

## **GUIDELINES ON JOINT VENTURE AGREEMENTS (JVA) TO EXPEDITE THE IMPLEMENTATION OF RECOVERY, RECONSTRUCTION AND REHABILITATION PROJECTS IN THE MOST AFFECTED AREAS OF MARAWI CITY**

### **I. RATIONALE**

Proclamation No. 216 (s. 2017) was issued on 23 March 2017 declaring a state of Martial Law and suspending the privilege of the writ of Habeas Corpus in the whole of Mindanao. Subsequently, on 13 December 2017, Joint Congress Resolution No. 13 was issued extending the state of Martial Law in the whole of Mindanao from the period 01 January 2018 to 31 December 2018.

In the aftermath of weeks of armed conflict, the City of Marawi and other localities surrounding the city sustained severe public infrastructure and utilities damage, as well as loss of private properties displacing thousands of families and destroying livelihood and businesses.

Administrative Order (AO) No. 3 dated 28 June 2017 created Task Force Bangon Marawi to ensure a unified and comprehensive effort on the part of the National Government for the recovery, reconstruction and rehabilitation of the City of Marawi and other affected localities. The Task Force Bangon Marawi was mandated to conduct a post-conflict needs assessment of Marawi City and, based thereon, develop and implement a Bangon Marawi Comprehensive Rehabilitation and Recovery Program (CRRP) for the City of Marawi and other affected localities.

AO No. 9 (s. 2017) amended AO No. 3 by reorganizing the composition of the Task Force Bangon Marawi and designating the Housing and Urban Development Coordinating Council (HUDCC) as Chairperson of the Task Force Bangon Marawi.

Under Executive Order (EO) No. 20 (s. 2001), the HUDCC exercises administrative supervision over the National Housing Authority (NHA), which remains attached to it for purposes of policy and program coordination. Pursuant to Section 6(e) of Presidential Decree (PD) No. 757 (s. 1975), the NHA is authorized to develop and undertake housing development and/or resettlement projects through joint ventures or other arrangements with public and private entities.

On 05 February 2018, the President signed EO No. 49 (s. 2018) exempting the NHA from the National Economic and Development Authority (NEDA) Guidelines on Joint Venture Agreements to expedite the implementation of recovery, reconstruction and rehabilitation projects in the most affected areas in Marawi City.

Section 2 of EO No. 49 mandates that all JVAs to be entered into by NHA pursuant thereto must comply with these Guidelines formulated and issued by the NHA under the supervision of the HUDCC, and in consultation with NEDA, the Public-Private Partnership Center (PPPC), and the Department of Budget and Management (DBM).

These Guidelines shall (a) apply only to recovery, reconstruction and rehabilitation projects for the most affected areas of Marawi City; (b) promote efficiency, transparency, competitiveness and accountability in covered transactions; (c) require the participation of agencies with mandates directly relevant to the project in the JVA selection and contracting process; and (d) be consistent with all applicable laws, rules and regulations.

### **II. PRINCIPLES**

The NHA may enter into a joint venture agreement with a private sector entity (PSE) consistent with the following principles:

1. The JV activity shall involve the recovery, reconstruction and rehabilitation of Marawi City. The minimum scope of work is provided in Annex A, which may be further amended by the NHA.
2. The JV activity shall provide a master development plan, that includes the following, but not limited to, land use, urban design standards and guidelines, environmental protection guidelines, implementation plan and city management structure for Marawi City to ensure the promotion of a vibrant community and healthy business environment.
3. The JV activity shall, to the extent possible, require minimal government subsidy or guarantees in the JV except for the provision of public access roads, right of way, government permits necessary for the immediate implementation of the JV activity, and others as may be deemed necessary and required.



4. The JV activity may allow take-over by the private sector partner of the government's share in the JV Activity subject to divestment procedures and other requirements under relevant laws.

### III. PURPOSE

These Guidelines are issued for the following objectives:

1. To prescribe the rules, regulations, guidelines and procedures in entering into JV Agreements with PSEs for projects/undertakings for the development, construction and rehabilitation of Marawi City;
2. To encourage participation of PSEs possessing expertise and technical capabilities in property, facilities and projects development, and in operations and management, in the development, construction and rehabilitation of Marawi City; and
3. To ensure that all JV agreements by the NHA are entered into through fair, objective and transparent processes and procedures that promote accountability in the NHA transactions.

### IV. COVERAGE

These guidelines shall apply to all unsolicited proposals submitted to HUDCC, as Chairman of the Task Force Bangon Marawi, related to the development, construction and rehabilitation of Marawi City.

### V. GENERAL GUIDELINES

1. The Selection Committee

The Bangon Marawi Selection Committee (BMSC) shall have seven (7) members and composed as follows:

- a. Chairperson – Secretary General of HUDCC;
- b. Co-Chairperson - General Manager of NHA;
- c. Member, Deputy Secretary General of HUDCC;
- d. Member, Assistant Secretary of DOF;
- e. Member, Head of Operations, NHA;
- f. Member, Assistant Secretary of DENR;
- g. Member, Assistant Secretary of DPWH;
- h. Non-voting Member, one (1) from the Public Private Partnership Center (PPP Center); and
- i. Observers, one (1) each from the City of Marawi, the affected locality, as applicable, and the Commission on Audit (COA).

