a certified statement duly signed by the Challenger or the Consortium Member's authorized representative stating that such Challenger or Consortium Member is not subject to income or business tax in the Philippines.
- (viii) Proof of reimbursement of the Philippine Peso equivalent of **Three Hundred Ninety-Six Thousand US Dollars (USD396,000)** at the time of reimbursement (exclusive of any bank charges), representing the fees for the Transaction Advisory Services for the **Laguindingan Airport Project** disbursed from the Project Development and Monitoring Facility (PDMF), plus 10% Cost Recovery Fee.

Proof of reimbursement shall be in the form of bank document evidencing deposit or remittance. Deposit/remittance should be made to the following PPP Center bank account:

<i>Account Name</i>	Public-Private Partnership Center of the Philippines
<i>Account Number</i>	1872-1034-02
<i>Name of Bank</i>	Land Bank of the Philippines – EDSA NIA Branch
<i>Bank Address</i>	DPWH Compound, EDSA, Diliman, Quezon City

- (b) (ix) Proof of payment to the International Finance Corporation amounting to **Nine Hundred Forty-Five Thousand US Dollars (USD945,000)** representing the Success Fee for the **Laguindingan Airport Project**. The payment of the Success Fee to the International Finance Corporation shall be made in United States Dollars, in accordance with the invoice to be presented by IFC, in immediately available funds, without any deductions whatsoever for taxes, duties, charges or other withholdings (all of which shall be borne by the Winning Challenger or Original Proponent as the case may be), into IFC's bank account, details of which will be provided in the Notice of Award. The PBAC shall submit a recommendation of award to the DOTr Secretary and the CAAP Governing Board no later than three (3) calendar days following the day the financial evaluation is completed. The PBAC must create and submit a thorough evaluation/assessment report outlining its reasoning for the bid review, along with clear explanations. Accordingly, the award will be decided by the DOTr Secretary and the CAAP Governing Board within three (3) calendar days of PBAC submitting the recommendation. The winning Challenger will receive a "Notice of Award" signed by the approval officer within five (5) calendar days of the bid being approved. The decision of the DOTr and CAAP to award the contract to the

selected Original Proponent or Winning Challenger, as the case may be, will be communicated in writing to all unsuccessful Challengers.

- (c) Failure to comply with the requirements described in the Notice of Award within the prescribed twenty [20] day period within receipt of the Notice of Award, or within any extensions granted by the PBAC, without reasonable justification acceptable to the DOTr and CAAP, shall result in the forfeiture of the Original Proponent's or Winning Challenger's, as the case may be, Bid Security and the withdrawal of the Notice of Award. Within five [5] days from the receipt of the requirements in the Notice of Award, the DOTr Secretary and CAAP Governing Board shall determine and notify the Original Proponent or Winning Challenger, as the case may be, of its compliance with all of the requirements stated in the Notice of Award.

## **11.2 Execution of Concession Agreement**

Within five [5] calendar days from its receipt of notification of compliance with the Post-Award Requirements, the Original Proponent or Winning Challenger, as the case may be, through its special purpose corporation (or, if its special purpose corporation is not duly formed in time, itself as in accordance with the terms of the Concession Agreement), shall execute the Concession Agreement. Failure to do so within the prescribed period shall be a ground for the forfeiture of the Original Proponent's or Winning Challenger's, as the case may be, Bid Security and the withdrawal of the Notice of Award.

---

## **12 Process to be followed for Non-Compliance of Post Award Requirements**

- (a) In the event that the Original Proponent which is issued a Notice of Award does not comply with the Post-Award Requirements within the timeframe specified in Section 11.1, or for any reason the Notice of Award is withdrawn due to the fault of the Original Proponent, then the Winning Challenger shall be issued a Notice of Award, and shall comply with the Post-Award Requirements.
- (b) If the Winning Challenger that is issued a Notice of Award does not comply with the Post-Award Requirements within the timeframe specified in Section 11.1, or for any reason the Notice of Award is withdrawn due to the fault of the Winning Challenger, then the next best complying Proposal shall be declared the new Winning Challenger and the Original Proponent shall be given the right to match the percentage of the Grantor Revenue Share offered by the new Winning Challenger following the procedure under Section 10(u).
- (c) The foregoing process may again be repeated with the third best complying Proposal and so on.
- (d) If there is no other Proposal left, then the PBAC shall recommend to the DOTr Secretary and CAAP Governing Board that the Original Proponent be issued a Notice of Award.
- (e) The DOTr and CAAP reserves the right, at its sole direction, to cancel the Tender, reject any or all Proposals or not to award the Concession Agreement to any Challenger or the Original Proponent.

---

## 13 Failure to Enter into Concession Agreement

In the event of refusal, inability, or failure of a winning Challenger to enter into contract with the Implementing Agency, its bid security shall be forfeited in favor of the DOTr and CAAP. In such an event, the PBAC shall consider the Challenger with the next Most Responsive Bid. Such comparative proposal shall also be subjected to a right-to-match mechanism under Section 10(u). If no other comparative proposal is determined to be better than that of the Original Proponent, the Concession Agreement shall be awarded to the Original Proponent. If the second comparative proponent fails to comply with any post-award requirement which shall be set as part of the tender documents, or fails to enter into the Concession Agreement with the DOTr and CAAP, its bid security shall be forfeited in favor of the DOTr and CAAP. This procedure shall be repeated for the Challenger with the next Most Responsive Bid, subject to the Original Proponent's right-to match, until the PPP Contract is executed or the PBAC declares a failure of bidding, as the case may be.

In case the Original Proponent refuses, neglects, or is unable to enter into contract with the DOTr and CAAP, the Original Proponent forfeits the privilege to match proposals of inferior rank to its own.

In case of failure of the winning Challenger or the Original Proponent, as the case may be, or of the next Most Responsive Bid that accordingly ranked higher, the right of the next Most Responsive Bids to be considered by the PBAC to enter into contract with the DOTr and CAAP, shall be recognized by the PBAC up until financial close.

---

## 14 General Conditions and Prohibitions

By submitting a Comparative Proposal, the Challenger acknowledges and agrees that:

- (a) It, including all Consortium Members, proposed Designated Operator, their Affiliates, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Tender Process;
- (b) It, including all Consortium Members, proposed Designated Operator, their respective officers, employees, agents and advisers shall not commit any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice;
- (c) It, including all Consortium Members, proposed Designated Operator, their Affiliates, and their respective officers, employees, agents and advisers, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Tender Process;
- (d) It waives its right to seek and obtain a writ of injunction or prohibition or restraining order against the DOTr, CAAP or the PBAC to prevent or restrain the holding of a bidding or any proceedings related thereto, award and execution of the contract to the Winning Challenger or the Original Proponent, as the case may be, and the carrying out of the awarded Concession Agreement. Such waiver shall, however, be without prejudice to the right of a disqualified or losing Challenger to question the lawfulness of its disqualification or the rejection of its Bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.
- (e) It accepts all the terms and conditions of the Tender Documents; and

- (f) The PBAC has the right to modify any of the Tender Documents at any time in accordance with Section 1.7.

---

## **15 Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice**

If a Challenger, any Consortium Member, any Designated Operator, or any Affiliate of any of these entities, or the Concessionaire, as the case may be, is found to have directly or indirectly or through an agent, engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice during the Tender Process, or after the issuance of the Notice of Award or the execution of the Concession Agreement, the DOTr and CAAP shall:

- (a) Reject or disqualify the Comparative Proposal of or Withdraw the Notice of Award to such Challenger, without being liable in any manner whatsoever to the Challenger;
- (b) Forfeit and appropriate the Bid Security of such Challenger, without prejudice to any other right or remedy that may be available to the DOTr and CAAP;
- (c) Seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and/or entities involved in such practice; and
- (d) Prohibit or disqualify individuals and/or entities involved in such practices from participating in any bidding of the DOTr and CAAP from the date that they are found to have directly or indirectly engaged in any such practices.

---

## **16 Conflict of Interest**

Challengers and Consortium Members, including their proposed Contractors and Affiliates, must not have any Conflict of Interest. Without limiting the generality of Conflict of Interest, any of the following will be considered a Conflict of Interest:

- (a) A Challenger, any of its Consortium Members, or any of their Affiliates [of either a Challenger or any of its Consortium Members] is a member of another Consortium, or an Affiliate of a member of another Consortium.
- (b) A Challenger, any of its Consortium Members, or any of their Affiliates [of either a Challenger or any of its Consortium Member] is proposed as a Designated Operator of another Challenger.
- (c) A Challenger, any of its Consortium Members, or any of their Affiliates [of either a Challenger or any of its Consortium Members] which has ownership interest of at least twenty percent [20%] in any other Challenger, any Consortium Member of any Challenger, or any of their Affiliates [of either the other Challenger or any of its Consortium Member] is: 1] in the same nature of business as that being contemplated by the Project, or 2] nominated to meet the technical or financial requirements for the project.
- (d) Another Challenger, any Consortium Member of another Challenger, or any of their Affiliates [or either the other Challenger or any of its Consortium Members] which has ownership interest of at least twenty percent [20%] in a

Challenger, any of its Consortium Members, or any of their Affiliates [of either the Challenger or any of its Consortium Member] is [1] in the same nature of business as that being contemplated by the Project, or [2] nominated to meet the technical or financial requirements for the Project.

- (e) A member of the board of directors, partner, officer, employee, professional advisor or agent of a Challenger, any Consortium Member, or any of their Affiliates [of either the Challenger or any of its Consortium Members], is also directly involved in any capacity related to the Tender Process for the Project for another Challenger, any Consortium Member of any other Challenger, or any of their Affiliates [of either the Challenger or any of its Consortium Members].

