

TERMS OF REFERENCE

AQUILINO Q. PIMENTEL JR. INTERNATIONAL CONVENTION CENTER



**OPERATION AND MANAGEMENT OF THE AQUILINO Q.
PIMENTEL JR. INTERNATIONAL CONVENTION
CENTER**

TERMS OF REFERENCE

DISCLAIMER

The information contained in the Bidding Documents, Information Documents and any other information, whether verbal or written, provided by the Tourism Infrastructure and Enterprise Zone Authority (“TIEZA”), or on behalf of the TIEZA, is provided to Interested Challenger on the terms and conditions set out in the Bidding Documents and such other terms and conditions subject to which such information is provided.

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

Information provided in the Bidding Documents and the Information 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 TIEZA accepts no responsibility for the accuracy, or otherwise for any interpretation or opinion on law expressed herein.

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

The TIEZA also accepts no liability of any nature, whether resulting from negligence or howsoever caused, arising from reliance of any Interested Challenger upon the statements contained in the Bidding Documents or Information Documents.

The TIEZA may, in its absolute discretion, but without being under any obligation to do so, amend, update, or supplement the information, assessments, or assumptions contained in the Bidding Documents or Information Documents. However, the TIEZA, their employees and advisors shall not be liable to any Interested Challenger (including the Winning Challenger) in respect of any failure to

- i. disclose or make available any information, documents, or data;

- ii. amend, update, or supplement the Bidding Documents or Information Documents; or
- iii. provide any information regarding any inaccuracy, error, omission, defect, or inadequacy in the Bidding Documents or Information Documents.

The issuance of the Bidding Documents or Information Documents does not imply that the TIEZA is bound to select an Interested Challenger or to appoint the select, as the case may be, for the Project, and the TIEZA reserves the right to reject all or any of the Bids without assigning any reason whatsoever.

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

TERMS OF REFERENCE FOR THE COMPARATIVE CHALLENGE FOR THE THE AQUILINO Q. PIMENTEL JR. INTERNATIONAL CONVENTION CENTER (APICC)

This Terms of Reference¹ (TOR) describes the procedures that will be followed in connection with the Comparative Challenge Selection for the Joint Venture of the Operation and Management of the Aquilino Pimentel Jr. International Convention Center (APICC) of the Tourism Infrastructure and Enterprise Zone Authority (TIEZA).

The Pre-Qualification-Qualification Bids and Awards Committee (PBAC) shall administer the TIEZA Public-Private Cooperation Program (PPCP) through Joint Venture, this TOR, and any other documents to be issued related to the Comparative Challenge. Interested Challenger further that any decision of and/or action taken by the PBAC is recommendatory to the Chief Operating Officer of TIEZA (TIEZA COO) and is not final while, on the other hand, the approval by the TIEZA COO on any aspect of the PPCP is final, subject to the ratification by the TIEZA Board of Directors (TIEZA Board) of the resulting Joint Venture Agreement.

The PPCP is being carried out pursuant to the provisions of Republic Act No. 9593 (RA 9593), otherwise known as the Tourism Act of 2009, as amended, and of Republic Act No. 11966 (RA 11966), otherwise known as the Public-Private Partnership Code of the Philippines. TIEZA is making available this TOR to provide Interested Challenger with ample time to examine the same and to determine their interest and eventual participation in the Comparative Challenge Selection.

This TOR is part of the bid documents and details the requirements for participation in the Comparative Challenge selection Comparative Challenge of APICC's original challenger on the Project particularly in the submission, the evaluation of the Technical and Financial Proposals and eventually the determination of the winning challenger ("Winning challenger/s").

This TOR has been developed by TIEZA, the Investment Committee, and the PBAC in connection with TIEZA's PPCP. Information contained in this document may not be used for any other purpose without the prior written consent of TIEZA and the PBAC. In connection with the PPCP, no person is authorized to give any information or to make any representation other than as contained in this TOR and, if given or made, such information or representation must not be relied upon as having been authorized by TIEZA and/or the PBAC. Interested Challenger should consult their respective financial adviser, legal counsel, accountant or other professional advisers with respect to their prospective participation in the PPCP. In making a decision to participate, Interested Challenger shall rely on their own examination of the TIEZA Asset covered by this TOR, and make their own judgment concerning the merits and risks involved, it being clear that the contents of this TOR are subject to verification and due diligence of the Interested Challenger. Nothing in this TOR shall be construed as a guarantee, it being clear that the Interested Challenger is responsible for making such verification as would be necessary.

