

**TERMS OF REFERENCE**  
**FOR THE RECONSTRUCTION, OPERATION AND MAINTENANCE OF THE CAMP JOHN HAY MINI-HYDRO**  
**POWER PLANT IN BAGUIO CITY AND MUNICIPALITY OF TUBA, PHILIPPINES**

**ARTICLE I**  
**PROJECT RATIONALE**

- Section 1 Republic Act No. 7227 mandates the Bases Conversion and Development Authority (BCDA) to accelerate the sound and balanced conversion into alternative productive uses of the former Clark and Subic military reservations and their extensions, to raise funds through the sale, lease or assignment of rights of portions of BCDA land, and to apply said funds for the development and conversion to productive civilian use of said reverted military baselands.
- Section 2 Executive Order No. 103 series of 1993 authorizes the creation of the John Hay Development Corporation (now the John Hay Management Corporation, herein after referred to as the JHMC) as the operating and implementing arm of the BCDA to manage the Camp John Hay.
- Section 3 JHMC wishes to consider bids for the reconstruction, operation and maintenance of the Camp John Hay Mini-Hydro Power Plant (hereinafter referred to as "MHPP" located at Barangays Camp 7, Baguio City and Barangay Camp 4, Tuba, Benguet, Philippines on an "*as-is, where-is*" basis. The vicinity map of the MHPP is attached as Annex "A".
- Section 4 The Camp John Hay Mini-Hydro Power Plant is an existing power plant facility comprising of the following immovable structures, namely:
- (i) Diversion Dam or Weir - a trench type overflow dam having a height of 3 meters and crest length of 12 meters.
  - (ii) Head Race – Reinforced concrete pipe with manholes having a diameter of 0.70 meters.
  - (iii) Penstock – A Two-Steel Pipe having a diameter of 0.30 meters.
  - (iv) Powerhouse – A 7-meter high reinforced concrete structure having a floor area of 150 square meters.
  - (v) Tailrace – A combination of Steel and Concrete Pipe 12 meters in length.
- Section 5 The disposition is to be carried out pursuant to the provisions of Republic Act No. 7227 ("The Bases Conversion and Development Act of 1992"), as amended, Executive Order No. 62 prescribing the policies and guidelines to implement R.A. 7227, and other relevant laws, Executive Orders, and rules and regulations, to the extent applicable.
- Section 6 This bidding is being administered by the Asset Disposition Program Committee (ADP-Com) of JHMC whose decisions or actions shall be subject to the approval by the JHMC Board of Directors.

**ARTICLE II**  
**BACKGROUND OF THE MHPP**

- Section 1. **Description of the MHPP.** The MHPP is a two-contiguous parcel of land located at the southern portion of the Camp John Hay. The first parcel (Lot 1) is situated within the City of Baguio while the second parcel (Lot 2) is situated within the Municipality of Tuba, Province of Benguet. Both parcels are accessible through the Kennon Road.

Lot No.	Area		Remarks
	Square Meters	Hectares	
1	246,424	24.6424	Location of the Diversion Dam or Weir, proposed location of the Headrace and Forebay.
2	141,892	14.1892	Location of the Penstock, Power House and Tailrace.
<b>Total Area</b>	<b>388,316</b>	<b>38.8316</b>	

Parcel Maps of Lots1 and 2 are attached as Annex “B”.

Section 2 **Property Owner.** Pursuant to R.A. 7227, 570 hectares of the John Hay Air Station was transferred to the Bases Conversion and Development Authority (BCDA). Part and parcel of the John Hay Air Station is the Camp John Hay Mini-Hydro Power Plant developed and utilized by the U.S. Government in the early 1900’s.

Section 3 **Land Use for the Property.** The Property shall be developed for industrial use specifically for the operation and maintenance of a MHPP. Other areas within the MHPP unaffected by the operation and maintenance of the MHPP shall remain as is and any property found therein shall remain the landowner’s.

If the winning bidder wants to develop other areas of the Property unaffected by the operation and maintenance of the Camp John Hay Mini-Hydro Power Plant, the Winning Bidder shall first secure JHMC’s prior written consent. In any case, the allowed economic activities shall be limited to those relating to:

1. Eco-Tourism Park and
2. Recreational Facilities.

Section 4 **Status of the MHPP.** JHMC hereby discloses the following conditions concerning the MHPP:

- 4.1 The property is an unregistered land transferred to BCDA through R.A. 7227 series of 1993
- 4.2 BCDA has pending application for a Special Patent with the Department of Environment and Natural Resources (DENR).

Section 5 **Restrictions on the Property.**

The MHPP shall conform to the land use prescribed in Section 3 of the TOR. Should the winning bidder opt to develop the unaffected areas into other productive uses, a prior written consent should be secured from BCDA/JHMC. The development of the MHPP shall strictly comply with all pertinent government standards such as, but not limited to, the National Building Code, the Comprehensive Fire Code of the Philippines and other relevant laws, rules, regulations and issuances of the agencies of the National Government, both existing and subsequent issuances.