The quorum in meetings of BMSC members shall consist of four (4) voting members. Each voting member is entitled to one (1) vote.

The BMSC shall act as the Bids and Awards Committee (BAC) and shall be responsible for the acceptance or non-acceptance of the unsolicited proposal, negotiation of the terms and conditions of the proposed JV activity with the PSE after the acceptance of the proposal and all aspects of the competitive challenge procedure, including the preparation of the selection documents, publication of the invitation for comparative proposals, qualification of comparative private sector participants, conduct of selection conferences and issuance of supplemental notices, interpretation of rules regarding the competitive challenge process, conduct of the competitive challenge process, evaluation of technical and financial comparative proposals, resolution of disputes between private sector participants, and recommendation for the award of the JV Agreement.

2. The Technical Working Group

The Bangon Marawi Technical Working Group (BMTWG) shall have fourteen (14) members and composed as follows:

- a. Chairperson - Deputy Secretary General from HUDCC;
- b. Vice Chairperson - Bases Conversion and Development Authority (BCDA);



- c. Member - two (2) from the NHA Legal and Finance;
- d. Member - one (1) from the HUDCC;
- e. Member - one (1) from the DOF;
- f. Member - one (1) from the Department of Environment and Natural Resources (DENR);
- g. Member - one (1) from the Office of the Civil Defense (OCD);
- h. Member - one (1) from the Department of Public Works and Highways (DPWH);
- i. Member - one (1) from the Department of Interior and Local Government (DILG);
- j. Member - one (1) from the PPP Center;
- k. Member - one (1) from Mindanao Development Authority;
- l. Member - one (1) from the Local Government Unit of Marawi City;
- m. Member - one (1) from the Provincial Government of Lanao Del Sur; and
- n. Observer - one (1) from COA.

The BMTWG shall be responsible for the processing of unsolicited proposals from PSEs, receipt and preliminary evaluation of proposals, recommendation for the acceptance of the proposal, and processing of eligibility documents of prospective PSPs.

The BMTWG shall be responsible for the preparation of minutes of meetings, records and documentation of the processing of the unsolicited proposal.

3. The NHA, as recommended by the BMSC, may opt to enter into a JV contractual agreement (unincorporated JV) or form a separate JV Company (incorporated JV) depending on which JV mode will provide the most efficient and viable financial arrangement for the JV partners. In either case, the JV agreement should clearly state the NHA's intent to undertake a specific activity that is responsive to the CRRP.
4. In case of an incorporated JV, the JV Company shall be formed by the NHA and the private sector partner under the following parameters:
  - a. The JV Company shall be incorporated and registered as a stock corporation in accordance with the provisions of Batas Pambansa Bilang 68, otherwise known as the Corporation Code of the Philippines, as amended, and the prevailing and applicable rules and regulations promulgated by the Securities and Exchange Commission (SEC);
  - b. Ownership and nationality requirements under the Constitution and other pertinent laws shall be complied with; provided, that NHA's equity contribution in the JV Company shall be no more than fifty percent (50%) of the outstanding capital stock of the JV Company. NHA's contribution may be through assets (including equipment, land, utility franchise, development rights, leasehold rights, intellectual property, cash or anything of value), which shall be subject to a third party independent valuation. For as long as the NHA is involved in the JV undertaking, the private sector partner shall not sell/transfer its interest in the JV Company without the express written consent of the NHA and HUDCC;
  - c. The NHA and HUDCC shall be represented in the Board of the JV Company;
  - d. The JV Company shall be permitted to derive income from the activities authorized under the JV Agreement during the term thereof. The NHA and the private sector partner shall be entitled to receive dividends from the net profits that would constitute a portion of the unrestricted retained earnings of the JV Company in each year in accordance with the JV Agreement; and
  - e. The JV Company shall stipulate a fixed term of existence of fifty (50) years, which may be extended for another fifty (50) years, by an amendment of the articles of incorporation, pursuant to the Corporation Code of the Philippines, as amended. The NHA's continued participation in the JV Company shall be determined by the attainment of the goals and objectives of the recovery, reconstruction and rehabilitation of the City of Marawi and other affected localities. After attaining such goals and objectives, the NHA may divest its interest in the JV Company based on existing laws, rules and regulations. Further, the withdrawal of NHA's capital contribution before the expiration of the said period is likewise encouraged; provided, that the divestment is made through competitive selection, initial public offering, or any other means that promote competition, fairness and transparency.
  - f. In drafting the incorporation documents of the JV Company and other contracts governing the relationship between the NHA and the private sector partner, the parties should consider the following guidelines, among others: (1) clearly defined business objectives; (2) specified degree of participation and the management roles



of each party in the JV activity; (3) defined contribution of capital and ownership rights to property; (4) specified division of the profits, risks and losses; (5) identified dispute mechanism to avoid management impasses that may produce deadlock or litigation; (6) specified termination/liquidation of the JV Company and indicate buy-out provisions; (7) specified confidentiality terms; and (8) stipulated indemnification mechanisms.

- 5. The above parameters and other provisions pertaining to incorporated JVs shall also govern unincorporated JVs to the extent applicable.
- 6. In all cases, full divestment should be undertaken in accordance with all the related laws, rules and regulations, guidelines, legal issuances, as may be applicable with disposition of government assets and properties.