TIEZA and the PBAC reserve the right to amend or supplement this TOR at any time prior to the submission of final proposals, it being understood that TIEZA and the PBAC shall be held free and harmless from any liability or damage which might occur or be incurred by Interested Challenger(s) as a result of such supplement or amendment.

In line with RA 9593, TIEZA is making available this TOR to provide Interested Challenger(s) with ample time to examine the same and to determine their interest and eventual participation in this Comparative Challenge Selection. This TOR is also made available to ensure transparency and fairness in the conduct of the Comparative Selection.

SECTION 1: GENERAL INFORMATION

This Terms of Reference (TOR) provides the procedures and requirements for the Comparative Challenge, which includes the submission of Bid Proposals by the Challenger and the evaluation criteria and rules to be followed by the TIEZA in the selection of a Winning Challenger to undertake the APICC Project. The contractual arrangement under which the Project will be undertaken is a contractual Joint Venture Agreement and the selection of a Winning Challenger shall be made pursuant to the TIEZA JV Guidelines, the applicable provisions of which are deemed incorporated by reference into this TOR.

1.1 BID DOCUMENTS

The Bid Documents issued by the PBAC to the Interested Challenger shall govern the preparation and submission of their Bid Proposals, as well as the evaluation of the Bid Proposals and award of the contracts for the Project. The Bid Documents consist of the following:

- a. This TOR
- b. the draft Minimum Performance Standards and Specifications (“MPSS”)
- c. the draft Joint Venture Agreement and its annexes and schedules, which may be accessed through TIEZA’s Virtual Data Room

From time to time, the Bid Documents may be amended or revised through the issuance of Bid Bulletins by the PBAC. Upon notice or communication to the Interested Challenger regarding the issuance of a bid bulletin by the PBAC, the same shall automatically be incorporated into and made an integral part of the particular Bid Document to which it relates. Any such notice or communication shall be deemed given when so sent by electronic mail in the electronic mail addresses provided by the Interested Challenger.

The Joint Venture Agreement and its annexes and schedules shall be the principal document governing the relationship between the Grantor and the Challenger.

In case of conflict between the Bid Documents, the provisions of the Joint Venture Agreement shall prevail.

In case of ambiguities or discrepancies within this TOR, the following rules of interpretation shall apply:

- i. between two or more Sections of this TOR, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Section

1.2 INDICATIVE BIDDING SCHEDULE

The Bidding Process shall follow the indicative schedule below:

Milestone	Tentative Date
Pre-Bid Conference	September 2, 2024
Site Visit and meeting with the Comparative Proponents (If necessary)	September 2-8, 2024

One-on-One Meetings with the Comparative Proponents (If necessary)	September 2-8, 2024
Last day for submission of queries	September 9, 2024
Release of Pre-Bid Conference Agreements/Clarifications	September 16, 2024
Final Bid Bulletin (<i>Prior to Freeze Period</i>)	November 19, 2024
Freeze Period	November 20 - December 20, 2024
Submission of Qualification Documents, Technical and Financial Proposals / Opening of Qualification Documents	December 23, 2024
Notice to Qualified/Disqualified Bidders	December 24, 2024 - January 16, 2025
Simultaneous Evaluation of Technical and Financial Proposals	January 17 – March 2, 2025

The actual schedule may be changed by the PBAC at any time, without incurring any liability to the Interested Challenger. Interested Challengers shall be notified by the PBAC of changes in the indicative schedule through Bid Bulletins. All references to dates shall refer to Philippine Standard Time.

In the event that date of the scheduled milestone is a non-working day or cancelled due to fortuitous event declared by competent government authority, the deadline for the milestone shall automatically be rescheduled to the next Business Day, without need for any further notice.

1.2.1 RESPONSIBILITY OF THE CHALLENGER

Notwithstanding any information given in the Bid Documents, Reference Documents and any additional communications from the TIEZA or PBAC, including Bid Bulletins, it is the sole responsibility of each Interested Challenger to:

- a. be fully acquainted with the applicable rules, requirements, terms, and conditions of the Bidding Process;
- b. examine all of the Bid Documents and Reference Documents and verify the correctness, completeness, accuracy, and reliability of the information contained in these documents;
- c. familiarize itself with the Constitution and all the applicable laws and regulations of the Republic of the Philippines, whether national or local, which may affect the Bidding Process and the Project; and
- d. 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; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and

availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; the financial viability of the Project; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.