- 5.1. Clearing of Existing Structures. The demolition or clearing of the existing structures within the property shall only be conducted after securing the necessary permits or clearances from JHMC. In cases where developmental permits from other National Government Agencies need to be secured, JHMC will endorse such applications to the concerned Agencies.

**ARTICLE III  
HIGHEST OFFER AND MODE OF DISPOSITION**

- Section 1 JHMC is offering the MHPP on an *“as-is, where-is”* basis for 25 years starting from the execution of a Development Contract (hereinafter referred to as “Contract” and attached as Annex “C”), which shall be renewable for another 25 years upon the parties mutual agreement. For this purpose, the Winning Bidder shall inform JHMC of its desire to renew the Contract not earlier than three years or not later than one year before the initial lease period expires.
- Section 2 The Winning Bidder is one who has met all the requirements of the bidding process under Articles V and VI of this *Terms of Reference (TOR)*, passed the post-qualification process, and has submitted and offered the highest share (hereinafter referred to as “Share”) to JHMC.
- Section 3 The Share shall refer to a percentage of the Winning Bidder’s annual gross income generated from the economic life of the Hydropower Plant. In no case shall the Share be lower than five percent (5%) of the Bidder’s annual gross income. Unless hereinafter provided, the Winning Bidder is only required to pay JHMC the Share for the operation and maintenance of the MHPP.
- Section 4 **Operations from other economic activities enumerated in Article II (3) of this TOR shall be subject to additional share for JHMC equivalent to five percent (5%) of the Winning Bidder’s annual gross income or as mutually agreed by both parties.**
- Section 5 Gross Income is defined as the income that is expected to be derived by the Winning Bidder from the MHPP for a given taxable year as defined in Section 32 of the National Internal Revenue Code (NIRC) of the Republic of the Philippines and as modified by this TOR.
- The rights and responsibilities of JHMC and the Winning Bidder shall be governed by the provisions of this *TOR* and the Contract to be signed between the parties. In case of conflict or inconsistency between the two documents, the *TOR* shall prevail over the Contract.
- Section 6 Upon the award of the MHPP, the Winning Bidder should form a subsidiary corporation for the operation and maintenance of the MHPP. The subsidiary corporation shall be a stock corporation incorporated and registered in accordance with the provisions of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, as amended, and based on the prevailing rules and regulations of the Securities and Exchange Commission (SEC).
- Section 7 The Winning Bidder shall assign one (1) share of stock to JHMC and provide one (1) seat to the Board of Directors of its subsidiary corporation or in case a subsidiary company will not be formed, to the Winning Bidder’s company who will operate and maintain the MHPP.
- Section 8 The Winning Bidder agrees to pay JHMC:
- (i) The Share as awarded by JHMC to the Winning Bidder. The share shall be correspondingly adjusted if and when there is any change in the VAT rate since VAT is a pass-on tax. The Winning Bidder agrees to pay any other gross receipts tax and any other taxes that may be imposed on the share in the future.
  - (ii) The Share shall be paid starting on the fourth anniversary of the Contract. The share shall be exclusive of twelve percent (12%) VAT.

**(iii) Additional Share shall be paid starting on the second year of operations of other economic activities on or before the anniversary of the execution of the Contract or as mutually agreed by both parties. The share shall be exclusive of twelve percent (12%) VAT.**

Section 9 Upon the expiration of the Contract, the ownership of all buildings and permanent facilities/improvements introduced by the Winning Bidder on the MHPP shall automatically be transferred to JHMC. Therefore, should the Winning Bidder opt to renew its Contract for the MHPP, negotiation on the Share for the next twenty-five (25)-year extension period shall be mutually agreed to by both parties.

Section 10 The negotiation shall be conducted no earlier than three (3) years nor later than one (1) year prior to the expiration of the Contract.

#### ARTICLE IV

##### RIGHTS AND RESPONSIBILITIES OF THE PARTIES

###### Section 1 **Rights and Responsibilities of the Winning Bidder and Penalties for Violation**

The Winning Bidder shall:

- 1.1 Strictly comply with the terms and conditions of the Contract to be executed between JHMC and the Winning Bidder and maintain all warranties and representations in good standing for the duration of the contract period.
- 1.2 Comply with all its work and financial commitment in carrying out its operations and provide all necessary services, technology, and financing in connection with the Contract.
- 1.3 **Undertake the re-greening of the areas under its responsibility by planting of pine trees and /or other species recommended by JHMC within the MHPP, and the maintenance of the same.**
- 1.4 Observe applicable laws relating to labor, health, safety, environment, ecology and construction standards.
- 1.5 Pay the government share and taxes, as may be applicable.
- 1.6 Give employment to qualified personnel in the area where the MHPP is located and give preference to Filipinos in all types of employment for which they are qualified.
- 1.7 Give preference to local companies/agencies in entering into subcontracts on RE activities or services which the RE Developer may not carry out, upon approval by the JHMC, provided that these companies/agencies are competitive and the services required are locally available.
- 1.8 Post Performance Security, if applicable, within the prescribed period.
- 1.9 **Secure an All-Risk Insurance policy with JHMC as the named beneficiary.**
- 1.10 Undertake, at its sole cost, on-site development and provide utilities, access roads to the MHPP, and internal road networks. This includes clearing and properly disposing of the existing cottages/structures within the property, in accordance with law and environmental rules and regulations, at the Winning Bidder's own cost.