The phrase “directly involved in any capacity related to the Tender Process for the Project” referred above includes the act of voting by a director on any matter related to the Tender Process, including but not limited to the approval of the relevant entity’s participation in the Tender.

For purposes of this section, an Independent Director appointed by the Challenger, any Consortium Member, or any of their Affiliates appointed in compliance with governance policies shall not be considered a member of the board of directors.

- (f) A Challenger, any of its Consortium Members, any proposed Designated Operator, or any Affiliates of any of these has participated as a consultant to the DOTr or CAAP in the preparation of any documents, design, or technical specifications of the Project or in connection with the Tender Process.
- (g) A Challenger, any of its Consortium Members, any proposed Designated Operator, or any Affiliates of any of these, engages any legal, financial, or technical adviser of the DOTr or CAAP in relation to the Project, or anyone who is or was an employee of the DOTr or CAAP less than one year before his or her engagement by the Challenger, any of its Consortium Member, any proposed Designated Operator, or any Affiliates of any of these.

If at any time prior to the signing of the Concession Agreement, any Challenger or Consortium Member, proposed Designated Operator, 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 Tender Process. If the Conflict of Interest involves another Challenger, then both Challengers shall be disqualified.

---

## **17 Grounds for Disqualification**

A Challenger may be disqualified from participation in the comparative challenge process for any of the following reasons:

- a. late submission of its Comparative Proposal or any part thereof;
- b. material or willful misrepresentation in the comparative challenge process;
- c. any form of politicking or other lobbying with respect to the comparative challenge process;
- d. illegal conduct or attempt to influence the PBAC’s evaluation of the Qualification Documents or the Comparative Proposal;
- e. Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice and Restrictive Practice in the comparative challenge process;



- f. any Conflict of Interest that would give it any unfair advantage in the comparative challenge process;
- g. failure to comply with any of the terms, conditions and instructions of the ITC; or
- h. other grounds for rejection or disqualification of Challengers under the PPP Code, the IRR, and other applicable laws.

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

---

## 18 Lock-Up Rules

The following rules [**“Lock-Up Rules”**] shall apply from Comparative Proposals Submission Date to execution of the Concession Agreement:

- (a) For a Challenger that is a corporation or partnership, no changes shall be made in the equity or ownership structure of such Challenger, as provided in the Challenger’s original or revised Business Structure [Annex QD-1A of the ITC] and Basic Information Sheet [Annex QD-2 of the ITC] submitted to and approved by the PBAC; provided, that if the Challenger is listed with the Philippine Stock Exchange or other foreign stock exchange, ordinary course changes in equity ownership shall be permitted, so long as such changes in equity do not cause a change in Control of the Challenger.
- (b) For a Challenger that is a Consortium, no changes shall be made in the composition of the Consortium or in the percentage interest of each Consortium Member in the Consortium as provided in the Challenger’s original or revised Business Structure [Annex QD-1B of the ITC] submitted to and approved by the PBAC.

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

---

## 19 Outstanding Dispute with Government

For the purpose of Evaluation of Tender Documents, an “Outstanding Dispute” refers to any pending judicial, administrative or alternative dispute resolution proceeding, including suspension or blacklisting proceedings between the Challenger, any Consortium Members or any of their Affiliates that are directly involved with the Project, any of their proposed Contractors, or Consortium on the one hand, and the national government, any of its offices, agencies or instrumentalities, or any government-owned or controlled corporation, arising out of, or in connection with any bidding, project or contract of the national government, any of its instrumentalities or any government-owned or controlled corporation:

- (a) Which is intended to provide a critical basic necessity
- (b) Which is of paramount public interest and importance
- (c) Where the Challenger, any of its Consortium Member, or any of their Affiliates has committed a default or breach of:
  - (i) contract,

- (ii) any representation,
- (iii) any warranty

and where, in the opinion of the DOTr or CAAP, such dispute would be an impediment to the successful implementation of the Project.

---

## 20 Governing Law and Rules

The provisions of the PPP Code, the IRR, and other applicable Philippine laws shall govern all matters not specifically covered by the ITC and other Tender Documents.

---

## 21 Definitions

The following words or terms shall have the following meanings in this Instruction to Challengers and other Invitation Documents:

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

**Airline** is an individual, partnership, corporation, or any other juridical entity that is a holder of any of the following permits issued by the Civil Aeronautics Board ("CAB") of the Philippines: (1) a valid and effective Permit to Operate Scheduled International Air Transportation Services; or (2) a valid and effective Permit to Operate Scheduled Domestic Air Transportation Services; or (3) a valid and effective Foreign Air Carrier's Permit and providing scheduled passenger services.

For avoidance of doubt, an individual, partnership, corporation, or any other juridical entity providing dedicated cargo transport services shall not be deemed an Airline.

**Airline-Related Entity** is an individual, partnership, corporation, or any other juridical entity that: (1) is an Airline; or (2) is an Affiliate of an Airline.

**Annual Passenger Throughput** of an airport is the sum total of its arriving and departing passengers, on a scheduled or non-scheduled commercial flight, for one year. This would not include arriving and departing passengers on general aviation flights. A transit passenger, who does not leave the airport terminal is counted once, as an arriving passenger.

**Auditor** means an external independent auditor who must be a reputable international auditing company with presence and operations in at least ten jurisdictions, including the Philippines. For the purpose of determining presence and scope of operations, an auditor's partner firms in other jurisdictions will be considered.

**Authorized Issuer** means the entity who should execute QD-5 (Certification for Details of Eligible Projects for Construction Experience), QD-7 (Certification for Operations & Maintenance Experience), and QD-14 (Certification for Establishing Affiliate Status).

For QD-5 and QD-7 these may be executed by an Auditor or the reference project's Project Owner / Client, provided, that if the Project Owner / Client is a private entity and an Affiliate of the concerned Challenger, or is the Challenger itself, then QD-5 and QD-7 may only be executed by an Auditor.

For QD-7, if the entity whose experience is being used to fulfill the Operations & Maintenance Experience Requirement is a contractor of the entity who has overall responsibility for the reference project, such entity who has overall responsibility for the reference project may execute QD-7, provided, that if such entity is a private entity and an Affiliate of the concerned Challenger, or is the Challenger itself, or a Designated Operator or an Affiliate of the Designated Operator, then QD-7 may only be executed by an Auditor.

For QD-14, this may be executed only by an Auditor.

**Background Information Documents** are those documents as described in Section 1.2(b).

**Bid or Comparative Proposal** means a valid offer to undertake the Project to be submitted by a Challenger, which includes the Bid Letter, Qualification Documents, Bid Security, and additional requirements for consortia with new Members, Technical Proposal and Financial Proposal to be submitted by the Challengers pursuant to Section 7.

**Bid Amount** is defined in Section 1.10.

**Bid Security** means the instrument provided by the Original Proponent and the Challenger to guarantee that if it should win the Tender it will enter into the Concession Agreement with the CAAP within the time prescribed.

**CAAP** means the Civil Aviation Authority of the Philippines.

**Challenger** means any partnership, corporation, or Consortium which participates in the Tender Process.

**Comparative Proposals Submission Date** means the day to be set by the CAAP for the submission of the Comparative Proposals.

**Complying Technical Proposal** means a Technical Proposal that was not rejected.

**Concession Agreement** means the PPP Contract as defined under Section 4(tt) of the IRR to be executed between the DOTr and CAAP, on one hand, and the Original Proponent or the Winning Challenger or the legal entity formed by the Original Proponent or the Winning Challenger, as the case may be. The term "Concession Agreement" is synonymous and is used interchangeably with the term "PPP Contract".

**Concessionaire** means the counter-party of the DOTr and CAAP under the Concession Agreement and which will undertake the Project.

**Conflict of Interest** is defined in Section 16.

**Consortium** means an unincorporated association of natural or juridical persons bound by contract or law, solitarily undertaking by mutual written agreement a common enterprise which is to participate in the Tender Process.

**Consortium Member** means any of the natural or juridical persons or group of persons comprising a Consortium, each having a definite interest in the common undertaking, solidarily liable in the Proposal 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.

**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 more than fifty percent [50%] of the outstanding voting shares and voting rights of these shares; [ii] 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 Comparative Proposals Submission Date, which has an arrangement with similar effect as in [i] or [ii] above. In determining ownership of shares in a corporation, shares held both directly and indirectly will be counted. For purposes of determining the existence of a Conflict of Interest, only agreements which are in effect at any point in time during the Tender Process will be considered.

**Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, and Restrictive Practice** respectively mean:

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

**Fraud** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating and the like, especially when involving misrepresentation, omission, concealment, suppression, non-disclosure or disclosure of incomplete facts, in order to influence the comparative challenge process or the execution of the Concession Agreement;

**Collusion** means a scheme or arrangement between or among the Original Proponent and any number of Challengers, or between or among Challengers, with or without the knowledge of the government, designed to establish the Bid Amount at artificial, non-competitive levels;

**Coercion** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person’s participation in the comparative challenge process or the execution of the Concession Agreement;

**Undesirable Practice** means (i) establishing contact with any person connected with or employed or engaged by the DOTr, CAAP, or the PPP Center with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and

**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 the Original Proponent, Challengers, Consortium Members, and/or the Affiliates of any of these entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.

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

**Disqualified Challenger** means a Challenger whose Qualification Documents were rejected.

**Designated Operator** means an entity designated by the Challenger to undertake the Operation and Maintenance of the Project but does not have equity interest in the Consortium and which is willing to enter into a Technical Service Agreement with the SPC for the Project.

**DOTr** means the Department of Transportation.

**Eligible Period** shall mean the last ten (10) years counted from the issuance of this ITC.

**Eligible Projects** shall mean projects in the Eligible Sector with a minimum [capital cost incurred/ payments received] of at least Two Hundred Fifty Six Million Seven Hundred Thousand Pesos (PhP 256,700,000) each (no indexation).