VI. PROCESS FOR ENTERING INTO JV AGREEMENTS

- 1. **Requirements/Conditions for proposed JV Activity.** The proposed JV Activities shall comply with the following requirements/conditions:
  - a. The proposed JV activity is responsive in meeting the goals and objectives of the recovery, reconstruction and rehabilitation of Marawi City;
  - b. The JV activity proposal clearly describes the proposed investment, including its total cost and breakdown, scope of activities, objectives, sources of funding, extent and nature of the proposed participation of the NHA, and the relevant terms and conditions;
  - c. The JV activity proposal establishes all the components in determining the over-all feasibility of the proposed JV activity, including the technical, financial, economic, and legal aspects. Moreover, in project risks distribution among JV partners, expertise and management track record of the JV partners in handling such risks (i.e., political, governance and economic) must be considered; and
  - d. The JV activity proposal shall contain all the required approvals needed to be secured from other government agencies/offices, if applicable.
- 2. **Negotiated JV and Competitive Challenge Procedure.**

**Receipt and Preliminary Evaluation of Unsolicited Proposal/s.** An unsolicited proposal shall be addressed to the Chairman of the Task Force Bangon Marawi, which shall endorse it to the NHA through the BMSC within three (3) calendar days. When the BMSC receives the unsolicited proposal, the BMSC through the BMTWG shall conduct a preliminary evaluation. If more than one (1) unsolicited proposal is received by the Task Force Bangon Marawi on the same day, all such proposals shall undergo preliminary evaluation by the BMTWG. Any unsolicited proposal/s received thereafter may likewise be evaluated subject to the discretion of the BMSC. The preliminary evaluation shall be completed by the BMTWG within fifteen (15) calendar days upon receipt of the unsolicited proposal from the Task Force Bangon Marawi.

The BMTWG shall determine on preliminary evaluation the following: (1) completeness of the proposal; (2) compliance with the requirements prescribed under Section 6.1.1; and (3) assessment using the rating system approach described below.

**Rating System Approach.** The BMTWG shall subject all such proposals to a rating system approach using the following criteria and score:

Score	Criteria
30	1. Project Cost
25	2. Terms of Payment
20	3. Responsiveness to the minimum requirement
15	4. Overall Conceptual Design
10	5. Project Completion (Not later than December 2021)
100	



The BMTWG shall, subject to the approval of the BMSC, formulate guidelines for the application of the evaluation criteria above.

The BMSC shall submit a recommendation to the TFBM Chairman after evaluation of the matrix report. **Acceptance of Proposal and Conferment of Original Proponent Status (OPS).** Upon completion of the preliminary evaluation, the BMTWG shall recommend for approval to the BMSC the acceptance or non-acceptance of the proposal. Acceptance of the proposal by the BMSC does not confer OPS to the PSE. OPS will only be given after the completion of a negotiation between the PSE and the BMSC and the issuance of a Certification of Successful Negotiation (CSN).

**Contents of an Unsolicited Proposal.** A complete proposal shall contain the following documents:

1. Cover Letter indicating the basic information of the unsolicited proposal such as:
  - Description of the Proposed Project (Rationale, Objectives)
  - Land Area and Location of the Proposed Development
  - Project Implementation Schedule
  - Other relevant information
2. Company Profile
  - SEC Papers or the equivalent document from the country of incorporation which includes the Articles of Incorporation and the By-Laws
  - Latest General Information Sheet (GIS)
  - Latest Income and VAT Returns
  - Proof that it has successfully undertaken project(s) similar or related to the JV activity being proposed or bidden out equivalent to at least 25% of the total project cost in the last ten (10) years
  - Audited Financial Statements for such period/s as may be required by the BMSC to prove financial capability to undertake the JV Activity equivalent to at least 50% of the total project cost
3. Business Case or Feasibility Study
4. Draft Contract and
5. Other Documents as may be required by the BMSC, even if proprietary in nature

- 6.3 **Competitive Challenge.** The negotiated terms as agreed by the BMSC and PSE shall be subjected to a competitive challenge wherein other PSEs shall be invited to submit comparative proposals.

The BMSC and PSE shall negotiate on the terms and conditions of the proposed JV activity – *i.e.* legal, technical and financial components. The negotiation shall be completed within fifteen (15) calendar days upon acceptance by the BMSC of the proposal.

Within three (3) days after the successful negotiation, the NHA, as recommended by the BMSC, and the authorized representative of the PSE shall issue a signed CSN that an agreement has been reached and both agree to submit the proposal to a competitive challenge. Said CSN shall also state that the NHA, as recommended by the BMSC, has found the PSE eligible to enter into the proposed JV activity and shall confer OPS to the latter. After the award of the OPS, the selection documents for the competitive challenge, including the draft contract, are prepared.

Should the parties not agree by the end of the negotiation period, the NHA, as recommended by the BMSC, shall have the option to reject the proposal by informing the PSE in writing of the grounds for rejection and thereafter accept a new proposal from another PSE, or to pursue the proposed activity through alternative routes other than JV.