The Interested Challenger, including any Consortium Member, Affiliate, and the Winning Challenger, shall not be entitled to, and shall not make, any claim against the TIEZA, its advisors, or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the grounds:

- i. of any misunderstanding or misapprehension in respect of the Bid Documents, and/or Reference Documents; or
- ii. that incorrect or insufficient information relating to the Bid Documents, and/or Reference Documents was given to them by TIEZA, its advisors, or any other associated party.

By submitting its Bid Proposal, an Interested Challenger shall be presumed to have fully examined and accepted all of the terms and conditions in all of the Bid Documents.

1.2.2 COST OF PARTICIPATION

Each Interested Challenger shall bear all costs, losses and damages associated with or resulting from their participation in the Bidding Process. The PBAC shall not be held responsible or liable for any such costs, expenses, losses or damages incurred by any Interested Challenger, regardless of the results of the Bidding Process.

1.3 BID BULLETINS

The PBAC reserves the right to amend, revise, modify, or clarify any section of the Bid Documents at any stage of the Bidding Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated in writing to all Interested Challenger through Bid Bulletins issued by the PBAC. Upon the issuance of a Bid Bulletin, the same shall automatically be incorporated into and made an integral part of the Bid Documents. In case material changes are made to the Bid Documents through Bid Bulletins, the PBAC may, in its discretion, extend the Bid Submission Date.

1.4 QUERIES AND COMMENTS ON BID DOCUMENTS

An Interested Challenger may send queries and/or comments on the Bid Documents. All queries and/or comments must be submitted by (i) using query function provided in the VDR, (ii) email and (iii) sending by personal delivery the original copy of the queries/comments to the PBAC at the address below:

**THE PBAC Chairperson
7th Floor Tower I
Double Dragon Plaza, DD Meridian Park
Macapagal Avenue corner EDSA Extension Bay Area,
Pasay City, Metro Manila**

Interested Challengers must submit their queries and/or comments in sets on or before 09 September 2024..

All queries must be properly identified by the Interested Challenger's name and date of query. Interested Challenger must use the template below (as applicable) for all its queries and comments. Electronic copies of questions must be sent either through word or excel format only.

For queries and comments on the Terms of Reference and its Annexes:

Topic	Terms of Reference	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 Joint Venture Agreement and its Annexes and Schedules:

Topic	Draft Joint Venture Agreement	Query/Comment	Proposed Revision (if any)
1.	[Indicate Section No./Annex No.]		
2.	[Indicate Section No./Annex No.]		

For queries and comments on all other documents:

Topic	Document Name/Document Reference No.	Section Reference	Query/Comment
1.			
2.			

In case of a discrepancy between copies personally delivered and those that are sent through e-mail, the copy personally delivered and duly received shall prevail.

Queries on the Bid Documents must be concrete or clarificatory and not purely hypothetical in nature.

The PBAC shall exert its best efforts to respond to all reasonable queries received. Responses to queries and any modifications to the Bid Documents will be made on a non-attributable basis and in writing through Bid Bulletins issued by the PBAC to all Interested Challenger. All Bid Bulletins issued by the PBAC shall be deemed to be incorporated in and made an integral part of the relevant Bid Document upon notice or communication to the Challenger in accordance with Section 1.5.

1.5 LANGUAGE AND FOREIGN DOCUMENTS

1.5.1 The Bid Proposal, and all correspondence and documents relating to the Bid Documents and the Bidding Process, shall be prepared and written in the English language.

1.5.2 All documents issued or executed in a foreign country must be authenticated by a Philippine consular official at the Philippine consulate nearest the place of issue or execution.

1.5.3 If the document was issued by a foreign authority, the Interested Challenger must submit a certified true copy of such document issued by such foreign authority, authenticated by the Philippine consular official referred to in Section 1.7.2.

1.5.4 If the document is a foreign law or regulation, the Interested Challenger need only submit a copy of the applicable excerpt of such law or its translation with a citation of its source, without need of submitting a copy of the entire law, unless subsequently required by the PBAC. For this purpose, the Interested Challenger should submit

(a) a certified true copy of such excerpt issued by the competent government authority; or

(b) a certification from the embassy or consular office of the relevant foreign country in the Philippines that such excerpt is an accurate copy of the foreign law. (check if consistent with latest rules on apostille)

If the document is written in a foreign language, the Interested Challenger must also submit an accurate English translation, accompanied by a notarized certification by an authorized

representative of the entity involved or by a translator in the relevant country that such translation is complete and accurate. This must also be authenticated by the Philippine consular official referred to in Section 1.7.2. In case of conflict, the English translation shall prevail.

