

Dialysis Center PPP Project for the Renal Center Facility of the Baguio General Hospital and Medical Center

Purchase Instructions for the Bidding Documents

17 December 2023



In order to access the Data Room where the Bidding Documents, including the Instruction to Bidders, Concession Agreement Term Sheet, and The Draft Concession Agreement and its Schedules for the Project will be made available, Bidders are required to complete the following steps:

1. The Bidder shall complete the payment of the non-refundable fee of Fifty Thousand Philippine Pesos (PHP 50,000.00), which constitutes the sale of the Bidding documents, through deposit to the designated bank account of the Department of Health - Baguio General Hospital and Medical Center as provided below:

Name of Bank : Development Bank of the Philippines
Branch : Baguio City
Account Name : BGHMC-OTHER MISCELLANEOUS
Account No. : 0-00320-510-0
SWIFT : DBPHPHMM

2. A Confidentiality Undertaking in the form set out in **Annex A** must be executed by the Bidder's authorized representative.
3. The Bidder's authorized representative must also execute an Authorization Letter using the template in **Annex B**. The SBAC reserves the right to require additional proof of the authority of the authorized representative. Failure to submit the said proof may lead to the revocation of the Bidder's access to the Data Room.
4. The Bidder is required to provide one (1) e-mail address which will be given access to the Data Room.
5. The Bidder shall submit (i) the scanned or screen-captured copy of the transaction receipt/deposit slip as proof of payment, (ii) the duly executed Confidentiality Undertaking, (iii) the duly executed Authorization Letter, and (iv) the Data Room contact email by:

- a. Submitting scanned copies to:

Attention: **DR. MARIA FRANCIA MICIANO-LAXAMANA, MHSA, CHS**
Chairperson, Special Bids and Awards Committee
Undersecretary of Health, Special Concerns Team
usecfmlosc@doh.gov.ph
(cc): Special Bids and Awards Committee Secretariat
ppphsecretariat@doh.gov.ph

- b. Submitting printed copies to the following:

Attention: **DR. MARIA FRANCIA MICIANO-LAXAMANA, MHSA, CHS**
Chairperson, Special Bids and Awards Committee
Undersecretary of Health, Special Concerns Team

Address: **Building 19, DOH Central Office, San Lazaro Compound, Rizal Avenue, Brgy.331,
Sta. Cruz, Manila City, Metro Manila, 1008**

- c. Informing the **Special Bids and Awards Committee Secretariat** of the completion of the above at this email ppphsecretariat@doh.gov.ph or through the telephone number (02) 8651-7800 locals. 2239, 2403, 2405, and 2407 or in person at the above address.

6. The Bidder shall then be provided an access link to the Bidding Documents through the Data Room. The Bidding Documents will be provided in electronic format only. The Instructions to Bidders and the Concession Agreement Term Sheet will be made available from the publication of the Invitation to Bid. The draft Concession Agreement and its Schedules will be made available at a later date. *DOH and BGHMC reserve the right to reject any or all bids, declare a failure of bidding, modify the Bidding Documents or any aspect thereof anytime, and/or not award the contract for any reason whatsoever and without need for any explanation.*

**DIALYSIS CENTER PPP PROJECT FOR THE RENAL CENTER FACILITY OF THE BGHMC
CONFIDENTIALITY UNDERTAKING**

This Confidentiality Undertaking (the “**Undertaking**”) is executed in favor of the Department of Health (“**DOH**”) and Baguio General Hospital and Medical Center (“**BGHMC**”) by [Name of Bidder] (the “**Recipient**”).

1. CONFIDENTIAL INFORMATION

Recipient is interested in obtaining information from the DOH, in furtherance of the **Dialysis Center Public-Private Partnership Project for the Renal Center Facility of the BGHMC (“Project”)** which will entail the finance, design, retrofitting, operation and maintenance of the Dialysis Center. The selection process shall be undertaken through a public bidding in accordance with the Philippine BOT Law (Republic Act No. 6957, as amended by Republic Act No. 7718), and its Revised 2022 Implementing Rules and Regulations. By reason of such interest of the Recipient, DOH proposes to disclose certain Confidential Information (as defined below) to the Recipient. Recipient acknowledges that DOH has the exclusive right to determine what information it may furnish to the Recipient.

As used herein, “**Confidential Information**” means all information concerning DOH and BGHMC or its assets, liabilities or obligations furnished to Recipient directly by any of DOH and BGHMC’s officials, employees, and legal, technical, financial advisors, agents or other representatives (“**DOH and BGHMC Representatives**”), including: (i) information obtained by Recipient (a) during the due diligence process, (b) through site visits to BGHMC or its offices and facilities and (c) through any management presentation by DOH and BGHMC; (ii) information contained in any other written material furnished or otherwise made available to Recipient; (iii) information furnished to Recipient electronically or through the Data Room; (iv) information presented to Recipient or its advisors orally, whether presented in a management presentation or another forum; and (v) all analyses, compilations, forecasts, studies or other documents prepared by Recipient or its Representatives (as defined in Section 3 hereof) which contain or reflect any of the foregoing information.