**Eligible Sector** would be limited to airports, highways, expressways, power, ports, railways, metro rail, industrial parks/ estates, logistic parks, storage tanks, and real estate development. Real estate development shall mean the development of land for residential, commercial, industrial, institutional or recreational purposes, or any combination of such.

**Financial Qualification Requirements** refers to the Qualification Requirements that must be met by the Challenger, as provided in Section 6.3.

**Government** means the Government of the Republic of the Philippines.

**Grantor** refers to DOTr and CAAP jointly, which are the Government agencies that will grant the Concession Agreement.

**Grantor Revenue Share** means all the revenues which Grantor is entitled to retain as defined in Section 1.1 of the Concession Agreement.

**International Airport** means an airport that handles air passenger traffic, including chartered flights, with at least 10% of the total traffic as international.

**ISO** means the International Organization for Standardization.

**IRR** means the Implementing Rules and Regulations of the PPP Code.

**ITC** means these Instructions to Challengers.

**Lead Member** means, for a Challenger which participates in the Tenders as a Consortium, the Consortium Member having the highest percentage of interest in the Consortium, which should not be less than thirty three percent [33%], and which should be designated in writing as such by the other Consortium Members.

**Legal Qualification Requirements** refers to the structural Qualification Requirements that must be met by a Challenger, as provided in Section 6.1.

**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.

**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.

**Net Worth** shall mean the sum of subscribed and paid-up equity, including additional paid-in capital, and unrestricted retained earnings. Unrestricted retained earnings means the amount of accumulated profits and gains realized out of the normal and continuous operations of the company after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts, and which is: (1) not appropriated by its Board of Directors for corporate expansion projects or programs; (2) not covered by a restriction for dividend declaration under a loan agreement; (3) not required to be retained under special circumstances obtaining in the corporation such as when there is a need for a special reserve for probable contingencies (as defined in SEC Memorandum Circular No. 11-08, December 5, 2008); and (4) not otherwise covered by any other legal restriction on the ability of the company to distribute or otherwise apply its equity.

**Notice of Award** is defined in Section 11.1.

**Non-Complying Technical Proposals** means a Technical Proposal that was rejected.

**Operation** means the day-to-day administration and management of the Project for its use by passengers, including the collection of charges from users of the CGY and the utilization of necessary manpower, equipment and materials, in accordance with the Concession Agreement.

**Operations and Maintenance Experience Requirement** refers to the Technical Qualification Requirements that must be met by a Challenger, as provided in Section 6.2(e).

**Original Proponent** means Aboitiz InfraCapital, Inc. or AIC. .

**Parent Company** means a single person, single corporation or any single entity Controlling the Challenger or Consortium Member (as the case may be).

**PBAC** means Pre-qualification, Bids and Awards Committee for the DOTr and its Attached Agencies' Co-Granted Public-Private Partnership Projects created pursuant to Department Special Order No. 2023-085.

**Post-Award Requirements** means the requirements that must be complied with by the Winning Challenger as a pre- condition to the execution of the Concession Agreement, as described in Section 11.1.

**PPP Center** means the successor of the BOT Center and Coordinating Council of the Philippine Assistance Program ["CCPAP"], the agency mandated under Section 12 of the Republic Act No. 6957, as amended by Republic Act No. 7718, to coordinate and monitor projects implemented under the Act, pursuant to Administrative Order No. 105, series of 1989, as amended by Administrative Order No. 67, series of 1999, as amended by Administrative Order No. 103, series of 2000, and Executive Order No. 144, series of 2002, as amended by Executive Order No. 8, series of 2010, as amended by Executive Order No. 136, series of 2013, and further amended by Executive Order No. 30, series of 2023, whose powers and functions are outlined in Section 24 of the PPP Code.

**PPP Code** means Republic Act No. 11966, otherwise known as "The Public-Private Partnership (PPP) Code of the Philippines".

**Project** means the financing, design, construction, and operations and maintenance of the CGY Project.

**Project Owner / Client** means the entity which bid out, commissioned, procured, awarded, accepted or received the infrastructure, assets or services under the reference project.

**Challenger** means a party who accomplished the required forms and pay a non-refundable fee of Two Hundred Fifty Thousand Pesos (PhP 250,000).

**Qualification Documents** mean the documents required to be submitted by the Challenger to be contained in Envelope 1.

**Qualification Requirements** means the criteria which a Challenger must meet in order to proceed to the opening of Envelopes 2 and 3 of its Comparative Proposal, which includes Legal Qualification Requirements, Technical Qualification Requirements and Financial Capability Qualification Requirements.

**Qualified Challenger** means to a Challenger whose Qualification Documents were not rejected.

**SEC** means the Securities and Exchange Commission.

**Technical Proposal** shall be those documents contained in Envelope 2 as described in Sec. 7.2(b)6.

**Tender Documents** means the documents enumerated in Section 1.2(a) which may be purchased by Challengers.

**Tender Process** or **Tender** means the process beginning from the publication of the Invitation to Submit Comparative Proposals until the signing of the Concession Agreement.

**Project** means the Laguindingan International Airport (CGY) Project.

**Unsatisfactory Performance** means any of the following:

- (a) Within the last five [5] years prior to the Comparative Proposals Submission Date:
  - (i) failure to satisfactorily perform any of its material obligations on any contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
  - (ii) expulsion from any project or contract;
  - (iii) termination or suspension of any of its projects or contracts due to breach of its obligations; or
  - (iv) material violation of laws and/or regulations applicable to any of its projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations;
- (b) Inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website [[www.worldbank.org/debarr](http://www.worldbank.org/debarr)], whether as an individual

contractor, partnership, or corporation or as a member of a joint venture or consortium; or

- (c) Involvement in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, and Restrictive Practice or having Conflicts of Interest.

**VDR** means the virtual data room to which Challengers were granted access and used to communicate and share information with the Challengers in accordance with the ITC.

**Winning Challenger** means the Challenger determined by the DOTr and CAAP, and confirmed by the PBAC, whose Technical Proposal was rated passed and submitted the best complying Proposal.



# Instructions to Challengers

## Annex QDC - Checklist of Qualification Documents

Document Ref. No.	Document Name	Page No.	Complying Entity					Designated Operator (indicate name)
			Single Challenger (indicate name)	Consortium				
				Member name	Member name	Member name	Member name	
QDC	List of Qualification Documents							
QBL-1	Form of Bid Letter							
QBL-1A	Certification of Not Being an Airline-Related Entity							
QBL-2A	Authority to Submit Comparative Proposal and Designation of Authorized Representative [for Challengers which are partnerships or corporations]							
QBL-2B	Consortium Member's Authority to Participate in the Consortium and Submit a Comparative Proposal and Designation of Lead							

Document Ref. No.	Document Name	Page No.	Complying Entity					Designated Operator (indicate name)
			Single Challenger (indicate name)	Consortium				
				Member name	Member name	Member name	Member name	
	Member and Authorized Representative of Consortium [for Challengers which are Consortia]							
QD-1A	Business Structure [for a Challenger which is a partnership or corporation or any other juridical entity]							
QD-1B	Business Structure [for a Challenger which is a Consortium]							
QD-2	Basic Information Sheet							
QD-3	Notarized Certification of Absence of Unsatisfactory Performance Record							
QD-4	Construction Experience							
QD-5	Certificate for Details of Eligible Projects for Construction Experience							
QD-6	Operations and Maintenance Experience							

Document Ref. No.	Document Name	Page No.	Complying Entity					Designated Operator (indicate name)
			Single Challenger (indicate name)	Consortium				
				Member name	Member name	Member name	Member name	
QD-7	Certificate for the Details of Projects for Operations and Maintenance Experience							
QD-8	Designated Operator's Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of, the Project							
QD-9	Key Personnel							
QD-10	Notarized Certification of Absence of Unsatisfactory Performance Record for Qualified Key Personnel							
QD-11	Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Project							
QD-12	Notarized Statement of Financial Capability							
QD-12A	Aggregate Financial Summary							

Document Ref. No.	Document Name	Page No.	Complying Entity					Designated Operator (indicate name)
			Single Challenger (indicate name)	Consortium				
				Member name	Member name	Member name	Member name	
QD-13	Notarized Application to Submit a Comparative Proposal							
QD-14	Certificate for Establishing Affiliate Status							
TP-1	Form of Bid Security							
TP-2	Challenger's Technical Proposal							
TP-3	Notarized Statement for Submission of Technical Proposal							
FP-1	Statement of Challenger on Bid Amount							
FP-2	Financial Model							
FP-3	Project Finance Plan							

# Instructions to Challengers

## Annex BL-1: Form of Bid Letter

[Letterhead]

[Republic of the Philippines]

I, [insert name],[insert citizenship], of legal age, with office address at [insert address], as the authorized representative of [insert Challenger], a [corporation/partnership or Consortium] [if a corporation, “organized and existing under and by virtue of the laws of [insert place of incorporation/registration]” and if a consortium state “under the [caption, date and other details to make clear reference to the consortium agreement] among its Consortium Members], after having been duly sworn according to law, hereby declare for and on behalf of [name of Challenger] that:

- 1 In accordance with the Tender Documents for the CGY Project [hereinafter referred to as the “Project”], [Name of Challenger], a [partnership/ corporation/Consortium] with \_\_\_\_\_ business \_\_\_\_\_ address \_\_\_\_\_ at \_\_\_\_\_, hereinafter referred to as the Challenger, submits its Comparative Proposal to finance, design, construct, operate and maintain the Project in accordance with the ITC.
- 2 Challenger’s Proposal consists of the following components:
  - (a) Envelope No. 1 – Qualification Documents
  - (b) Envelope No. 2 - Technical Proposal
  - (c) Envelope No. 3 - Financial Proposal
- 3 [Name of Challenger] declares that all statements made and the information and documents submitted in its Comparative Proposal are true and correct as of the date of this statement, and any misrepresentation or false statement made therein shall be a ground for its disqualification.
- 4 [Name of Challenger] declares that it is compliant with ownership and control thresholds applicable to Airline- Related Entities.
- 5 [Name of Challenger] authorizes the DOTr and CAAP to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Comparative Proposal, and to seek clarification from its clients and bankers regarding any technical and financial aspects. [Name of Challenger] also permits third parties to supply information required to verify statements and information submitted in its Comparative Proposal.
- 6 [Name of Challenger]’s Comparative Proposal is unconditional and unqualified. We understand and accept all terms, conditions and other provisions of the Invitation Documents and Tender Documents.