1.6 TREATMENT OF DOCUMENTS FROM INTERESTED CHALLENGER

All documents and information submitted by the Interested Challenger and officially accepted by the PBAC shall be treated and considered strictly confidential and any information obtained by the TIEZA from such documents may be reasonably used by it, subject to the confidentiality clause of this TOR.

1.7 SITE VISITS

The PBAC will schedule the site visit for the Project upon request of Interested Challenger. A bid bulletin will be released for the schedule of site visits. The cost of site visits will be shouldered by the Interested Challenger.

1.8 PRE-BID CONFERENCE

PBAC shall conduct a Pre-Bid Conference to clarify any part of the Bid Documents and/or the Bidding Process and to answer any relevant questions from Interested Challenger. The details of the Pre-Bid Conference shall be provided in a Bid Bulletin. Interested Challenger may attend the Pre-Selection Conference. Any Interested Challenger may submit their queries and comments in accordance with Section 1.6 (Queries and Comments on Bid Documents).

No provision, term, or condition in the Bid Documents shall be modified by statements made at the Pre-Bid Conference unless such statements are confirmed in writing and contained in a Bid Bulletin issued by the PBAC. Within Seven (7) days from the Pre-Bid Conference, the Interested Challenger must confirm in writing the questions and concerns which they raised during the Pre-Bid Conference in accordance with Section 1.6 (Queries and Comments on Bid Documents). The PBAC reserves the right to issue a Bid Bulletin modifying the Bid Documents even if the Interested Challenger fail to confirm in writing the questions and concerns that they raised during the Pre-Bid Conference.

SECTION 2: DEFINITIONS

Unless otherwise provided, the following terms used in these Terms of Reference shall have the following meanings. Capitalized terms not otherwise defined in these Instructions to Interested Challenger shall have the meanings provided in the ED Kit or in the JV Agreement. In case of conflict between the definition of a term as provided in this TOR and those in the ED Kit, the definition provided in this TOR shall govern.

2.1 Acceptable Payments – refers to cash or Manager’s check drawn on a Metro Manila branch of a universal or commercial bank duly registered and licensed by the Bangko Sentral ng Pilipinas (BSP).

2.2 Accredited Financial Institution – refers to universal banks, commercial banks, insurance companies, investment houses and finance companies authorized and licensed to

operate with the Philippines.

2.3 Affiliate - means a person who, alone or together with any other person, is effectively controlled by or Controls or is under common Control with another person. Two or more persons may be considered together for purposes of determining an Affiliate relationship where:

- i. such persons are Affiliates of each other;
- ii. such persons have a legal agreement among them that reasonably supports aggregation of their interests; or
- iii. such persons have an arrangement with similar effect. The term “persons” includes natural persons, partnerships, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality).

2.4 APICC Project – means the Aquilino Q. Pimentel Jr. International Convention Center Project.

2.5 Asset – means the Aquilino Pimentel Jr. International Convention Center, an approximately 1.3-hectare Convention Center owned by TIEZA.

2.6 Bid documents – means the documents issued to the Interested Challengers, as enumerated in Section 1.1, including any notices and Bid Bulletins issued by the PBAC until Bid Submission Date.

2.7 Bid Submission Date – means the date when the Interested Challenger must submit their Bid Proposal to the PBAC.

2.8 Bidding Process – means the procurement process beginning from the publication of the Invitation to Apply for Eligibility and Submit Proposals until the date of signing of the Joint Venture Agreement.

2.9 Challenger - refers to private sector timely who submitted the Letter of Intent and paid the non-refundable participation fee.

2.10 Consortium – means an unincorporated association of natural or juridical persons bound by contract or law, solitarily undertaking by mutual written agreement to participate in the Bidding Process.

2.11 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, solitarily liable in the Bid Proposal, and whose interest will be converted into an equivalent equity participation in the Concessionaire if the Consortium is awarded and accepts the Project.

2.12 Construction Performance Security - means the security posted by the Winning Challenger to secure its faithful performance of its obligations under the Joint Venture Agreement, which must be a Performance or Surety Bond issued by the GSIS or any reputable insurance company.