- 1.11 Maintain complete and accurate technical data and reports, and accounting records of all the costs and expenditures for the operations.
- 1.12 Submit in timely manner the technical and financial reports in accordance with the format as prescribed by JHMC.
- 1.13 Be responsible in the proper handling of data, samples, information, reports and other documents.
- 1.12 Allow JHMC personnel, at all reasonable times, full access to the MHPP and to accounts, books, and other records related to the operation of the MHPP.
- 1.13 Undertake, at its sole cost, on-site development and provide utilities, access to the MHPP, and internal road networks.
- 1.14 All documents, information, data and reports generated during its operation under the Contract shall be confidential, and shall not be disclosed to any third-party or to any affiliate not directly involved in the implementation of the Contract. For this purpose, the winning Bidder undertakes that its officers, employees and affiliates directly involved in the Contract shall a Non-Disclosure Agreement.
- 1.15 Be granted fiscal and non-fiscal incentives and privileges under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008, and its Implementing Rules and Regulations (IRR), and all other existing laws that are not otherwise modified or repealed by the Act;
- 1.16 Obtain assistance from DOE in endorsing the project to the national government, local government units (LGUs), Board of Investments (BOI) and other entities for the acquisition of permits, licenses, and clearances and availment of applicable fiscal and non-fiscal incentives;
- 1.17 Allow, in accordance with the existing laws, entry into the Philippines and employment of expatriate employees who shall exercise their technical professions solely for the hydropower operations, provided that Filipino employees shall be given preference to positions for which they have adequate training;
- 1.18 Have a free and unimpeded use of hydropower resources within the MHPP in view of the hydropower operations, additional and new investments.
- 1.19 Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of hydropower resources within the MHPP.
- 1.20 Conduct preliminary hydropower resources data gathering activities during the pre-development stage and, if warranted by the results of such hydropower resources data gathering, conduct a full hydropower resources assessment;
- 1.21 Submit a work plan for the first five (5) years from its declaration of commerciality and its corresponding budget thereof, and two (2) months prior to the end of the first five (5) years, submit a work plan and budget for the next five (5) years and shall do so every five years thereafter;
- 1.22 Secure any necessary permits and clearances from all relevant government entities for the project;

1.23 Allow officials and representatives authorized by the DOE access to the MHPP, and to the accounts, books, and records directly relating to the MHPP.

1.24 Supply power to JHMC at preferred reasonable rates as may be requested by JHMC.

Should the Winning Bidder fail to perform any of its responsibilities as specified in Sections 1.1 to 1.24 above, JHMC shall have the option to terminate the Contract as well as the option to re-bid the MHPP. In such instance, the Winning Bidder shall forfeit any and all monies so far remitted to JHMC in relation to the construction, operation and maintenance of the MHPP.

This section shall not preclude JHMC from exercising its rights/remedies set out anywhere else in this TOR or in the Contract for the MHPP.

## Section 2 **Rights and Responsibilities of JHMC**

JHMC shall:

2.1 Give the Winning Bidder the sole right to reconstruct, operate and manage the MHPP during the effectivity of the Contract, subject to the restrictions, terms and conditions outlined in it.

2.2 Deliver possession of the MHPP including all existing structures within the MHPP to the Winning Bidder, on an ***“as-is, where-is”*** basis, upon the execution of the Contract. The Winning Bidder shall have the option to demolish said structures subject to a written clearance from JHMC and all materials resulting from such demolition should be turned-over/returned to JHMC.

## Section 3 **Take-Over of the MHPP**

The Winning Bidder shall authorize JHMC to enter the MHPP as the agent or attorney-in-fact of the Winning Bidder in the following instances:

3.1 The MHPP is abandoned, deserted or vacated before the expiration of the Contract;

3.2 Violation of any terms thereof by the Winning Bidder; or

3.3 Non-payment of JHMC share in full by Winning Bidder.

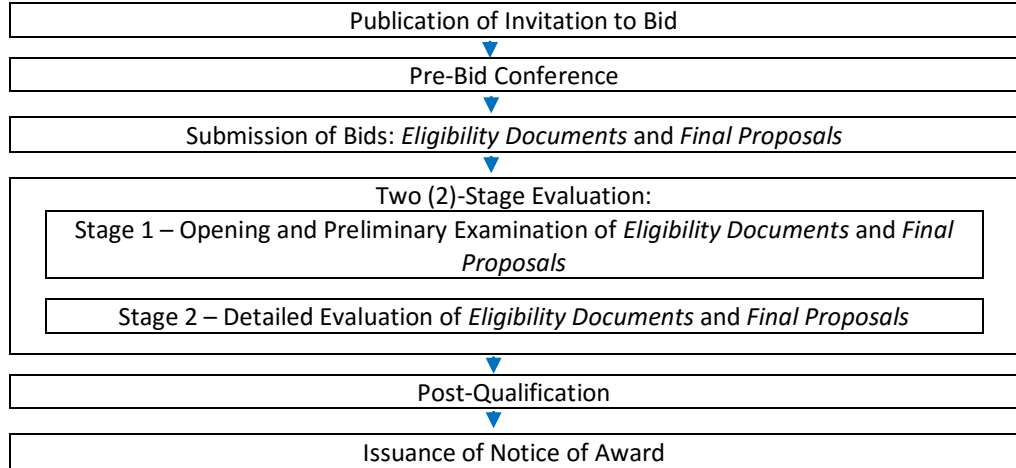
JHMC shall further have the option to contract-out the same to other parties as the agent of the Winning Bidder, to receive the annual share thereof, and to apply the same to the payment of the annual share due under the Contract, holding the Winning Bidder liable for any deficiency, without prejudice to any right of action against the Winning Bidder.

For purposes of this Section, the MHPP is considered to be abandoned, deserted or vacated if the Winning Bidder or its authorized representatives or beneficiaries has not commenced the construction of the MHPP seven (7) calendar days from the issuance by JHMC to the Winning Bidder of a Notice to Proceed (NTP).

This section shall also not preclude JHMC from exercising its right/remedies that shall be set out anywhere else in this TOR or in the Contract for the MHPP.

**ARTICLE V**  
**BIDDING PROCEDURE**

Section 1 **Process Flow.** The bidding follows the following process flow:



Section 2 **Publication of Invitation to Bid.** JHMC shall publish the “*Invitation to Bid*” once in three (3) newspapers or publications of general circulation, as well as in the JHMC website (www.jhmc.com.ph). This shall serve to inform and invite prospective Bidders to the subject bidding.

Section 3 **Submission of Bids.** Bidders shall submit their bids comprising of their *Eligibility Documents* and *Final Proposals* on the date specified in the *Timetable of Activities*. The *Eligibility Documents* and *Final Proposals* shall be submitted simultaneously, in two (2) separate sealed envelopes:

- **First Envelope** containing two (2) sets of the **Eligibility Documents**, as listed in Article VI, Section 2.2, appropriately marked as: “*First Set: Eligibility Documents*” and “*Second Set: Eligibility Documents*”; and
- **Second Envelope** containing two (2) sets of the **Final Proposal**, as described in Article VI, Section 3, appropriately marked as: “*First Set: Final Proposal*”, and “*Second Set: Final Proposal*”.

**ARTICLE VI**  
**ELIGIBILITY CHECK, EVALUATION OF BIDS AND SELECTION OF WINNING BIDDER**

Section 1 JHMC shall adopt a two (2)-stage evaluation process.  
**Stage 1** involves the opening and preliminary examination of the *Eligibility Documents* and the *Final Proposal* to determine completeness of documents submitted and sufficiency of data/information provided therein.

**Stage 2** involves the detailed evaluation of the *Eligibility Documents* and the *Final Proposal* to determine compliance with all the requirements specified under this *TOR*.

Section 2 **Eligibility**

2.1 **Eligibility Criteria.** A Bidder shall be considered eligible if it satisfies all of the following requirements:

- a. **Legal Capacity.** The Bidder must be a corporation duly-registered with the Philippine Securities and Exchange Commission (SEC) or its equivalent in the country of incorporation or an unincorporated consortium. In any case, Filipino citizens should own at least 60% of the capital of such corporation. For juridical entity, the bidder shall submit an original copy of the Board of Director's Resolution or a Secretary's Certificate of the Bidder (or all members in case of consortium) expressly authorizing its participation in the bidding process, and appointing its authorized representative/s for this purpose. A consortium comprising of two (2) or more corporations may also apply for eligibility, provided that at least one member of the consortium is duly registered with the Philippine SEC. If the Bidder is a consortium, it must submit a copy of the duly-executed consortium agreement among all members of such consortium showing the principal rights and obligations of the members, the extent of participation of each member, and their commitment to be jointly and severally liable to JHMC for their responsibilities in relation to the MHPP. In case of foreign corporation, the documents to be submitted shall be duly authenticated by the Philippine Consulate having jurisdiction over the entity.
- b. **Compliance Commitment.** The Bidder (or any of its members, if a consortium) must commit to comply, in the reconstruction, operation and maintenance of the MHPP, with: (1) the allowable land use/s, and the restrictions for the MHPP; and (2) all other pertinent government standards such as, but not limited to, the National Building Code, the Fire Code, and other relevant laws,-rules, regulations and issuances of the agencies of the National Government for the entire duration of the Contract.
- c. **Technical Capability.** The bidder must possess the necessary technical capability to undertake the obligations under the Contract in the terms of the following:
  - i. **Track Record or Experience** – By himself, the corporation itself, through the member-firms, in case of a joint venture/consortium, or through employment of service providers, the bidder shall include in its technical submission proof of its on-going or completed contracts/agreements similar to or congruent with the nature of the project/work being proposed by this TOR. The individual firms may individually specialize on any or several stages of the project. A joint venture/consortium bidder shall be evaluated based on the individual or collective experience of the member-firms of the joint venture/consortium.
  - ii. **Key Personnel Experience** – Key personnel of the bidder must have sufficient and relevant work experience in connection with the project.
- d. **Financial Capacity.** The Bidder must have adequate capability to provide the financial requirements to sustain the proposed Work Program for the exploration activities and detailed engineering/geological/industrial