- 7 [Name of Challenger] acknowledges the right of the DOTr and CAAP to reject its Proposal without assigning any reason and to cancel the Tender process at any time, without incurring any liability to the [Name of Challenger].
- 8 [Name of Challenger], including all its Consortium members, and all of the entities it has identified to comply with the Qualification Requirements under the ITC as submitted as part of its Comparative Proposal, have not at any time engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practices, nor have a Conflict of Interest, will comply with the Lock-up Rules under Section 18 of the ITC, and has no Unsatisfactory Performance Record.
- 9 [Name of Challenger] 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 DOTr and CAAP to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Tender Process, the award of the contract to the Winning Challenger or the Original Proponent, as the case may be, and the implementation of the Concession Agreement. [Name of Challenger] acknowledges that the DOTr and CAAP are undertaking this Tender 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 CAAP will suffer serious and irreparable damage on account of any breach by us of these undertakings, and agree that the breach of these undertakings shall result in our automatic disqualification to participate in the Tender for the Project.
- 10 [Name of Challenger] agrees to keep its Comparative Proposal valid for one hundred and eight [180] days from the Comparative Proposals Submission Date.
- 11 In the event that [Name of Challenger] is issued a Notice of Award for the Project, [Name of Challenger] agrees to comply with the requirements of Section 11 of the ITC and execute the final Concession Agreement with the DOTr and CAAP within the deadlines set in the ITC.

[Date and Place of Execution.]

For and on behalf of [Name of Challenger/Name of Consortium and List of Consortium Members]

By:

[Name, Designation and Signature of Authorized Representative]

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

NOTARY PUBLIC

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

Page No.: \_\_\_\_\_

Book No.: \_\_\_\_\_

Series of 2024.

# Annex BL-1A: Certification of Not Being an Airline-Related Entity

Republic of the Philippines     )  
  ) S.S.

## Certification of Not Being an Airline-Related Entity

As per authenticated records, this is to certify that (*Name of the Challenger / Consortium Member*) is not an Airline-Related Entity as defined in Section 20 of the Instructions to Challengers, and that:

1. (*Name of the Challenger / Consortium Member*) is not an Airline;
2. (*Name of the Challenger / Consortium Member*) does not have the power to direct or cause the direction of the management policies and actions of an Airline, whether through: (i) direct or indirect ownership of at least thirty-three percent (33%) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in an Airline, or (ii) the ability to elect a majority of the members of an Airline's board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements;
3. No Airline has the power to direct or cause the direction of the management policies and actions of (*Name of the Challenger / Consortium Member*), whether through: (i) direct or indirect ownership of at least thirty-three percent (33%) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, in (*Name of the Challenger / Consortium Member*), or (ii) the ability to elect a majority of the members of (*Name of the Challenger / Consortium Member*)'s board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements; and
4. (*Name of the Challenger / Consortium Member*) and an Airline are not subject to the same person's power to direct or cause the direction of their management policies and actions, whether through: (i) direct or indirect ownership of at least thirty-three percent (33%) of either or a combination of the following: (i.a) the total outstanding voting shares, or (i.b) the voting rights, or (ii) the ability to elect a majority of the members of the board of directors, or (iii) any legal agreement or legal agreements, including a voting trust or other voting agreements.

Certified by:

Name of the Authorized Representative:  
(Signature, name and designation of the Authorized Signatory)

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

Doc No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024



# Annex BL-2A: Authority to Submit Comparative Proposal and Designation of Authorized Representative [for Challengers which are partnerships or corporations]

To be submitted by all Challengers which are partnerships or corporations.

[Letterhead]

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 Challenger] [the “Challenger”], 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 of the Challenger, 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 Challenger] [the “Challenger”] be, and is, authorized to submit Comparative Proposal for the CGY Project [hereinafter called the “Project”] of the Department of Transportation (“DOTr”) and the Civil Aviation Authority of the Philippines (“CAAP”);

RESOLVED FURTHER, that in the event the Challenger is issued a Notice of Award for the Project, it commits to [a] fulfil all the requirements in the ITC, including the submission and completion of the Post-Award Requirements, within twenty [20] days from receipt of the Notice of Award, and [b] execute and deliver the Concession Agreement with the DOTr and CAAP immediately after being notified by the DOTr Secretary and CAAP Governing Board that it has complied with the Post-Award Requirements.

RESOLVED FURTHER, that [Name of Challenger’s Representative] be and is hereby appointed as the authorized representative of the Challenger throughout the Tender Process for the Project and its incidents until the signing of the Concession Agreement, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Challenger.

RESOLVED, FINALLY, that any and all acts done and/or performed by [Name of Challenger’s 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 Challenger;

5 That the above resolutions are in accordance with the records of the Challenger.

[Place, Date of Execution].

\_\_\_\_\_  
[Corporate Secretary or Equivalent Officer]

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

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

Page No.: \_\_\_\_\_

Book No.: \_\_\_\_\_

Series of 2024.

# Instructions to Challengers

## Annex BL-2B: Consortium Member’s Authority to Participate in the Consortium and Submit a Comparative Proposal and Designation of Lead Member and Authorized Representative of Consortium [for Challengers which are Consortia]

To be submitted by each Consortium Member

[Letterhead]

### SWORN CERTIFICATION OF RESOLUTIONS

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 “Company”], a [corporation/partnership] organized and existing under and by virtue of the laws of [the Philippines];
- 3 At a regular/special meeting of the [Authorized Body] of the Company, held on [date] at [place], in which meeting a quorum was present and acting throughout, the following Resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the [Consortium Member] [the “Company”], 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 Tender Process for the financing, design, construction, operation and maintenance of the CGY Project [hereinafter called the “Project”] of the Department of Transportation and the Civil Aviation Authority of the Philippines:

Name of Consortium Member	% Interest

RESOLVED FURTHER, that the Company authorizes the Consortium described above to submit a Comparative Proposal for the Project;

RESOLVED FURTHER, that the Company shall maintain its percentage interest in the Consortium until the signing of the Concession Agreement, and thereafter shall

comply with the requirements and restrictions on changes in ownership of the Concessionaire as stated in the Concession Agreement;

RESOLVED FURTHER, that in the event the Consortium is issued a Notice of Award, the Company will cooperate with the other Consortium Members to register a domestic corporation with the Philippine Securities and Exchange Commission and comply with all other requirements specified in the ITC and the Concession Agreement;

RESOLVED FURTHER, that the Company jointly and severally binds itself with the Consortium Members listed above in undertaking the obligations of the Consortium in the tender for the Project until, if the Consortium is issued a Notice of Award, the corporation formed by the Consortium signs the Concession Agreement and/or fulfils the Closing Requirement, or if the Consortium is not declared as the Winning Challenger within 180 days after the Comparative Proposals Submission Date, until 180 days after the Comparative Proposals Submission Date.

RESOLVED FURTHER, that [Name of Company's Representative] be and is hereby appointed as the authorized representative of the Company, authorized representative of the Company throughout the Tender Process for the Project and its incidents, until the signing of the Concession Agreement, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Company;

RESOLVED FURTHER, that the Company 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 throughout the Tender Process for the Project;
- (a) authorizes [Name of Authorized Representative of Name of Lead Member of Consortium] as representative of the Consortium in relation to the Tender Process 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 Company's 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 Company;

5 That the above resolutions are in accordance with the records of the Company.

[Place, Date of Execution.]

\_\_\_\_\_  
[Corporate Secretary or Equivalent Officer]

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

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

Page No.: \_\_\_\_\_

Book No.: \_\_\_\_\_

Series of 2024.

# Instructions to Challengers

## Annex QD-1A: Business Structure

[for a Challenger which is a partnership or corporation or any other juridical entity]

1 Name of Challenger:

2 Contact Information of Challenger

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

3 Entity nominated to fulfil the Construction Experience Requirement

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

. Note: If this requirement is fulfilled by an Affiliate of the Challenger provide evidence of such affiliation using the form prescribed in Annex QD-14.

4 Entity which fulfils the Operations and Maintenance Experience Requirement

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

b. Relationship to Challenger <sup>1</sup>	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note: (i) If this requirement is fulfilled by a Designated Operator proposed by the Challenger, list the Designated Operator and provide the information above for such Designated Operator; (ii) If this requirement is fulfilled by an Affiliate of the Designated Operator, list such Affiliate and provide the information above for such Affiliate; and (iii) If this requirement is fulfilled by an Affiliate of the Challenger or Affiliate of a Designated Operator, provide evidence of such affiliation using the form prescribed in Annex QD-14.

5 Entity nominated to fulfil the Financial Capability Requirement

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

Note: If this requirement is fulfilled by the Affiliate of the Challenger, provide evidence of such affiliation using the form prescribed in Annex QD-14.

For and on behalf of [Name of Challenger]  
[Signature of Authorized Representative]  
[Name, Title, and Date]

<sup>1</sup> State if Designated Operator or Affiliate of Designated Operator. If Affiliate of Designated Operator, state "Affiliate of [Name of Designated Operator] (Designated Operator)".