2.13 Control – means, for purposes of defining an Affiliate, the power to direct or cause the direction of the management policies and actions of a body corporate whether through:

- i. ownership, whether directly or indirectly, of at least fifty percent (50%) plus one (1) share of the outstanding voting shares; or
- ii. Ownership, whether directly or indirectly, of at least twenty percent (20%) of the outstanding voting shares and (i) possession of at least fifty percent (50%) plus one (1) share of the voting rights through a voting trust or other voting agreements entered into at least one (1) year before the Pre-Qualification Documents Submission Date; or
- iii. the ability to elect a majority of the members of the Affiliate’s board of directors, or
- iv. a legal agreement entered into at least one (1) year before the Eligibility Documents Submission Date, which has an arrangement with similar effect as (a) or (b) above.

2.14 Discount Rate- refers to the interest rate to be used in computing for the present value of future cashflows. The discount rate to be used is ten percent (10%).

2.15 Eligibility Documents – pertain to documents that should be submitted by an Interested Challenger applying for eligibility on or before 05 November 2024.

2.16 Eligibility Document Kit – describes the required documents to be submitted and the procedures that will be followed in connection with applying for and in acquiring eligibility have their proposals for the operation and management of APICC opened and evaluated.

2.17 Estimated TIEZA Benefits – refers to the nominal value of the total guaranteed benefits being proposed by an Interested Challenger to TIEZA for the JV of the Asset. These benefits are composed of the 1) Annual Fixed Fee, and 2) Percentage Share in Gross Revenues (converted into its equivalent absolute peso amount) to be received by TIEZA.

2.18 ISCP – Invitation to Submit Comparative Proposals

2.19 Interested Challenger – is Challenger that has submitted all the pre- qualification requirements provided in the ED Kit and has been declared “Interested Challenger” by the PBAC.

2.20 Joint Venture (JV) – An association of persons or companies jointly undertaking a commercial enterprise — generally, all contribute assets and share risks. It requires a community of interests in the performance of the subject matter, a right to direct and govern the policy connected therewith, and duty, which may be altered by agreement to share both in profit and losses.

2.21 Minimum Committed Capital – pertains to the minimum nominal amount of Php 88 million that will be used to fund the improvements/rehabilitation and construction of facilities.

2.22 Office of the Government Corporate Counsel (OGCC) – the principal and statutory law office of government-owned-and-controlled corporations (GOCC's), their subsidiaries, government financial institutions, government corporate offspring, government instrumentalities with corporate powers and government acquired asset corporations.

2.23 Operations Performance Security - means the security posted by the Winning Challenger in favor of the TIEZA to secure the faithful performance of its obligations under the Joint Venture Agreement during the Operation Period, which must be a Performance or Surety bond issued by the GSIS or any reputable insurance company.

2.24 Pre-Qualification/Qualification, Bids and Awards Committee – the selection committee designated by TIEZA to oversee the implementation of the PPCP. The committee is composed of a chairperson and seven (7) members.

2.25 Private Sector Challenger (PSC) – refers to the private sector entity which shall have contractual responsibility for the project, and possesses technical capability, sufficient financial base, and adequate track record in the concerned industry.

2.26 Proposed Committed Capital – pertains to the nominal amount of capital being proposed by an Interested Challenger to fund the improvements/rehabilitation and construction of facilities.

2.27 Public-Private Cooperation Program (PPCP) – the Program approved by the TIEZA Board last 08 October 2019 to find suitable private sector partners to develop TIEZA assets and projects.

2.28 Republic Act No. 11966 - also known as the Public-Private Partnership Code of the Philippines became effective on 05 December 2023.

2.29 Terms of Reference (TOR) – describes the procedures that will be followed in connection with the Comparative Challenge for the O&M of the Aquilino Q. Pimentel Jr. International Convention Center (APICC) of the Tourism Infrastructure and Enterprise Zone Authority.

2.30 TIEZA Board of Directors – the governing body of the Tourism Infrastructure and Enterprise Zone Authority.

2.31 TIEZA Chief Operating Officer – the agency head of TIEZA.

2.32 Winning Challenger – the Interested Challenger whose proposal was found to be the highest-rated proposal by the PBAC, approved by the TIEZA COO and ratified by the TIEZA Board.