- 6.4 **Selection Documents for Competitive Challenge.** The BMSC is responsible for the preparation of the selection documents for competitive challenge appropriate for the particular project. These may include:

- i. Instructions to Private Sector Participants (PSPs). This contains the general description and objectives of the JV activity; comparative proposal submission procedures and requirements; amount, form and validity period of proposal security; milestones; method, parameters and criteria for the evaluation of the comparative proposals; minimum amount of equity required from the JV Partner; requirements of concerned regulatory bodies/agencies as may be pertinent or applicable to the JV activity; revenue sharing arrangement, dividends policy, if any; and nationality and ownership requirements as required by law;
- ii. Minimum Design, Performance Standards/Specification, and other Financial and Economic Parameters. This shall include appropriate environmental standards by the Department of Environment and Natural Resources



(DENR) and other standards by the NHA and other concerned regulatory agencies as may be pertinent or applicable to the JV activity. For the purpose of evaluating proposals, the following economic parameters, among others and where applicable, shall be prescribed: (i) discount rate, foreign exchange rate and inflation factor; (ii) maximum period of project construction; (iii) fixed term and price indices to be used in the adjustments of tolls/fees/rentals/charges, and (iv) minimum period of repayment;

- iii. Business Case or Feasibility Study of the Proposed JV Activity:
- iv. Draft contract reflecting the terms and conditions in undertaking the JV activity, including the contractual obligations of the contracting parties and the ownership of the JV activity, project, or property after the termination of the JV Agreement. The draft contract shall include provisions on the following matters, as far as practicable:
  - a. Clearly defined purpose and objective/s, contractual/agreement mode (whether incorporated or unincorporated JV), term and scope of the JV;
  - b. Total cost of the JV activity, project specifications and features;
  - c. The relationship between the parties, management roles in the JV activity, and a statement that the parties are actually co-venturers for the project, whether or not the contract is in the name of all members;
  - d. The establishment of a fund by the parties to finance the work, together with the amount, type (cash, assets, etc.), and valuation of committed contributions of each party and when such contributions will be made, with the fund being deposited in a special bank account under dual control and all progress payments and other revenues being deposited in such account. If the equity/contribution of the private sector is to be borrowed, a statement that there shall be no government guarantee for said loan;
  - e. Procedure for additional capital infusions, if required, and a statement that there shall be no government guarantee for loans to be incurred by the private sector in case the additional contribution of the private sector is to be borrowed;
  - f. A declaration of the participation of the parties and percentage in which profits and losses are shared, in proportion to the contributions of the party to the working fund. The amount of contribution of funds by the parties can be increased or decreased, depending on the contributions of equipment or expertise;
  - g. Specified termination/liquidation of the JV Company, buy-out provisions, and details on the transfer of ownership of the JV activity/facility including provisions on what happens to the JV's assets after the expiration of the JV agreement or end of the JV period. If equity other than cash is to be contributed, a statement as to how the property will be appraised and valued during and after the effectivity of the JV Agreement;
  - h. Implementation milestones, regular meeting schedules, financial and periodic JV and progress reporting procedure;
  - i. Definition of items which are to be considered as costs to the JV for the purpose of determining profit or loss and a description of items which are not reimbursable to members of the JV, and specified division of the profits and risks and losses;
  - j. Performance security requirements of the project and the bonding obligations of the co-venturers;
  - k. Undivided pro-rata interests held by the co-venturers on all assets of the JV;
  - l. Restriction regarding assignment of private sector participant's undivided pro-rata interests in assets of the JV;
  - m. Cost recovery scheme, including payment to the government of royalties/rights, the form/description and amount of earnings (cash, asset, etc.), whether they are in absolute amounts or variable, and the period and timing such earnings or payment shall be received. In case of non-cash payment or payment in form of asset, a statement/provision on how it will be valued, the minimum value of the asset, and the determination/selection of asset such as how and who will determine/select the asset;
  - n. Indemnification and liquidated damages; performance and warranty bonds; minimum insurance coverage; acceptance tests and procedures; validity of the performance security, warranty period and procedures;
  - o. Grounds for and effects of contract termination/default including modes for settling disputes, procedure for handling guarantees, defects and insurance after termination, and threshold (in terms of amount, time/period, or both) for which non-payment or delay in payment and delay in starting the project/s shall be grounds for termination/rescission of the JV contract/agreement;
  - p. The manner and procedures for the resolution of warranty against corruption;
  - q. Compliance with all other laws, rules and regulations;
  - r. Procedure and/or period for withdrawal by the government entity of its contribution to the JV, or exit divestment by the government entity of its interest in the JV, and substitution or addition of parties;
  - s. Payout of funds; and
  - t. Disputes arbitration clause.
- v. Selection Form reflecting the required information to properly evaluate the technical and financial proposal;
- vi. Forms of technical and financial proposals and performance securities; and



vii. Other documents as may be required by the BMSC and other requirements of concerned regulatory agencies as may be pertinent or applicable to the JV activity.

5. **Publication of Invitation to Apply for Eligibility and Submit a Proposal (IAESP).** The IAESP shall be advertised at least once in a newspaper of general nationwide circulation, and posted continuously at the website of the NHA and HUDCC. Interested PSPs shall be given at least twenty one (21) calendar days from the last date of publication of the IAESP to apply for eligibility and submit its technical and financial proposal. Notwithstanding, the NHA, as recommended by the BMSC, may adjust said period as may be appropriate for the nature, scope, size and complexity of the proposed JV activity; provided, that the principles of transparency, competition and accountability are observed.