design for the construction, operation and maintenance of facilities. The financial capability shall be measured in terms of:

- i. Audited Financial Statement for the last two(2) years and unaudited Financial Statement if the filing date is three(3) months beyond the date of the submitted audited Financial Statement;
  - ii. Bank Certification to substantiate the cash balance in the audited Financial Statement or updated Financial Statement;
  - iii. Projected cash flow statement for two(2) years;
  - iv. List of company-owned equipment/facilities available for the proposed RE projects;
  - v. If the bidder, on account of its infancy, is unable to produce the requirements in sub-paragraphs (i) to (iii) above, it shall submit an audited Financial Statement and duly certified and/or notarized guarantee or Letter of undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the audited financial Statement and the guarantee or Letter of undertaking/Support shall be dully authenticated by the Philippine Consulate Office that has consular jurisdiction over the said parent-company; and
  - vi. Proof of the ability of the bidder to provide the required minimum amount of Working Capital which shall be equivalent to 100% of the cost of its work commitment for the first year of the proposed Work Program.
  - vii. **Valid Tax Clearance Issued by the BIR. In case the Bidder legitimately has no BIR received ITR in its newness, a Sworn Statement shall be submitted, in lieu of aforementioned returns stating therein such information as to when the company was formed, started operation; that it has not received any income for the month/quarter from business in the Philippines for which a Tax Return should have been filed.**
- e. **No Default.** The Bidder (or any of its members, if a consortium), its parent-company, or its subsidiaries, or affiliates with common controlling shareholdings, if any, is **not** considered in default of its financial or other obligations to, or included in the negative list of JHMC as of the day of submission of bids. The negative list is a list of entities that the JHMC determines not suitable to be a partner due to acts committed in relation to previous contracts with BCDA or any of its subsidiaries, or due to previous acts or dealings or transactions with BCDA or any of its subsidiaries considered inimical to the interest of JHMC or the government. Such reasons include:

- (i) default of financial or other obligations to BCDA or any of its subsidiaries;
  - (ii) submission of eligibility requirements containing false information or falsified documents;
  - (iii) submission of bids that contain false information or falsified documents, or concealment of such information in the bids in order to influence the outcome of the bidding;
  - (iv) withdrawal of bid, or refusal to accept an award, or enter into contract with JHMC without justifiable cause;
  - (v) attempt by a bidder to unduly influence or delay the bidding conducted by JHMC.
- f. **Timely and Complete Payment of Taxes.** The Bidder (and its consortium members) should have no tax liabilities in the Philippines as evidenced by a Tax Clearance Certificate issued by the BIR.
- g. **Bid Documents.** The Bidder must have purchased the *TOR* (including bid forms and pertinent documents) for a non-refundable fee of **One Hundred Thousand Pesos (PhP100,000.00)**. Only those who have purchased the *TOR* (including bid forms and pertinent documents) shall be entitled to participate in this bidding and receive Bid Bulletins or official responses from the ADP-Com.
- 2.2 **Eligibility Documents.** To be eligible, Bidders are required to submit the following documents described in the attached Checklist (Annex "D"). Legal, Technical, and Financial Requirements including documents listed under the Final Proposal shall be marked in alphabetical order:
- a. **Legal Requirements:** (Original/Authenticated/Certified True Copy)
    - i. Duly notarized Eligibility Statement (**Form 1** or **Form 1-A**, as applicable);
    - ii. Company Profile of the Bidder, or all members in case of a consortium, including its ownership structure and percentages of ownership, authorized and paid up capital, the stockholders and their respective shareholdings, the Board of Directors and the management team, and other related business interests, affiliates, subsidiaries and principals, if any (**Form 2**);
    - iii. SEC Registration of the Bidder (and its consortium members) and the General Information Sheet (GIS) for the latest applicable calendar or fiscal year or, for foreign corporations, the equivalent document duly authenticated by the Philippine Consulate based in the foreign company's domicile.
    - iv. Articles of Incorporation and By-Laws of the Bidder (or all members in case of consortium), and any amendments.