# Instructions to Challengers

## Annex QD-1B: Business Structure

[for a Challenger which is a Consortium]

Name of Consortium:

### 1 Consortium Members

	<b>Lead Member</b>	<b>Other Member</b>	<b>Other Member</b>	<b>Other Member</b>
Name				
Percentage Interest in the Consortium				
Type of Legal Entity [corporation/ partnership]				

### 2 Contact Information of Consortium Members

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

a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	



ii. Fax	
iii. E-mail	

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

3 Entity nominated to fulfil the Construction Experience Requirement

a. Name of Entity	
b. Relationship to Challenger or Consortium Member <sup>2</sup>	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

Note: If this requirement is fulfilled by an Affiliate of a Consortium Member, provide evidence of such affiliation using the form prescribed in Annex QD-14.

4 Entity nominated to fulfil the Operations and Maintenance Experience Requirement

a. Name of Entity	
b. Relationship to Challenger or Consortium Member <sup>3</sup>	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. Fax	

<sup>2</sup> If relationship is with the Consortium Member, indicate the name of the Consortium Member.

<sup>3</sup> (i) If relationship is with the Consortium Member, indicate the nature of the relationship and the name of the Consortium Member; (ii) State if Designated Operator or Affiliate of Designated Operator. If Affiliate of Designated Operator, state "Affiliate of [Name of Designated Operator] (Designated Operator)".

iii. E-mail	
-------------	--

Note: (i) If this requirement is fulfilled by a Designated Operator proposed by the Challenger, list the Designated Operator and provide the information above for such Designated Operator; (ii) If this requirement is fulfilled by an Affiliate of the Designated Operator, list such Affiliate and provide the information above for such Affiliate; and (iii) If this requirement is fulfilled by an Affiliate of Consortium Member of the Challenger or Affiliate of a Designated Operator, provide evidence of such affiliation using the form prescribed in Annex QD-14.

5 Entity/ Entities nominated to fulfil the Financial Capability Requirement

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

Note: (i) If more than one entity is contributing to Financial Capability as per 6.3 b iii, please add more tables as per the format provided for table 5; and (ii) If this requirement is fulfilled by the Affiliate of a Consortium Member of the Challenger, provide evidence of such affiliation using the form prescribed in Annex QD-14.

For and on behalf of [Name of Challenger/if Consortium, Name of Consortium and Lead Member]

[Signature of Authorized Representative]  
[Name, Title and Date]

# Annex QD-2: Basic Information Sheet

To be submitted by all entities listed in all sections of the Business Structure [Form QD-1A or QD-1B],

1 Required attachment: For all entities submitting this form:

- (a) 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 personality or capacity.

The certification may come from either the SEC or its equivalent in a foreign country, the entity’s corporate secretary, or authorized representative of such entity. 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 having jurisdiction over the place of issue.

In case the foreign partnership, corporation or other juridical entity does not have a GIS or its equivalent, the entity shall submit a certification from its corporate secretary or authorized representative stating that no such document is available in the country where the entity is registered for recognition or creation of its juridical personality or capacity and such entity must also submit a document providing similar information as required in a GIS, certified either by the appropriate government agency in its home country, or by such entity’s corporate secretary or authorized representative. If the certification is made outside the Philippines, it must be authenticated before a Philippine consular official at the Philippine consulate having jurisdiction over the place of issue.

- (b) Certified true copy of the SEC Certificate of Incorporation, or for a foreign entity, the equivalent document issued 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 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, the entity’s corporate secretary, or authorized representative. If it comes from the entity’s corporate secretary or authorized representative, 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 having jurisdiction over the place of issue.
- (c) Certified true copy of the latest Articles of Incorporation and By-Laws, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for recognition or creation of its juridical 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, the entity's corporate secretary, or authorized representative. If it comes from the entity's corporate secretary or authorized representative, 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 having jurisdiction over the place of issue.

- (d) In the case of foreign entities, the authorized representative shall submit a notarized certification stating that the documents submitted attached to its Annex QD-2 are the equivalents of those required to be submitted under Section 7.1[f][iii][A] to [C].

1. Name of Entity	
2. Type of entity [please check one]	<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation
3. Consortium Member or not? [please check one]	<input type="checkbox"/> Yes <input type="checkbox"/> No
3a. Airline Related Entity or not? [please check one]	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Designated Operator or not? [please check one]	<input type="checkbox"/> Yes <input type="checkbox"/> No
4a. Affiliate of the Designated Operator or not? [please check one]	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Affiliate of an entity listed in QD-1A or QD1B?	<input type="checkbox"/> Yes, Affiliate of
	<input type="checkbox"/> No
6. Place of Incorporation or Registration	
7. Year of Incorporation or Registration	
8. Principal Purposes or Businesses	

9. Shareholder or Partner Information

Name of Shareholder or	Nationality	Percentage of
------------------------	-------------	---------------

<b>Partner</b>		<b>shareholding or interest</b>

[Insert rows as necessary]

For entities listed on the Philippine Stock Exchange (“PSE”), the Challenger must submit the listed entity’s latest Public Ownership Report and List of Top 100 Stockholders, as submitted to the PSE. The information in such Report and List must be as of a date no earlier than 31 December 2022. Shares held by PCD Nominee may be lumped together in the List of Top 100 Stockholders.

For entities listed outside the Philippines, the Challenger must state where the entity is listed, and must submit the equivalent document/s that is/are submitted to the listed entities’ public or private regulator. The most recent submission to such a regulator must be submitted, provided that such submission contains information as of a date no earlier than 31 December 2022.

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

<b>Name of Beneficial Owner</b>	<b>Nationality</b>	<b>Percentage total of Beneficial ownership</b>

[Insert rows as necessary]

For and on behalf of [Name of Entity]

For and on behalf of  
[Name of Challenger/if Consortium, Name  
of Consortium and Lead Member]

[Signature of Authorized Representative]  
[Name, Title, and Date]

[Signature of Authorized Representative]  
[Name, Title, and Date]

# Instructions to Challengers

## Annex QD-3: Notarized Certification of Absence of Unsatisfactory Performance Record

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

Challenger:	
Name of Entity: <sup>4</sup>	
Qualification Requirement: <sup>5</sup>	
Relationship to Challenger: <sup>6</sup>	

Republic of the Philippines ]  
] S.S.

### Certification of Absence of Unsatisfactory Performance Record

I, [name],[citizenship], of legal age, with office address at [address], as the [position/designation] of [name of 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, as defined in Section 20 of the Instructions to Challengers.

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

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024.

<sup>4</sup> If not otherwise the Challenger.

<sup>5</sup> If fulfilling a Qualification Requirement, indicate either Construction Experience or Operations & Maintenance Experience. Otherwise, indicate N/A.

<sup>6</sup> (i) If relationship is with the Consortium Member, indicate the nature of the relationship and the name of the Consortium Member; (ii) State if Designated Operator or Affiliate of Designated Operator. If Affiliate of Designated Operator, state "Affiliate of [Name of Designated Operator] (Designated Operator)".

# Instructions to Challengers

## Annex QD-4: Construction Experience

To be submitted by each entity nominated to fulfil the Construction Experience Requirement as identified in the Business Structure [Form QD-1A or QD-1B], Item 3.

1. Required attachment for each Eligible Project :
  - (i) Certificate for Details of Eligible Projects for Construction Experience from an Authorized Issuer using the form prescribed in Annex QD-5.
  - (ii) If the project was completed by an Affiliate of the entity which fulfills the Construction Experience requirement, evidence of such affiliation using the form prescribed in Annex QD-14.
2. A valid license issued by the Philippine Contractors Accreditation Board (PCAB) for Large B Classification/License Category AAA, or in 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 Winning Challenger that proposed the foreign entity is awarded the Project.

In case the entity that is being proposed for Construction Experience is a foreign entity, and there is no accreditation institution and/or accreditation/licensing system in such foreign entity's country of origin that is equivalent to the PCAB or the accreditation/licensing system established under Republic Act No. 4566 ("Contractor's License Law"), as the case may be, then the Challenger proposing such foreign entity must submit the following:

- (i) A sworn certification from the Corporate Secretary or authorized representative of the foreign entity stating that there is no accreditation institution and/or accreditation/licensing system in the foreign entity's country of origin that is equivalent to the PCAB or the accreditation/licensing system established under the Contractor's License Law, which certification must be authenticated before a Philippine Notary Public or Consular Official; and
- (ii) A certificate from an Auditor or Corporate Secretary or authorized representative of the foreign entity certifying that the foreign entity meets the qualifications for securing a PCAB license for Large B Classification/License Category AAA,

Provided, that the foreign entity must obtain the required PCAB license and accreditation after the Winning Challenger that proposed such foreign entity is awarded the Project.

3. Entity which fulfils the Construction Experience Requirement as identified in item 3 of the Business Structure [Form QD-1A or QD1B].

Challenger:	
Entity which fulfils the requirement:	

Relationship to Challenger:	[Challenger / Consortium Member / Affiliate of Challenger/ Affiliate of Consortium Member]
-----------------------------	--

3 Project Completed<sup>#</sup> for Construction Experience:

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 Project	

<sup>#</sup>Please provide details of all the relevant projects.

\*Please attach Certificate for Details of Eligible Projects for Construction Experience from an Authorized Issuer, as per format provided in Annex QD-5.

\*\* If an Affiliate of the Challenger or the Consortium Member, please attach an Auditor Certificate of such affiliation as per format provided in Annex QD-14.