The OPS shall post the proposal security on the date of the first day of the publication of the IAESP in the amount equivalent to two percent (2%) of the total project cost through a manager's check issued by a domestic universal/commercial bank or any international bank recognized by the Bangko Sentral ng Pilipinas. The required Proposal Security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the comparative proposals.

6. **Eligibility of Private Sector Participants.** Any individual, partnership, corporation, firm, or consortium, whether local or foreign, may participate subject to the limits set herein:

- a. Legal Capacity. The prospective PSP participant must meet the nationality and ownership requirements under the Constitution and other applicable laws and issuances. In case of a corporation or partnership, it must be duly incorporated or established under the laws of the jurisdiction of its incorporation or establishment.

In case of a Consortium, legal capacity must be established upon advice of BMSC.

- b. Technical Capability. The prospective JV Partner, by itself or through member-firm/s in case of a consortium, or through consultant(s)/contractor(s) which the prospective JV Partner may engage for the project, must have successfully undertaken project(s) similar or related to the JV activity being proposed or bidden out equivalent to at least 25% of the total project cost in the last ten (10) years. The person in charge of the project shall likewise possess at least ten (10) years of experience in similar projects. The cost and the relevant period in which the similar projects were undertaken shall be determined by the BMSC depending on the scope and value of the proposed JV Activity. The individual firms and/or its consultant(s)/contractor(s) may individually specialize on any or several phases of the JV Activity. A consortium PSP shall be evaluated based on the individual or collective experience of the member-firms and of the consultant(s)/contractor(s) that it has engaged for the project.
- c. Financial Capability. The BMSC shall determine before evaluation of eligibility, the minimum amount of equity needed for the JV activity.

Financial capability shall be measured in terms of the ability of the prospective JV Partner to provide a minimum amount of equity to the JV activity, which shall be determined by the BMSC depending on the scope and value of the proposed JV Activity. The minimum equity shall be measured in terms of proof of the ability of the prospective PSP to provide:

#### Equity

- a minimum amount of equity to the JV Activity measured in terms of the net worth of the PSP, or in the case of a consortium, the net worth of the lead member or the combined net worth of members,
- Set-aside deposit equivalent to the minimum equity required

Net Financial Contracting Capacity should be at least 50% of the total project cost. For this purpose, the PSP must submit Audited Financial Statements for such period/s as may be required by the BMSC, to prove its financial capability; or

#### Debt

- A notarized statement/certification from a domestic universal/commercial bank or any international bank recognized by the Bangko Sentral ng Pilipinas attesting that the PSP and/or members of the consortium are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the JV Activity.



- d. Acceptance of Criteria and Waiver of Rights to Enjoin JV Activity. In addition to the above, all prospective PSPs shall be required to submit, as part of their eligibility documents, a statement stipulating that the PSP: (i) has accepted the eligibility criteria established by the BMSC; and (ii) waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the NHA, BMSC and BMTWG to prevent or restrain the competitive selection proceedings related thereto, the award of the contract, and the carrying out of the awarded contract.
- e. If the PSP is a consortium, it must also submit a copy of the Consortium Agreement, which shall include the following information:
  - brief description of the consortium, the individual members of the consortium and the nature and extent of the participation (capital of each member in relation to the whole capital);
  - the lead member of the consortium, who is authorized by all the members to represent and sign any and all documents related to this bidding including the JV agreement with the NHA; and
  - agreement of all members to be jointly and severally liable for the obligations of the consortium under the award/contract.

Each consortium member should submit the required eligibility documents.

7. **Eligible and Ineligible.** The BMSC, through the BMTWG, shall, within a period of five (5) calendar days after the deadline for submission of eligibility documents, complete the processing of the eligibility documents of the prospective PSPs and determine which among them are "eligible" and "ineligible". Within three (3) calendar days after such determination, the BMSC shall duly inform the prospective PSPs in writing of their eligibility or ineligibility. In case of the latter, the grounds for ineligibility must be stated in the notice.
8. **Issuance of Competitive Challenge Documents.** The NHA, through the BMSC, shall make available the related selection documents to all eligible PSPs as soon as practicable to provide them ample time to examine the same and to prepare their respective comparative proposals prior to the date of opening of the proposals. The time period from the last day of the issuance of selection documents to the date of opening of the comparative proposals shall not exceed fifteen (15) calendar days.

The parameters for the proposed JV activity should be transparent and fair. It should not, in any way, be tailor-made for or be meant to favor or give advantage to a particular PSP.