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

Notwithstanding the foregoing, information disclosed by DOH and BGHMC which would otherwise be Confidential Information shall not be deemed Confidential Information to the extent that it can be proven by written records that said information is (i) part of the public domain without violation of this Agreement or (ii) disclosed pursuant to administrative or judicial action; *provided*, that, the Recipient shall use its best efforts to maintain the confidentiality of the Confidential Information (including but not limited to asserting in such action any applicable privileges), and shall, immediately after getting knowledge or receiving notice of such action, notify DOH and BGHMC thereof and give DOH and BGHMC the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence. If only a portion of the Confidential Information falls under any of the above, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Agreement.

2. NO REPRESENTATION

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

3. RECIPIENT'S OBLIGATIONS

Unless DOH gives its prior written authorization, Recipient shall, during a period of one (1) year from the date of disclosure of any Confidential Information hereunder:

- (a) not use the Confidential Information for any other purpose than for the Project;
- (b) protect the Confidential Information against disclosure in the same manner and with the same degree of care, but not less than a reasonable degree of care, with which it protects confidential information of its own;
- (c) limit circulation of the Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives, or (as applicable) other persons, partnerships or corporations with whom the Recipient shall form a consortium for purposes of submitting a bid for the Project (collectively, the "**Representatives**") who need to know such Confidential Information and only for the purpose of evaluating the Project and who have executed and delivered a confidentiality undertaking in favor of DOH AND BGHMC covering the Confidential Information.

Confidential Information furnished in tangible form or on electronic media shall not be duplicated by the Recipient except for purposes of evaluating the Project. Upon the request of DOH AND BGHMC, Recipient shall either return all Confidential Information received in written, electronic, or other tangible forms, including copies, or reproductions or other media containing such Confidential Information or destroy the same and certify that it has been destroyed, as requested by DOH, within ten (10) days of such request; *provided*, however, that Recipient may retain one copy of all Confidential Information provided in written, electronic or tangible form for its corporate records if required for regulatory purposes, subject to Recipient providing DOH AND BGHMC written notification of such regulatory purpose with details satisfactory to DOH AND BGHMC. Without limiting the generality of the foregoing, in the event that the Project is not consummated with the Recipient (for any reason whatsoever, including but not limited to the Recipient's not (i) submitting a bid or (ii) being declared the winning bidder), neither Recipient nor its Representatives shall use any of the Confidential Information for any purpose. Recipient will be responsible for any breach of this Agreement by its Representatives.

During the course of the Recipient's evaluation, the Recipient shall make all inquiries and other communications directly to DOH AND BGHMC in writing and addressed to Special Bids and Awards Committee Secretariat representative at the following address: pphsecretariat@doh.gov.ph, and usecfmlosc@doh.gov.ph Recipient

agrees not to directly or indirectly contact or communicate with any other official or other employee of DOH and BGHMC concerning the Project, or to seek any information in connection therewith from such person, without the express written consent of DOH.

4. COMMUNICATIONS WITH OTHER BIDDERS

Except as may be required by applicable law, Recipient shall refrain from communicating, and cause its Representatives to refrain from communicating, directly or indirectly, with any Bidder about the Project, or about any subject related to the Project; *provided*, however, that Recipient may communicate with its Representatives and any other third party (and any of its Representatives) bound by a confidentiality agreement with DOH and BGHMC covering the Confidential Information.

5. GOVERNING LAW AND VENUE

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

6. NO IMPLIED WAIVER

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

7. NO COMMITMENT

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

Recipient also acknowledges and agrees that no contract or agreement providing for the Project shall be deemed to exist between Recipient and DOH, as applicable, unless and until a definitive agreement has been executed and delivered by Recipient and DOH.

8. SEVERABILITY

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

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

[NAME OF BIDDER]

By: _____

(Authorized Representative)

Date: _____

Signed in the Presence of:

[Letterhead]

AUTHORIZATION LETTER

[date]

**Department of Health/
Baguio General Hospital and Medical Center**

[Insert Office]

[Insert Address]

Attention: **DR. MARIA FRANXIA M. LAXAMANA**
Chairperson, Special Bids and Awards Committee for the Dialysis Center PPP
Project for the Renal Center Facility of the BGHMC

Gentlemen:

In connection with the intended participation of *(name of Bidder)* in the bidding process for the Dialysis Center PPP Project for the Renal Center Facility of the BGHMC (the "**Project**"), I hereby certify, based on *(insert basis of authority)*, that *(name of authorized representative)* is authorized to request access to the Data Room and to sign the Dialysis Center PPP Project for the Renal Center Facility of the BGHMC Confidentiality Undertaking on behalf of *(name of Bidder)*.

Please provide access to the Data Room to the following person with this email address:

Name:
Email Address:

Yours,

[name]
[Corporate Secretary/Equivalent Officer]
[name of Bidder]