For and on behalf of [Name of Entity]

For and on behalf of  
[Name of Challenger/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-5: Certificate for Details of Eligible Projects for Construction Experience

For each project being cited as an experience towards the Construction Experience requirement, a certificate shall need to be produced by the entity claiming such experience as an evidence for having the said experience. Such certificate shall need to be obtained from an Authorized Issuer. Such certificate shall substantially cover the details required in the format prescribed below:

### Certificate from an Authorized Issuer (Applicable for Construction Experience)

This is to certify that ..... *[name of the Challenger / Member of Consortium / Affiliate]* [constructed/ undertook construction of ] the ..... *[name of project]* which is a / an ..... *[nature of project]*, where ..... *[name of the Challenger / Member of Consortium / Affiliate]* had the responsibility for constructing the project. The project was commissioned on ..... *[date of commissioning of the project]*.

We further certify that the total [capital cost incurred for/ payments received from] this project, is PhP ..... Million, of which the [capital cost incurred/payments received] during the Eligible Period in the respective years is as per the details presented below.

Year	([Capital Cost incurred/Payments received] in PhP Million)
	[Cost/Payment]
Year 1	
Year 2	
....	
Year 10	
Total	

Certified by:

Name of the issuer: Seal of the issuer:

Designation: (Signature, name and designation of the authorized signatory)

Date:

\*Please provide the above information and certification for any additional airports.

# Annex QD-6: Operations and Maintenance Experience

To be submitted by each entity nominated to fulfil the Operations and Maintenance Experience Requirement as identified in the Business Structure [Form QD-1A or Form QD1B], item 4.

- 1 Required attachments for each project:
- (i) Certificate for Details of Projects for Operations and Maintenance Experience from an Authorized Issuer using the form prescribed in Annex QD-7.
  - (ii) If the project was or is being undertaken by an Affiliate of the entity nominated to fulfil the Operations and Maintenance Experience Requirement, evidence of such affiliation using the form prescribed in Annex QD-14.
- 1 Entity nominated to fulfil the Operations and Maintenance Experience Requirement in Section 6.2(e), as identified in item 4 of the Business Plan [Form QD-1A or QD-1B]

Challenger	
Entity which fulfils the requirement	
Relationship to Challenger <sup>7</sup> *	

2 Project Completed<sup>#</sup> for Operations and Maintenance Experience

Name of Project	
Location	
Description	
Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement	
Client*	

<sup>7</sup> (i) If relationship is with the Consortium Member, indicate the nature of the relationship and the name of the Consortium Member; (ii) State if Designated Operator or Affiliate of Designated Operator. If Affiliate of Designated Operator, state also the name of the Designated Operator.

Cost of Contract	
Name of Entity which Completed the Project**	

#Please provide details of all the relevant projects.

\*Please attach Certificate for Details of Projects for Operations and Maintenance Experience from an Authorized Issuer, as per format provided in Annex QD-7.

\*\* If an Affiliate of the Challenger or the Consortium Member or the Designated Operator, please attach evidence of Affiliation as per format provided in Annex QD-14.

For and on behalf of [Name of Entity]

For and on behalf of  
[Name of Challenger/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-7: Certificate for the Details of Projects for Operations and Maintenance Experience

For the project being cited as a reference to fulfill the Operations and Maintenance Experience requirement, a certificate shall be produced by the entity claiming such experience as evidence for having the said experience. Such certificate shall need to be obtained from an Authorized Issuer. Such certificate shall substantially cover the details required in the format prescribed below:

[If the entity nominated to fulfil the O&M requirement is a third party designated to be responsible for the O&M of the airport reference]:

This is to certify that ..... *[name of the entity nominated to fulfill the O&M requirement]* was engaged by ..... *[name of the owner of the International Airport]* to operate and maintain ..... *[name of the International Airport]*, from ..... *[start date]* to ..... *[end date]*, during which period the total Annual Passenger Throughput at the International Airport was as stated below:

[Or, if the entity nominated to fulfill the O&M requirement has an equity interest in the entity that undertook the overall responsibility for operating and maintaining the airport]:

This is to certify that ..... *[name of the entity nominated to fulfill the O&M requirement]* owned and itself operated and maintained the ..... *[name of the International Airport]*, from ..... *[start date]* to ..... *[end date]*, during which period the total Annual Passenger Throughput at the International Airport was as stated below:

Year	Total Annual Passenger Throughput	International Annual Passenger Throughput
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		

Where the Annual Passenger Throughput of an airport is the sum total of its arriving and departing passengers for a stated period of time. A transit passenger, who does not leave the airport terminal, is counted once as an arriving passenger.

Where Year 1 is the most recent calendar year (January – December) of operation of the said airport by the said entity and Year 2 shall be the year preceding Year 1 and so on.

We further certify that the ..... [name of the International Airport] qualifies as an International Airport as defined in the Instructions to Challengers.

Certified by:

Name of the issuer:

Seal of the issuer:

Designation: (Signature, name and designation of the authorized signatory)

Date:

\* Please provide the above information and certification for any additional airports.

# Annex QD-8: Designated Operator’s Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of, the Project

To be submitted by the Designated Operator proposed by the Challenger to fulfil the Operations and Maintenance Experience Requirement as identified in the Business Structure [Form QD-1A or Form QD-1B], item 4.

Challenger:	
Entity which fulfils the requirement:	
Relationship to Challenger: <sup>8</sup>	

Republic of the Philippines]

] s.s.

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

I, [name], [citizenship], of legal age, with office address at [address], as the [position/designation] of [name of Designated Operator], 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 Designated Operator], that:

- 1 [Name of Designated Operator] is willing to participate, through the [Name of Challenger], in the Tender for the Laguindingan International Airport PPP Project in accordance with the Instructions to Challengers.
- 2 [Name of Designated Operator] or [Name of Designated Operator’s Affiliate] has the required experience and capacity to participate in the Project in accordance with the provisions of the Invitation to Challengers.
- 3 Based on my personal knowledge or authentic documents that the information provided in form QD-6 and QD-7 is true and correct.
- 4 If selected by [name of Challenger], [name of Designated Operator] shall formally enter into a contract with the name of [Challenger] to perform the obligations and

<sup>8</sup> (i) If relationship is with the Consortium Member, indicate nature of the relationship and the name of the Consortium Member; (ii) State if Designated Operator or Affiliate of Designated Operator. If Affiliate of Designated Operator, state “Affiliate of [Name of Designated Operator] (Designated Operator)”.

assume the attendant liabilities as Designated Operator for the Laguindingan International Airport PPPProject.

Date and Place of Execution.

For and on behalf of [Name of Designated Operator]

[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

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024.

# Annex QD-9: Key Personnel

And 6.2(e)(vi)

Name of Challenger:

---

1. Individual having had the overall responsibility for the development (i.e. planning, coordination, integration and/ or implementation of the designing, engineering and construction) of at least (3) Eligible Projects, each with a project cost of at least PHP 500 million, with at least one (1) of such projects having a project cost of at least PHP 1 billion, and with at least one of such projects being an airport. For the purpose of this requirement, holding (2) or more different positions with respect to the same Eligible Project shall be considered as having been involved in two (2) or more projects.

Name	
Employer	
Position	
Nationality	
Date of Birth	

## 1.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

## 1.2 Educational Background

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

2. Individual having been responsible for the coordination of the operations and maintenance of at least 1 airport (landside and airside facilities) with an annual passenger throughput of at least 3 million passengers per annum for a period of at least 3 consecutive calendar years anytime within the Eligible Period. For the purpose of this requirement, responsibility for landside and airside facilities may be separately accrued from different airports or from different periods in the same airport. .

Name	
Employer	
Position	
Nationality	
Date of Birth	



2.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

2.2 Educational Background

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

3. Individual responsible for the commercial development and marketing of an airport, having experience in commercial management (aeronautical and non-aeronautical) at an airport with an annual passenger throughput of at least 3 million passengers per annum for a period of at least 3 consecutive calendar years any time within the Eligible Period.

Name	
Employer	
Position	
Nationality	
Date of Birth	

3.1 Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

3.2 Educational Background

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

If selected by (*name of Challenger*), (*name of Concessionaire*) undertakes to use the above-named key personnel in the implementation of the Laguindingan International Airport PPP Project .

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

(Signature of Authorized Representative)

--

## Annex QD-10: Notarized Certification of Absence of Unsatisfactory Performance Record for Qualified Key Personnel

Note: To be submitted by all persons proposed to meet the Technical Qualification Requirements of Qualified Key Personnel in Section 6.2 (e)(vi).

Challenger:	
Qualification Requirement:	
Person which fulfills the Qualification Requirement:	

Republic of the Philippines            )  
  ) S.S.

Notarized Certification of Absence of Unsatisfactory Performance Record for all Qualified Personnel

I, *(name of Qualified Key Personnel)*, *(citizenship)*, of legal age, with office address at *(address)*, hereby certify that I do not have any record of Unsatisfactory Performance, as defined in Section 20 of the Instructions to Challengers.

*Date and Place of Execution.*

(Signature of Qualified Key Personnel)

(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

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024.

# Annex QD-11: Notarized Statement of Capacity to Undertake the Qualified Key Personnel Requirements of the Project

To be submitted by any person proposed by the Challenger to qualify for the technical requirements under the category of Qualified Key Personnel in Section 6.2(e)(vi).

Challenger:	
Qualification Requirement:	
Person which fulfills the Qualification Requirement:	

Republic of the Philippines    )  
  ) s.s.

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

I, *(insert name of Qualified Key Personnel)*, *(insert citizenship)*, of legal age, with office address at *(insert address)*, hereby declare that:

1. I am willing to participate as a Qualified Key Personnel, through *(Name of Challenger)* in the bid for the Laguindingan International Airport PPP Project in accordance with the Instructions to Challengers.
2. I have the required experience and capacity to undertake the required services for the Project in accordance with the Instructions to Challengers.
3. Based on my personal knowledge or authentic documents, the information provided in Annex QD-9 and Annex QD-10 is true and correct.
4. If selected by *(Name of Challenger)*, I shall formally enter into a contract with the Challenger to perform the obligations and assume the attendant liabilities as Qualified Key Personnel for the Laguindingan International Airport PPP Project.