- v. Board Resolution or Secretary's Certificate of the Bidder (or all members in case of consortium) expressly authorizing its participation in the bidding process, and appointing its authorized representative/s for this purpose.

**b. Technical Requirements:**

- i. Summary of projects completed, on-going, and in the pipeline (contract awarded, but not yet started) which are similar to the proposed development undertaken within the last five (5) years, including description, area of development, nature of the Bidder's (and its consortium members') participation, status of the project and the project cost (**Form 3**);
- ii. List of Key Personnel to be assigned to the Project (**Form 4**);

**c. Financial Requirements:**

- i. Audited Financial Statement for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted audited Financial Statement;
- ii. Bank Certification to substantiate the cash balance in the audited Financial Statement or updated Financial Statement;
- iii. Projected cash flow statements for two (2) years;
- iv. If the bidder, on account of its infancy, is unable to produce the requirements in sub-paragraphs (i) to (iii) above, it shall submit a notarized Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent-company, the notarized Letter of undertaking/Support shall be duly authenticated by the Philippine Consulate Office that has consular jurisdiction over the said parent-company;
- v. Proof of the ability of the Bidder to provide the required minimum amount of Working Capital which shall be equivalent to 100% of the cost of its work commitment for the first year of the proposed Work Program; and
- vi. **Tax Clearance Certificate issued by the BIR or Sworn Statement.**

Section 3

**Final Proposal.** The *Final Proposal* shall consist of the following:

- 3.1 **Final Bid Letter.** Bidders shall have to submit a letter duly signed by its authorized representative stating its bid for the MHPP (**Form 5**);
- 3.2 **Pre-Feasibility Study.** Bidders shall submit a pre-feasibility study providing initial technical, economic, financial, social, as well as the administrative viability of the project. It shall likewise include a report particularly highlighting the activities for the proposed project such as:
  - 3.2.1. Data collection and review of pertinent data and study reports relevant to the proposed project;
  - 3.2.2. Pre-Development Stage Schedule. A schedule starting from the preliminary assessment and feasibility study up to financial closing.
  - 3.2.3. Development/Commercial Stage Schedule. A schedule starting from construction and installation of facilities up to the operation phase.

A comprehensive feasibility study will be submitted by the winning bidder to JHMC during or at the end of the Pre-Development Stage.

- 3.3 **Work Program.** Shall refer to plans, programs, and activities, including the corresponding budgetary requirements, for the performance of obligations under the Contract, including but not limited to plans for exploration, development, production or utilization. This shall be evaluated based on its viability, minimum expenditure commitments, detailed program of activities inclusive of environmental protection/conservation and social acceptability plans, among others; and
- 3.4 **Bid Security.** All bids shall be accompanied by a bid security equivalent to 10% of the Bidder's Share, in the form of bank manager's check or cashier's check. Failure to enclose the required bid security in the amount prescribed herein shall automatically disqualify the bid concerned. The Bid Security of the Winning Bidder will be treated as earnest money for its required payment at the time of signing of the Contract. The Bid Security of all other Bidders shall be returned without interest upon signing of the Contract between JHMC and the Winning Bidder, unless otherwise forfeited under Article VIII, Section 9.

#### Section 4 **Evaluation of Bids**

- 4.1 **Preliminary Examination of Bids.** On the date and time specified in the *Timetable of Activities*, the sealed envelopes containing the *Eligibility Documents* shall be opened by the ADP-Com to determine completeness of documents and sufficiency of data/information provided therein.

Only those Bidders determined by the ADP-Com during the preliminary examination to have complied with the Eligibility Requirements under this *TOR* shall be declared "**passed**" and qualified for the opening of their *Final Proposals*. Those Bidders determined by the ADP-Com to have failed to submit and qualify in any of the Eligibility Requirements shall automatically be declared "failed", in which case their *Final Proposals* shall be returned to them unopened.

The ADP-Com shall open the *Final Proposals* to determine compliance with the requirements under Article VI, Section 3 of this *TOR*. *Final Proposals* that are found to be non-complying shall be automatically rejected, and the Bid Security shall be immediately returned to the concerned Bidder. *Final Proposals* shall be presented for mere comparison only as all submitted documents shall, still, be subject to further evaluation and verification by the ADP-Com.

- 4.2 **Detailed Evaluation of Bids.** Within the period specified in the *Timetable of Activities*, the ADP-Com shall conduct a detailed evaluation of the *Eligibility Documents* and *Final Proposals* submitted. Bids that have satisfied all the requirements of this *TOR* shall be ranked based on the tendered offer by the Bidders. The highest offer shall be declared the **Highest Ranked Bid**. The

results of the ADP-Com’s detailed evaluation of bids shall be subject to the approval of the JHMC Board.