SECTION 3: SUBMISSION AND OPENING OF BIDS

3.1 SUBMISSION OF PROPOSALS BY INTERESTED CHALLENGERS

Only Interested Challengers shall be allowed to submit Proposals. Interested Challengers

shall submit to the PBAC, in accordance with the deadline set forth below, their Proposals containing certain documents and information required hereunder.

3.1.1 REQUIREMENTS FOR SUBMISSION OF PROPOSALS

3.1.1.1 LEGAL REQUIREMENTS

An Interested Challenger must submit the following documents:

- i. Proposal Security

An Interested Challenger must submit an acceptable Proposal Security. The Proposal Security is further discussed in Section 3.8 of this TOR.

- ii. A duly accomplished Proposal Form (Annex B)
- iii. Secretary's Certificate

If the Interested Challenger is a legal entity, it must submit a notarized Secretary's Certificate authorizing the submission of the Proposal, the submission of incremental proposals (if needed), designating the authorized signatory and authorizing and committing to the payment of all financial obligations in case the Interested Challenger is declared the Winning Challenger. If the Interested Challenger is a consortium, each of the legal entities in the Consortium must comply with the requirements stated herein.

- iv. Tax Clearance

An Interested Challenger must submit its BIR Tax Clearance.

3.1.1.2 TECHNICAL PROPOSAL

The Technical Proposal shall include the required documents/submissions and information specified in Annex A of this TOR

3.1.1.3 FINANCIAL PROPOSAL

Each Interested Challenger shall be provided with an Electronic Financial Commitment Form in a flash drive. The Financial Proposal should include the following:

- a. a duly accomplished traceable Financial Commitment Form;
- b. traceable Financial Model;
- c. five (5) hard/printed copies of the duly accomplished Financial Commitment Form and Financial Model duly signed by the authorized signatory of the Interested Challenger concerned;

- d. all other required documents/submissions and information specified in Annex A of this TOR.

3.1.1.4 DEADLINE OF SUBMISSION OF PROPOSALS

Interested Challengers shall submit their Proposals on or before 12:00 noon of 23 December 2024.

The PBAC Secretariat shall indicate the time of receipt of the proposals in the envelope labeled as "Copy No. 1."

Interested Challengers are advised to consider that Security Protocol at the Double Dragon Building requires registration and Identification Document (ID) Card of all guests in the Main Lobby of Tower I. TIEZA also requires registration at its floor Lobby.

3.1.1.5 ADDRESSES

All Proposals and required documents, must be enclosed in properly labeled envelopes. These envelopes shall be sealed and addressed to:

**THE PBAC
Chairperson
7th floor Tower 1
Double Dragon Plaza, DD Meridian Park
Macapagal Avenue corner EDSA Extension Bay Area,
Pasay City, Metro Manila**

The sealed envelopes should be submitted by the Interested Proponent along of the Eligibility Documents as discussed in the Eligibility Documents Kit.

3.2 SIGNING AND MARKING OF PROPOSALS

The Interested Challenger shall submit five (5) copies (one original and four machine copies) of its Proposal and one (1) flashdrive for each envelope containing the electronic copies of the Proposal. Each copy shall be accompanied by a checklist of all documents submitted in the form of Annex A.

Interested Challengers shall clearly mark each Proposal as "Proposal for Joint Venture of APICC – COPY No._". In the event of any discrepancy among the five sets, Copy No. 1 (the original copy) shall prevail.

All pages of the original Proposal to be submitted shall be initialed by the person or persons authorized to sign and submit the Proposal.

If the Interested Challenger is a consortium, all pages of the original Proposal shall be initialed

by the authorized representative(s) of the members of the consortium.

Changes or erasures in any document shall only be valid if said changes or erasures are signed by the person authorized to sign the Proposal.

3.3 SEALING OF PROPOSALS

3.3.1 The documents (Proposal) contained in each envelope shall be bound, tabbed and labeled accordingly.

3.3.2 Interested Challengers shall enclose and seal each copy of the Proposal in an envelope marked "**Proposal for Joint Venture of APICC – COPY No. .**". All five (5) envelopes shall be submitted together to the PBAC. The Interested Challenger shall be responsible in ensuring that these envelopes are properly secured together before dropping at the box provided under Section 3.1.1.6.