Date and Place of Execution.

(Signature of Qualified Key Personnel)

(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

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024.

# Annex QD-12: Notarized Statement of Financial Capability

To be submitted by the entity/ entities nominated to fulfil the Financial Capability Requirement as identified in the Business Structure [Form QD-1A or Form QD-1B], item 5.

(a) Required attachments:

- (i) Certified True Copy of audited financial statements for the year ending December 31, 2022, 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 personality or capacity.
- (ii) Letter testimonial from a domestic universal/commercial bank or an international bank authorized by the Bangko Sentral ng Pilipinas (BSP) to transact in the Philippines attesting that the Challenger and/or members of the Consortium, or their Affiliates, are banking with them, and that they are in good financial standing and are qualified to obtain credit accommodations from such banks to finance the Project equivalent to the value of the debt requirement in their proposal. The sum of the maximum debt amounts mentioned in the letters testimonial for said entity/ entities should add up to at least Eight Billion Nine Hundred Million Pesos (PhP 8,900,000,000).
- (iii) If the project was or is being undertaken by an Affiliate of the entity nominated to fulfil the Financial Capability Requirement, evidence of such affiliation using the form prescribed in Annex QD-14.
- (iv) If more than one entity is nominated to fulfil the Financial Capability Requirement, aggregate financial summary of all of such entities using the form prescribed in Annex QD-12A.

Challenger:	
Entity which fulfils the requirement:	
Relationship to Challenger: <sup>9</sup>	

---

<sup>9</sup>

Republic of the Philippines]

] s.s.

Notarized Statement of Financial Capability

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

1 The Financial Summary of [Name of Entity] from 2020-2022 is as follows:

<b>Financial Information</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
[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 Challenger/ Consortium Member/ Affiliate is a customer in good standing in the following bank:

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].

Notary Public

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024.

# Instructions to Challengers

## Annex QD-12A: Aggregate Financial Summary

To be submitted by the Challenger who nominated more than one entity to fulfill the Financial Capability Requirement.

The Aggregate Financial Summary of [name all entities nominated to fulfill the Financial Capability Requirement] from 2020-2022, as individually provided in Annex QD-12, is as follows:

<b>Financial Information</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
[indicate last day of accounting year]			
1] Total Assets			
2] Total Liabilities			
3] Total Net Worth			
4] Profits before Taxes			
5] Profits after Taxes			



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

(Signature of Authorized  
Representative)

# Annex QD-13: Notarized Application to Submit a Comparative Proposal

1 To be submitted by the Challenger.

[Letterhead]

Republic of the Philippines ]

] s.s.

Notarized Application to Submit a Comparative Proposal for CGY Project

I, [name],[ citizenship], of legal age, with office address at [address], as the authorized representative of [name of Challenger], a [corporation/partnership or Consortium] [organized and existing under and by virtue of the laws of [place of incorporation/registration] or organized by agreement among its Consortium Members], as indicated by the authorization certificate attached as [Annex BL-2A [for a partnership or corporation]: Authority to Submit a Comparative Proposal and Designation of Authorized Representative] or Annex BL-2B [for a Consortium Challenger, to be submitted by each Consortium Member]: Consortium Member's Authority to Participate in Consortium and to Submit a Comparative Proposal, and Designation of Lead Member and Authorized Representative of Consortium], after having been duly sworn according to law, hereby certify for and on behalf of [name of Challenger] that:

- 1 In accordance with the Tender Documents for the CGY Project [hereinafter referred to as the "Project"], the [Name of Challenger], a partnership/corporation/Consortium with business address at, is applying to participate in the Tender for the Project and submit its Comparative Proposal.
- 2 [Name of Challenger] confirms that all statements made and the information and documents provided in its Qualification Documents, including statements made by all Consortium Members, their Affiliates, and proposed Designated Operator in any of the Qualification Documents are true and correct, and any misrepresentation or false statement made therein shall be a ground for its disqualification.
- 3 [Name of Challenger] authorizes the DOTr and CAAP to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Qualification Documents, and to seek clarification from its clients and bankers regarding any technical and financial aspects. [Name of Challenger] also permits third parties to supply information required to verify statements and information submitted in its Qualification Documents.
- 4 [Name of Challenger] acknowledges the right of the DOTr and CAAP to reject its Qualification Documents without assigning any reason and to cancel the Tender Process at any time, without incurring any liability, and accepts all the terms and conditions of the ITC and other Tender Documents.
- 5 [Name of Challenger], including the entities it has identified to comply with the Qualification Requirements under the ITC, have not at any time engaged in any

Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practices, nor have a Conflict of Interest.

- 6 [Name of Challenger] 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 DOTr and CAAP to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Tender Process.
- 7 [Name of Challenger] acknowledges that the DOTr and CAAP is undertaking this Tender 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 DOTr and CAAP will suffer serious and irreparable damage on account of any breach by [Name of Challenger] of these undertakings, and agree that the breach of these undertakings shall result in [Name of Challenger]'s automatic disqualification to participate in the Tender for the Project.
- 8 [Name of Challenger] certifies that it or any of its Consortium Members or its any juridical entity that the Consortium Member Controls 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 Comparative Proposals Submission Date, with the National Government and/or any of its agencies, involving an amount above \_\_\_\_\_ Philippine Pesos [PhP\_\_\_\_\_].
- 9 [Name of Challenger] certifies the completeness and accuracy of the following list of litigated or arbitrated disputes the Challenger/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].

For and on behalf of  
[Name of Challenger/ 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

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Book No.: \_\_\_\_\_  
Series of 2024.

# Annex QD-14: Certificate for Establishing Affiliate Status

If the experience belongs to an Affiliate or Parent Company of the entity, a certificate from an Auditor providing evidence of such relationship shall be submitted, substantially covering the details prescribed in the format below:

## Certificate from an Auditor regarding Affiliates

As per authenticated records, this is to certify that ..... *[name of the Challenger / Consortium Member / Affiliate / Parent Company]* is an Affiliate / Parent Company of ..... *[name of Challenger / Consortium Member / Affiliate / / Designated Operatorentity]* as defined in the Instructions to Challengers.

A brief description of such affiliation is given below:

*[Describe the shareholding of the Applicant / Consortium Member and the Affiliate. Upon confirmation of the affiliate / parent-subsidiary relationship, such relationship may be suitably described and similarly certified herein. In case the control is exercised through a legal agreement, provide provisions of such legal agreement evidencing such control.]*

Certified by:

Name of the Auditor:

Designation: (Signature, name and designation of the authorized signatory)

Date:

# Instructions to Challengers

## Annex TP-1: Form of Bid Security

[Letterhead of Issuing Bank]

Department of Transportation

Civil Aviation Authority of the Philippines

Place of Presentation: [Issuer Address]

Standby Letter of Credit No. \_\_\_\_\_

Date:

Gentlemen:

We, [●], a corporation organized and existing under the laws of the Republic of the Philippines [the "Issuer"], hereby establish our Irrevocable Standby Letter of Credit No. [●] [the "Letter of Credit"] in your favor and for the account of [insert name of Challenger or Consortium's Lead Member] [the "Challenger"] relating to the obligations of the Challenger under the Instructions to Challengers [ITC] for a period of one hundred eighty [180] days from Comparative Proposals Submission Date.

Capitalized terms used in this Letter of Credit shall have the meanings given to them in the ITC, except as otherwise expressly defined herein.

- 1 The maximum aggregate amount available under this Letter of Credit is Two Hundred Two Million Five Hundred Thousand Pesos [PhP 202,500,000.00] [the "Stated Amount"].
- 2 Subject to the other provisions of this Letter of Credit, the Department of Transportation ("DOTr") or Civil Aviation Authority of the Philippines ("CAAP") are hereby irrevocably authorized to make one or more drawings under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from the DOTr/CAAP in substantially the form attached as Annex A, duly completed, and that is in the form of a letter on the DOTr's/CAAP's letterhead signed by any of their authorized signatories.
- 3 The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in the account [the "Designated Account"] designated by the DOTr/CAAP in accordance with Annex A. Forthwith upon any such drawing being honored as aforesaid, this Letter of Credit shall be deemed to be amended to effect a reduction in the Stated Amount hereunder equal to the amount of such drawing. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.
- 4 We hereby agree to honor each drawing hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Challenger might raise against DOTr's/CAAP's entitlement to payment, by transferring in immediately available funds to the Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such

demand. As used herein, the term "Business Day" means any day other than [i] a Saturday or Sunday or [ii] a day on which banking institutions in Metropolitan Manila, Philippines are authorized or obligated by law or executive order to remain closed.

- 5 If a demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice [but within the first Business Day succeeding the date of such demand] to the DOTr/ CAAP that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a demand for payment was not effected in conformity with this Letter of Credit, DOTr/CAAP may attempt to correct any such non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
- 6 This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of [i] 5 p.m. at the place of presentation one hundred eighty [180] days year from Comparative Proposals Submission Date [ii] the date on which we receive confirmation from the DOTr/CAAP that the Stated Amount has been reduced to zero, [iii] the date on which we have honored a drawing or drawings in an aggregate amount equal to the Stated Amount, and [iv] the date when we receive a written notice from the DOTr/CAAP that a replacement Letter of Credit, which is in full force and effect, has been substituted for this Letter of Credit [the "Expiration Date"].
- 7 All documents presented to the Issuer in connection with any drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to the DOTr/CAAP. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to the DOTr/CAAP, or sent to the Issuer by fax to the following number:  
  
Fax No. [●] (Answerback: [●]).
- 8 This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and the DOTr/CAAP.
- 9 This Letter of Credit sets forth our undertaking and our agreement with the DOTr/CAAP and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
- 10 The Issuer hereby agrees that it shall have no recourse to the DOTr/CAAP if the Challenger fails at any time to pay any amounts which may from time to time be due and payable by it to the Issuer in relation to this Letter of Credit.
- 11 References in this Letter of Credit to the ITC or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The ITC and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
- 12 This Letter of Credit is issued subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP 98"), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by

the express terms and conditions of this Letter of Credit. If this Letter of Credit should expire during an interruption of our business, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.