9. **Supplemental Selection Bulletins and Selection Conferences for Competitive Challenge.**
  - a. Responsibility of the PSP. The prospective PSP shall be solely responsible for examining and understanding the requirements and terms and conditions of the selection documents with respect to the cost, duration and execution/operation of the JV Activity as it affects the preparation and submission of its proposal. NHA shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective PSP from information furnished or indicated in the competitive selection documents.
  - b. Supplemental Notices. On or before the pre-selection conference, a prospective PSP may submit to the BMSC a written request for clarification as to any data or requirements or any part of the selection documents. Any substantive interpretation given by BMSC shall be issued in the form of a Supplemental Notice, and be furnished to all prospective PSPs. The BMSC may also issue Supplemental Notices to all prospective PSPs at any time for purposes of clarifying any provisions of the selection documents, provided that the same are issued within a reasonable period to allow all PSPs to consider the same in the preparation of their proposals.
  - c. Pre-Selection Conference. The BMSC shall conduct a pre-selection conference at least ten (10) calendar days before the deadline for the submission of comparative proposals. Notwithstanding, the BMSC may adjust said period as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity; provided, that the principles of fairness, transparency, competition and accountability are observed.
10. **Submission and Receipt of Comparative Proposals.** PSPs shall be required to submit their proposals on or before the deadline stipulated in the "Instructions to Private Sector Participants". For eligible participants, proposals shall be submitted in two (2) separate sealed envelopes, the first being the technical proposal and the second the financial proposal.
  - a. The Technical Proposal shall contain the following, as applicable:
    - i. Compliance statements with regard to the technical parameters as stated in the selection documents;



- ii. Operational feasibility;
- iii. Technical soundness, including proposed project timeline;
- iv. Preliminary environmental assessment;
- v. Cost and financing plan of the JV activity;
- vi. Proposal Security in the amount to be determined by the BMSC, but which shall not be more than two percent (2%) of the total project cost of the JV activity subject of the competitive challenge process. The Proposal Security shall be in the form of a bank manager's check issued by a domestic universal/commercial bank or any international bank recognized by the Bangko Sentral ng Pilipinas. The required Proposal Security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the comparative proposals.
- vii. Other documents to support the PSP's technical proposal, as may be required by the BMSC.

b. The Financial Proposal shall contain the following, as the case may be:

- i. Compliance statements with regard to the financial parameters stated in the selection documents;
- ii. Proposed cost of the JV activity, operation and maintenance cost, the amount of equity to be infused and debt to be obtained for the project, sources of financing, and all other related costs; and
- iii. Financial proposal corresponding to the parameters set by the BMSC.

c. The BMSC is not precluded from specifying other requirements for the technical and financial proposals that are best suited for the specific JV activity.

11. **Submission of late proposals.** Comparative proposals submitted after the deadline for submission prescribed in the "Instructions to Private Sector Participants" shall be considered late and shall be stamped with the date and time received and be returned unopened.

## 12. Opening and Evaluation of Proposals

- a. Opening of the Envelope for the Technical Proposal. At the date and time of the opening of comparative proposals stipulated in the "Instructions to Private Sector Participants", the BMSC shall open only the first envelope containing the technical proposal and ascertain: (a) whether the same is complete in terms of the data/information required; and (b) whether the same is accompanied by the required Proposal Security in the prescribed form, amount, and period of validity. All PSPs or their representatives present at the opening of the envelopes containing the Technical Proposal shall sign a register of the proposal opening.
- b. Evaluation of the Technical Proposal. The evaluation of the first envelope containing the Technical Proposal shall involve the assessment of the technical, operational, environmental, and financing viability of the proposal, vis-à-vis the prescribed requirements and criteria/minimum standards, and basic parameters prescribed in the competitive selection documents. The BMSC shall complete the evaluation of the Technical Proposal within fifteen (15) calendar days from the date the proposals are opened. Only those proposals that have positively passed the evaluation of the Technical Proposal shall be qualified and considered for the evaluation of the Financial Proposal.
- c. Opening of the Envelope for the Financial Proposal. Only the Financial Proposals of PSPs who passed the technical proposal evaluation shall be opened for further evaluation. The financial proposals tendered by PSPs who failed the technical proposal evaluation shall not be considered further, and shall be returned unopened, together with a notice stating the reasons for disqualification. The BMSC shall notify the PSPs qualifying for the second stage of evaluation of the date, time and place of the opening of the envelopes for the financial proposal. The opening thereof shall follow the same procedure prescribed for the opening of the envelopes containing Technical Proposals.
- d. Evaluation of the Financial Proposal. The evaluation of the Financial Proposal shall involve the assessment and comparison of the Financial Proposals against the financial parameters stated in the selection documents and proposal parameters set by BMSC. The proposed financing plan must show that the same adequately meets the costs relative to the JV activity. The evaluation of Financial Proposals shall be completed by the BMSC within fifteen (15) calendar days.
- e. Simultaneous Evaluation of the Technical and Financial Proposals. Simultaneous evaluation of the Technical and Financial proposals may be resorted to if the BMSC determines that the nature of the JV activity requires the appreciation of both the Technical and Financial Proposals as a whole in order to determine the best proposal. In such case, the selection documents shall explicitly state the evaluation procedure. Simultaneous eval-



uation of the Technical and Financial proposals shall be completed within fifteen (15) calendar days from the date the proposals are opened.