**Section 5 Post-qualification**

- 5.1 The Bidder with the Highest Ranked Bid must pass a post-qualification process to verify accuracy and authenticity of all submitted documents and information, including submission of a Tax Clearance Certificate issued by the BIR. Any material insufficiency in the information required, inconsistencies, errors or misrepresentations in the submitted documents shall be ground for disqualification and forfeiture of its Bid Security.
- 5.2 If the Bidder with the Highest Ranked Bid passes post-qualification, its proposal shall be declared as the **Highest Ranked and Complying Bid**. The ADP-Com shall recommend to the JHMC Board the award of the contract to said Bidder (Winning Bidder).
- 5.3 If the Bidder with the Highest Ranked Bid fails post-qualification, the ADP-Com shall notify the Bidder of the results thereof. The ADP-Com shall subject the Bidder with the Second Highest Ranked Bid to post-qualification.
- 5.4 If the Bidder with the Second Highest Ranked Bid passes post-qualification, it shall be declared as the Winning Bidder. If, however, the bidder with the Second Highest Ranked Bid fails post-qualification, the post-qualification process shall be repeated for the bidder with the next highest ranked bid, and so on until a Winning Bidder is determined.

**Section 6 Award.** A Notice of Award (NOA) shall be issued to the Winning Bidder, inviting the Winning Bidder to execute the Contract within thirty (30) calendar days from receipt thereof.

**ARTICLE VII  
TIMETABLE OF ACTIVITIES**

Activities	Timetable
Publication of Invitation to Bid	July 31, 2015
Issuance of TOR	Aug. 03 to Sept. 24, 2015
Pre-bid Conference	Aug. 27, 2015
Deadline for Submission of Requests for Clarification	Sept. 08, 2015
Last day of Issuance of Bid Bulletin	Sept. 16, 2015
Deadline for Submission of the Eligibility Documents and the Final Proposals	10 A.M. of Sept. 25, 2015
Opening and Preliminary Examination of Bids	10:30 A.M. of Sept. 25, 2015
Detailed Evaluation of Bids	Sept. 26 to Oct. 8, 2015
Board approval of the Results of Evaluation of Bids	Oct. 12, 2015
Announcement of Results of Evaluation of Bids	Oct. 15, 2015
Post-qualification	Oct. 16 to 22, 2015
Estimated Board Approval of Results of Post-qualification and ADP-Com Recommendation to declare the Winning Bidder	Oct. 26, 2015
Announcement of the Winning Bidder and Issuance of Notice of Award	Oct. 28, 2015
Board approval of Contract	Nov. 09, 2015
Signing of Contract	Nov. 23, 2015

The above is an indicative timetable which may change at the discretion of the ADP-Com.

## **ARTICLE VIII OTHER MATTERS**

Section 1      **Amendments.** The information and/or procedures contained in this *TOR* may be amended or replaced at any time, at the discretion of the ADP-Com, subject to the approval of the JHMC Board, without giving prior notice or providing any reasons therefore. Should any of the information and/or procedures contained in this *TOR* be amended or replaced, the ADP-Com shall inform all Bidders of such amendments by way of a Bid Bulletin. To ensure that all Bidders are informed of any amendments to this *TOR*, all Bidders are requested to inform JHMC of their contact persons as well as contact telephone numbers and e-mail addresses. In addition, receipt of all Bid Bulletins shall be duly acknowledged by each Bidder prior to the submission of bids and shall be so indicated therein.

Section 2      **Pre-Bid Conference.** Interested bidders are invited to attend a Pre-Bid Conference to discuss this *TOR* and other possible questions. The Conference shall be held on the date and time specified in the *Timetable of Activities* at the Bell House, Historical Core, John Hay Special Economic Zone, Camp John Hay, Baguio City, Philippines

Succeeding conferences with the prospective Bidders shall be scheduled by the ADP-Com prior to the submission of bids. Any change in the *Timetable of Activities*, as well as resolutions and actions on the issues raised by the Bidders shall be embodied in a Bid Bulletin.

Section 3      **Requests for Clarifications.** Bidders are enjoined not to contact any employee or officer of JHMC, whether personally or through phone calls. All relevant inquiries and concerns shall be raised in writing and addressed only to the ADP-Com Chairperson as follows:

THE CHAIRPERSON  
Asset Disposition Program Committee  
John Hay Management Corporation  
Cottage 628 JHMC Office Complex, Sheridan Drive, John Hay Special Economic Zone,  
Camp John Hay, Baguio City, Philippines

All clarifications and inquiries on the submission of Bids should be received by the ADP-Com on or before the date specified in this *TOR*.

Section 4      **Due Diligence.** JHMC is bidding out the MHPP strictly on an “*as-is, where-is*” basis. Each prospective Bidder shall be solely responsible for its own due diligence of all matters relating to this *TOR* and the MHPP which may affect its proposal. JHMC shall not be responsible for any erroneous interpretation or conclusion of the Bidder out of data furnished or indicated in this *TOR* and official eligibility and proposal forms, including any addenda, amendments or Bid Bulletins issued by the ADP-Com.