3.3.3 All envelopes shall be addressed to:

THE PBAC Chairperson
7th Floor Tower I
Double Dragon Plaza, DD Meridian Park
Macapagal Avenue corner EDSA Extension Bay
Area, Pasay City
Metro Manila

and shall state the name and address of the Interested Challenger. It shall also bear the marking: "**Do not open before 2:00 pm of 23 December 2024**"

3.4 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Interested Challengers are not allowed to modify or withdraw their Proposals after submission to the PBAC.

3.5 LATE SUBMISSION OF PROPOSALS

Proposals submitted after the deadline for submission prescribed in Section 3.1.1.4 shall be considered late, shall not be accepted and shall be returned unopened to its Interested Challenger.

3.6 TIEZA'S PREROGATIVE

The PBAC reserves the right to consider and decide on matters brought to its attention or such issues which shall arise or those which it may deem proper during the opening of the submission/opening of the Proposals, including but not limited to extending the deadline for submission, for reasons which the PBAC shall deem justifiable.

3.7 OPENING AND EVALUATION OF PROPOSALS

3.7.1 There will be a simultaneous opening and evaluation of Technical and Financial Proposals between 06 November 2024 to 19 December 2024.

3.7.2 Only those bids that have been determined to have passed the evaluation of qualification requirements, pursuant to the bidding rules under the PPPC IRR, shall be qualified and considered for the evaluation of the proposals

3.7.3 Only the members of the PBAC and its authorized representatives may open the envelopes containing the Proposals.

3.7.4 The proposals received shall be opened in the order of its actual receipt (based on the time-stamp marked on the envelopes) by the PBAC Secretariat.

3.7.1.1 RIGHT TO CONSIDER MATTERS BROUGHT DURING SUBMISSION/OPENING

The PBAC reserves the right to consider and decide on matters brought to its attention, or such issues which shall arise, or those which it may deem proper, during the opening of the submission/opening of the Proposals, including but not limited to extending the deadline for submission, for reasons which the PBAC shall deem justifiable.

3.7.1.2 RIGHT TO REJECT PROPOSALS

The TIEZA and the PBAC reserve the right to reject any or all Proposal(s), waive any minor defects therein, conduct verification, request clarifications, negotiate and accept the offer it deems most advantageous to TIEZA.

3.7.1.3 FAILURE OF COMPARATIVE CHALLENGE SELECTION

3.7.1.3.1 No interested challenger/s is/are eligible;

3.7.1.3.2 No bids or proposals are received;

3.7.1.3.3 No interested challenger/s is/are able to comply with technical requirement;

3.7.1.3.4 No successful negotiation on the financial terms/proposal as provided in these Guidelines

3.7.1.3.5 Failure to execute a Contract with TIEZA due to refusal, inability or failure of the Winning Challenger and the next complying challengers to enter into contract with TIEZA within the time provided.

3.8 TECHNICAL PROPOSALS

The Technical Proposals shall contain the following, as may be deemed necessary by the PBAC:

3.8.1 Compliance statements with regard to the technical parameters required

3.8.2 Operational feasibility of the Project;

3.8.3 Technical soundness/CAPEX/Project Timelines;

3.8.4 Preliminary environmental assessment; and

3.8.5 Bid Security

3.9 EVALUATION OF TECHNICAL PROPOSALS

TIEZA shall evaluate the technical proposals of the Interested Challenger in accordance with the following criteria:

3.9.1 Technical soundness

3.9.2 Operational feasibility – The proposed organization, methods, and procedures for operating and maintaining the facility shall be well defined, should conform to the prescribed MPSS, and be shown to a workable.

3.9.3 Environmental and social standards and impact mitigation measures-The proposed plan and the project must be in accordance with the environmental standards and social standards provided in applicable laws, rules and regulations

3.10 FINANCIAL PROPOSALS

The financial proposal shall contain the following, as the case may be:

3.10.1 Compliance statements with regard to the financial parameters stated in the tender documents;

3.10.2 Proposed project cost,

3.10.3 Project financing scheme

3.10.4 Financial proposal corresponding to the bid parameters set by the Implementing Agency;

3.10.5 Financing plan and third-party valuation of the bidder's/challenger's contribution, in the case of JV arrangements; and

3.10.6 Other documents to support the bidder's/challenger's financial proposal, as may be subsequently required.

3.11 EVALUATION OF FINANCIAL PROPOSALS

The evaluation of the financial proposal shall involve the assessment and comparison of the financial proposals of the interested challengers.

- a. Consistency and responsiveness with the TIEZA requirements;
- b. Consistency with the submitted technical proposal; and
- c. Reasonableness of assumptions.