- f. Prescriptive Periods. The periods stated for the evaluation of the Technical and Financial Proposals are prescriptive. The BMSC may adjust said periods as may be appropriate for the nature, scope, size, and complexity of the proposed JV activity. Provided, that the principles of fairness, transparency, competition and accountability are observed.
- g. Rejection of Proposals. Non-compliance with the information required on either the first or second envelope shall be grounds for rejection of proposals.
- h. Withdrawal and/or Modification of Proposals. Withdrawal and/or modification of proposals may be allowed upon written notice by the PSP concerned to the BMSC prior to the time and date set for the opening of the envelope containing the Technical Proposal as specified in the "Instructions to Private Sector Participants". No proposals shall thereafter be modified or withdrawn. Proposal modifications received after said period shall be considered late and will be returned unopened. Withdrawal of proposals after the proposal opening date shall cause the forfeiture of the PSP's Proposal Security.
- i. Right to Reject All Proposals. BMSC reserves the right to reject any or all proposals, waive any minor defects therein and accept the offer it deems most advantageous to the government.
- j. Breaking Tie Bids. In case tie bids occur under competitive challenge, the procedure for breaking tie bids shall be done through drawing of lots or similar methods that are non-discretionary and non-discriminatory such that it is based on sheer luck or chance.
- k. Right to Outbid. The original PSE shall have the right to outbid subject to terms and parameters set by the NHA as recommended by the BMSC. The outbidding shall be within seven (7) calendar days from receipt of notification from the BMSC, of the results of the competitive challenge. If the original PSE submits a better offer than the one submitted by the PSP within the prescribed period, the JV activity shall be awarded to the original PSE. However, should there be no better offer received from the original PSE within the prescribed period, the JV activity shall be awarded to the PSP submitting the most advantageous comparative proposal. In case, however, that no complying comparative proposal is received by the NHA challenging the original proposal, the JV activity shall immediately be awarded to the original PSE.

### 13. Award and Approval of Contract

- a. Recommendation to Award. Within three (3) calendar days from the completion of the evaluation procedure by the BMTWG, the BMSC shall endorse its evaluation/assessment of the comparative proposals to the NHA.
- b. Decision to Award. Within three (3) calendar days from the submission by the BMSC of the recommendation to award, the NHA shall approve or reject the same. The approval shall be manifested by signing and issuing the "Notice of Award" to the Winning PSP within three (3) calendar days from approval thereof. The NHA shall post a corresponding "Notice" on its website declaring the award of the JV Agreement to the Winning PSP.
- c. Notice of Award. The "Notice of Award" to be issued by the NHA, as recommended by the BMSC, shall contain, among others, an instruction to the Winning PSP to comply with conditions precedent for the execution of the JV Agreement and to submit compliance statements with regard thereto, within ten (10) calendar days from receipt of the "Notice of Award" unless otherwise specified or extended by NHA.
- d. Performance Security. Conditions precedent for the execution of the JV Agreement shall include the posting of a Performance Security in favor of the NHA. The BMSC shall determine which form of Performance Security it will require, which may be in the form of cash, bank draft or guarantee confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by Government Service Insurance System (GSIS) or by a surety or insurance companies duly accredited by the Insurance Commission as follows:
  - i. Cash, manager's check, irrevocable letter of credit, bank draft — a minimum of two percent (2%) of the PSP's contribution to the JV activity;
  - ii. Bank Guarantee — a minimum of five percent (5%) of the PSP's contribution to the JV activity;
  - iii. Surety Bond — a minimum of ten percent (10%) of the PSP's contribution to the JV activity.



Failure to comply with the conditions precedent for the execution of the JV Agreement within the prescribed thirty (30)-calendar day period or as specified or extended by NHA will result in confiscation of the Performance Security. Within seven (7) calendar days from receipt of the compliance statements from the winning PSP, NHA shall determine the sufficiency of the same, and notify the winning PSP accordingly.

- e. Validity and Return of Proposal and Performance Securities. The execution of the JV Agreement shall be made within the period of the validity of the Proposal Security. The required Proposal Security shall be valid for a reasonable period, but in no case beyond one hundred eighty (180) calendar days following the opening of the comparative proposals. Unless earlier forfeited, Proposal Securities shall be returned to all PSPs upon signing of the JV Agreement by the winning PSP.

The Performance Security shall be valid within the period of one (1) year after the expiration of the JV Agreement or end of the JV period, or as may be stipulated in the JV Agreement. Upon certification by NHA that there are no claims filed against the Winning PSP after the expiration of the JV agreement or end of the JV period or as may be stipulated in the JV Agreement, the Performance Security shall be released by the former. As may be agreed upon in the JV agreement, a portion of the Performance Security shall be released upon compliance with corresponding milestones.

Extension of Validity of Proposals. When an extension of validity of proposals is considered necessary, those who submitted proposals shall be requested in writing to extend the validity of their proposals before the expiration date of the same. However, PSPs shall not be allowed to modify or revise the price or other substantial aspect of their proposals. Further, PSPs must correspondingly extend the validity of their Proposal Security as a condition for the extension of the validity of their proposals.

PSPs shall not refuse such request for extension except on the following grounds: (1) loss of interest in the JV Activity, and (2) unforeseen financial meltdown/crisis. PSPs who refuse the request based on these grounds shall not forfeit their Proposal Security; provided that, in case of refusal based on unforeseen financial meltdown/crisis, PSP must submit an affidavit attesting to the facts alleged, and other specific documents proving the same.

- f. Prospective Private Sector Participants Compliant with the Technical Requirements. In case no technically qualified PSP is able to comply with financial requirements, NHA may conduct negotiation on the financial terms/proposal in accordance with Section 6.13 (g) hereof.
- g. Negotiation on the Financial Terms/Proposal under the Competitive Challenge Process. In case the PSPs, whose Technical Proposals are rated "passed", are not able to comply with the financial requirements, NHA shall request said PSPs to submit new Financial Proposals. Thereafter, the BMSC shall notify and negotiate with the PSP with the most advantageous Financial Proposal. The Technical Proposal shall remain valid and binding. In the event the BMSC fails to successfully negotiate with said PSP within thirty (30) calendar days reckoned from the date of notification, the BMSC shall negotiate with the next ranked most advantageous financial proposal, and so on and so forth, until a successful negotiation has been concluded.