No verbal agreement or conversation with, nor any verbal clarification from, any officer or employee of JHMC, the ADP-Com or any of their advisers shall affect or modify any of the terms and conditions contained in this *TOR*. Only amendments, supplements or clarifications to this *TOR* that are set down in writing and circulated

to proponents by the ADP-Com shall be relied upon as authorized. Neither the JHMC, its Directors, Officers, staff, consultants and authorized representatives/ personnel may make any representation or warranty concerning any matter affecting this bidding except for the representations and warranties of JHMC that shall be set out in the Contract for the Project.

Section 5 **Failure of Bidding.** JHMC shall declare a failure of bidding in any of the following instances:

- 5.1 No bids are received;
- 5.2 No Bidder passed the preliminary examination of bids;
- 5.3 No Bidder qualified during detailed evaluation of bids;
- 5.4 No Bidder passed post-qualification;
- 5.5 The Winning Bidder refused to accept the award or enter into contract with JHMC; and
- 5.6 The happening of a fortuitous event or any reason beyond the control of JHMC, including but not limited to change in government policy, which prevents the completion of the contract or unduly delays its conclusion.

Section 6 **Appeal.** A Bidder determined as disqualified and/or whose bid has been found non-complying may file an appeal in writing (Notice of Appeal) to the JHMC Board of Directors. The appeal must be filed within seven (7) calendar days from receipt of Notice of Disqualification and/or Non-Compliance. The Notice of Appeal shall be accompanied by a sworn statement and corresponding payment of a non-refundable appeal fee in the amount of **Ten Million Pesos (PhP10,000,000.00)**, in the form of a bank manager's check.

The bidding process will be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The decision of the JHMC Board on the appeal shall be final and immediately executory.

Section 7 **Confidentiality of Bids.** All bids and accompanying documents shall be treated as confidential. Both parties shall hold any and all confidential information in strict adherence and will not disclose or use any confidential information or any part of it except for the proper performance of the party's obligations under the *TOR*.

Section 8 **Waiver of Right to Seek Legal Remedies.** JHMC, its Board of Directors, Officers, staff, consultants, and authorized representatives/personnel shall be held free and harmless from any liability, costs and expenses arising from the participation by the Bidders in this bidding process. All Bidders, in participating in the bidding, waive all rights to seek legal action (e.g. Temporary Restraining Order, lawsuits, etc.) to prevent JHMC from awarding and executing a contract with the Winning Bidder or against any decision of JHMC in connection with the evaluation, award, suspension or termination of the bidding process.

Section 9 **Forfeiture of Bid Security.** Any of the following shall be ground for the forfeiture of the Bid Security in favor of JHMC upon certification by the ADP-Com:

- 9.1 Any misrepresentation, error and/or fraudulent declaration made by the Winning Bidder in the bid documents or any of the required attachments discovered at any time after the preliminary examination of bids;
- 9.2 Withdrawal or modification, whether conditional or otherwise, of the proposal after the deadline for the submission of bids;

- 9.3 Failure or refusal of a Winning Bidder to enter into a Contract with JHMC within the prescribed period;
- 9.4 Any judicial or extrajudicial action by the Winning Bidder that shall delay the execution of the Contract and/or its compliance with its obligations as set out in this *TOR*; and
- 9.5 Any circumstance or reason that provides JHMC reasonable and valid basis to believe that the Winning Bidder is or has been rendered incapable of completing its obligation, as proposed.

The decision of the JHMC Board with regard to the forfeiture of the bid security is final.

Section 10 **Anti-corruption Policy.** The Bidders, their Directors and Officers are prohibited from communicating with or contacting, directly or indirectly, any of JHMC's Directors, Officers, staff, consultants and authorized representatives/personnel on matters concerning the bidding for the entire duration of the bidding process except for queries and clarifications of proposal which must be in writing and addressed to the ADP-Com Chairperson.

The Bidders shall not offer or give, directly or indirectly, any amount, benefit or advantage to any Director, Officer, employee, consultant or authorized representative/personnel of JHMC. Violation of this policy shall be a ground for disqualification or revocation of the award, if any, without prejudice to damages that JHMC may recover for any loss or damage that may result therefrom.

Section 11 **Qualifications and Waivers.** JHMC reserves the right to reject any or all bids and its decision shall be final. JHMC reserves the right to review all relevant information affecting the Bidder or the proposal before the execution of the Contract. JHMC may disqualify the Bidder or suspend/terminate the bidding process or declare a failure of bidding should such review uncover any misrepresentation, error, mistake or fraud in any of the submitted documents or information or evaluation which affects the substance of its proposal.

JHMC further reserves the right to call off the bidding at any stage prior to the signing of the Contract and call for a new bidding under amended rules, without any liability whatsoever to any and all the Bidders. In such a case, the Bid Security shall be returned to the Bidder.

Section 12 **Interpretation of Documents.** The *TOR* and all its Annexes have been crafted with a view toward fair, transparent and competitive bidding of the subject MHPP. Any ambiguity in, or conflict between, the *TOR* and its Annexes shall be resolved toward fulfilling the intent of this privatization, as determined by JHMC.