- 13 To the extent that the provisions of this Letter of Credit are not governed by ISP 98, this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, we have caused these presents to be executed in our name on this [●] day of [●] 2024.

[Issuing Bank]

By

\_\_\_\_\_

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

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

Page No.: \_\_\_\_\_

Book No.: \_\_\_\_\_

Series of 2024.

ANNEX A TO ANNEX TP-1: Demand for Sight Payment

To: [Name of Issuer]

[Issuer Address]

Attn: [ ]

Re:

Irrevocable Standby Letter of Credit No. [ ]

The undersigned, a duly authorized officer of the Department of Transportation (DOTr) or the Civil Aviation Authority of the Philippines (CAAP), makes reference to the Instructions to Challengers of the Laguindingan International Airport PPP Project ("Project").

1. The DOTr/CAAP hereby demands payment (the "Drawing") under the Letter of Credit in the amount of [ ] PHILIPPINE PESOS (PHP [ ]) in order to satisfy liabilities of the Challenger under the Instructions to Challengers.
2. The amount of the Drawing does not exceed the Stated Amount.

Please wire transfer the amount of the Drawing to [account details to be inserted by the DOTr/CAAP] (the "Designated Account").

IN WITNESS WHEREOF, the DOTr/CAAP has executed and delivered this certificate as of the [ ] day of 2024.

DEPARTMENT OF TRANSPORTATION / CIVIL AVIATION AUTHORITY OF THE  
PHILIPPINES

By:

Name:

Title:



## Annex TP-2: Challenger's Technical Proposal

*(NOTE: TECHNICAL PROPOSAL REQUIREMENT TO FOLLOW  
IN A BID BULLETIN)*

# Instructions to Challengers

## Annex TP-3: Notarized Statement for Submission of Technical Proposal

To be submitted by each Challenger

*[Letterhead]*

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the authorized representative of *(Challenger)*, a *[(corporation/partnership/other juridical entity or Consortium) (organized and existing under and by virtue of the laws of [place of incorporation/registration] or organized by agreement among its Consortium Members)]*, hereby:

1. Submit, for and on behalf of *(name of Challenger)*, that annexes required to be submitted as part of the Technical Proposal under Annex TP-2, are being submitted herewith as mentioned below:

<b>S.N.</b>	<b>Document Requirement</b>	<b>Submitted (Please mention Yes if complying)</b>
1.	Annex TP-1	
2. (etc.)	(etc.)	(etc.)

2. Agree on behalf of the Challenger that non-submission of any of the above Annexes may lead to the Technical Proposal being rated as “Fail”.
3. Agree on behalf of the Challenger that the PBAC reserves the right to reject the Technical Proposal of the Challenger if in the view of PBAC the Technical Proposal does not meet the KPI standards as specified in the corresponding Schedule to the Concession Agreement. In such a scenario, the Technical Proposal of the Challenger may be rated as “Fail”.

*(Date and Place of Execution.)*

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

By:

*(Name, Designation and Signature of Authorized Representative)*

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

NOTARY PUBLIC

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

Page No.: \_\_\_\_\_

Book No.: \_\_\_\_\_

Series of 2024.

# Instructions to Challengers

## Annex FP-1: Statement of Challenger on Bid Amount

I, [insert name], [insert citizenship], of legal age, with office address at [insert address], as the authorized representative of [insert Challenger], a [corporation/partnership or Consortium] [organized and existing under and by virtue of the laws of [insert place of incorporation/registration] or organized by agreement among its Consortium Members], hereby declare for and on behalf of [name of Challenger] that in accordance with the Tender Documents for the CGY Project [hereinafter referred to as the "Project"], [Name of Challenger], a [partnership/ corporation/ Consortium] with business address at \_\_\_\_\_, [hereinafter referred to as the "Challenger"], submits the Bid Amount. The Bid Amount shall be expressed as a percentage up to two decimal points,

Bid Amount in words	
Bid Amount in figures	

For and on behalf of [Name of Challenger/Name of Consortium / List of Consortium Members]

By:

[Name and Signature of Authorized Representative]

Date: \_\_\_\_\_

# Instructions to Challengers

## Annex FP-2: Financial Model

**Name of Project:** CGY Project

**Name of Challenger:**

[Note: All amounts in Philippine pesos and in 2024 prices.]

Hard copy and electronic copy of the Challenger's Financial Model may be attached, capturing the following minimum information per year from 2024-2058.

<b>A. Project Costs</b>	
Engineering Design	
Civil Works	
Insurance Costs	
Others	
<b>B. Key Operating Assumptions</b>	
Inflation	
Average vehicles per day, Class I	
Average vehicles per day, Class II	
Average vehicles per day, Class III	
<b>C. Projected Income</b>	
Aeronautical Revenues	
Non-aeronautical Revenues	
<b>Total Revenues</b>	
Operating expenses	
Routine maintenance expenses	
Periodic maintenance expenses	
Insurance expenses	
Others	
Depreciation and amortization	

<b>Total Expenses</b>	
Operating income	
Interest expenses	
Other expenses	
Net income before tax	
Tax	
<b>Net income after tax</b>	
<b>D. Projected Balance Sheet</b>	
Assets	
Current Assets	
Long-Term Assets	
Other Assets	
<b>Total Assets</b>	
Liabilities and Stockholder's Equity	
Short-term Debt	
Current Portion of Long-Term Debt	
Other current liabilities	
Long-term debt	
Other long-term liabilities	
<b>Total Liabilities</b>	
Total Stockholder's Equity	
Total Liabilities and Stockholder's Equity	
Debt / Total Capital Ratio	
<b>E. Projected Cashflow Statement</b>	
Cashflow from Operations	
Cash inflows from aeronautical revenues	
Other operating cash inflows	

Cash operating and maintenance costs	
Net Cashflow from Operations	
Cashflow from Investing	
Cash inflows from investing activities	
Capital expenditure	
Other cash outflows from investing activities	
Net Cashflow from Investing Activities	
Cashflow from Financing	
Interest Income	
Interest Expense	
Gross Borrowing	
Gross Debt Repayment	
Equity contributions	
Payments to Shareholders	
Net Cashflow from Financing Activities	
Net Cashflow	
Cash at beginning	
Cash at end	

F. Rates of Return

Project IRR and Weighted Average Cost of Capital

[please show calculations to derive the project IRR and breakdown of WACC in each year]

Equity IRR

[please show calculations to derive the equity IRR and compare with cost of equity]

For and on behalf of [Challenger/Lead Member]

[Signature of Authorized Representative]

\_\_\_\_\_

[Name]

[Designation]

# Instructions to Challengers

## Annex FP-3: Project Finance Plan

The financial plan provided by the Challenger will describe the sources of funds and the terms of financing for both debt and equity as applicable for implementing the CGY Project. For the avoidance of doubt, shareholder loans will be treated as equity provided that they are subordinated to all other debt. The Challenger will provide details on the financing sources as outlined in the below Table 1. The financing should be in an amount sufficient to cover all estimated Project costs.

Financing will be in the form of equity and debt. At least twenty percent [20%] of the total financing, inclusive of contingencies, will be in the form of equity and the remainder in debt or subordinated debt.

**Table 1**

<b>SOURCES OF FUNDS</b>					
<b>Items/Sources</b>	<b>USD</b>	<b>+</b>	<b>Local Currency</b>	<b>=</b>	<b>Equivalent Total in Philippine Peso [PHP]</b>
1.1 Total Project Costs [Excluding stand-by credit facility]					
1.2 Equity					
Lead Member Name:					
[Consortium Member] Name:					
[Consortium Member] Name:					
Contractor / Supplier Name:					
Contractor / Supplier Name:					
Philippine Sources Name:					
Other Sources Name:					
Total Equity:					
1.3 Debt Financing					



<b>SOURCES OF FUNDS</b>					
<b>Items/Sources</b>	<b>USD</b>	<b>+</b>	<b>Local Currency</b>	<b>=</b>	<b>Equivalent Total in Philippine Peso [PHP]</b>
Export Credit Agencies [list individually]					
Export Credit Agency Name:					
Export Credit Agency Name:					
Export Credit Agency Name:					
Export Credit Agency Name:					
Commercial Sources [list individually]					
Commercial Source Name:					
Commercial Source Name:					
Commercial Source Name:					
Multilateral Sources [list individually]					
Multilateral Source Name:					
Multilateral Source Name:					
Other Sources [list individually]					
Other Source Name:					
<b>Total Debt:</b>					

**1 DOCUMENTATION**

In support of the financing plan provided above, the following documentation is to be provided.

- 1.1 Financial Plan certified by the Chief Executive Officer or Treasurer /Controller of each of the companies verifying that the company will provide the amount of equity stated in Section 1.2 of Table 1 at the relevant time.
- 1.2 If the Challenger has appointed a financial advisor/arranger for the Project, the Challenger shall provide the name of the organization, the lead person who will perform the services from the organization, and the qualification statement for the organization and the lead person.
- 1.3 Should the Challenger plan to have financing for the Project at a later date, details of financing arrangements prior to the long-term financing being effective shall be provided. Note: If necessary, Challengers may provide for a separate document or annexes for their financial model and project finance plan.

Note: If necessary, Challengers may provide for a separate document or annexes for their financial model and project finance plan.