In case of a single technically qualified PSP, the NHA, through the BMSC, may conduct negotiations on the financial terms or on the Financial Proposal and shall conclude said negotiation within thirty (30) calendar days. The Technical Proposal shall remain valid and binding.

If there is no successful negotiation, the NHA shall conduct another competitive challenge. In case of a second failure of competitive challenge, NHA, as recommended by the BMSC, shall enter into the JV Agreement with the original PSE.

- i. Execution/Approval of the JV Agreement. The authorized signatory(ies) of the Winning PSP and the NHA, shall execute and sign the JV Agreement, within seven (7) calendar days after NHA notifies the Winning PSP of its compliance to the conditions or requirements precedent to the execution of the JV Agreement.

In the event of refusal, inability or failure of the Winning PSP to enter into a JV Agreement with the NHA within the time provided therefore, NHA shall forfeit its Proposal Security. In such event, NHA shall consider the PSP with the next ranked complying proposal as the Winning PSP, and notify said PSP accordingly. If the next ranked complying PSP shall likewise refuse or fail to enter into contract with NHA, its Proposal Security shall likewise be forfeited and NHA shall consider the next ranked complying proposal, and so on, until a contract shall have been entered into. In the event that the NHA is unable to execute the contract with any of the complying PSPs, a failure of competitive challenge will be declared and the JV may be subjected to a competitive challenge again.



- j. Deviations and Amendments to the JV Agreement. The NHA shall not proceed with the award and signing of the JV Agreement if there are material deviations from the parameters, terms and conditions set forth in the selection documents that tend to increase the financial exposure, government liabilities and risks or any other factor that would cause disadvantage to government and any deviation that will cause prejudice to losing PSPs. Violation of this provision shall render the award and/or the signed JV Agreement invalid.
  - k. Other Approvals for JV Agreement. The JV partner shall, as may be required under existing laws, rules and regulations, secure any and all other approvals for the JV Agreement, or the implementation thereof, from government agencies or bodies including the regulator, in the case of public utility projects. The NHA may provide the necessary assistance to its JV Partner in securing all the required clearances. The JV Agreement shall provide milestones in securing such other approvals required for the implementation thereof. The NHA will ensure that required approvals under existing laws shall be complied with as condition precedents prior to contract effectivity.
  - l. Contract Effectivity. The contract shall be effective upon signing thereof by the General Manager of the NHA unless another date is stipulated therein.
14. **Appeals Mechanism.** Decisions of the BMSC may be appealed in writing to the NHA: Provided, however, that the appellant has filed a prior motion for reconsideration and the same has been resolved by the BMSC. The appeal must be filed within seven (7) calendar days from receipt by the appellant of the resolution of the BMSC denying its motion for reconsideration. An appeal may be made by filing a verified position paper with the NHA, accompanied by the payment of a non-refundable appeal fee, which shall not be less than one-half (1/2) of one percent (1%) of the project cost.
- The NHA shall act on the appeal within thirty (30)-calendar days. The decision of the NHA on the appeal shall be final and immediately executory. If the appeal is not resolved within said period, the appeal is deemed denied.
15. **Amendments.** These Guidelines may be amended and/or modified from time to time by the NHA.
16. **Separability.** If any provision of these Guidelines is held or declared void or unenforceable by final judgment of a court of competent jurisdiction, the other provisions unaffected thereby shall remain in full force and effect.
17. **Effectivity.** These Guidelines and any subsequent amendment or modification thereto shall take effect immediately after publication.

Certified Correct:

(Sgd.)

**ATTY. MARIA MAGDALENA D. SIACON**

Corporate Secretary, National Housing Authority (NHA)

Pursuant to NHA Board Resolution No. 6314, entitled "Adopting the Guidelines on Joint Venture Agreements to Expedite the Implementation of Recovery, Reconstruction, and Rehabilitation Projects in the Most Affected Areas of Marawi City", approved on 07 February 2018 at NHA, Quezon City.



## **ANNEX A**

### Minimum scope of work:

1. Debris Management;
2. Site Development Plan;
3. Area of development shall cover 250 hectares of the Most Affected Area (MAA) by the Marawi siege;
4. Concrete Road infrastructures (per lane, per kilometer, including street and traffic lights) with provision for bike and pedestrian lanes;
5. Provision for underground utilities such as water, power and telecommunications;
6. Both sides of the Agus River and Lake Lanao waterfront on the Marawi side shall be allocated for parks and recreational sites (minimum setback of 50 meters on each side);
7. Vertical Development shall be based on classifications provided for by the National Building Code;
8. Centralized Waste Water Treatment Facility or Centralized Sewage Treatment Plant that will meet the demand of at least 60,000 population and with the discharge meeting DENR standards (*Note: Must be included in conceptual plan.*);
9. Twenty four (24) units of 1,000 sqm lot area barangay complex covering a 2-storey barangay hall, with 500 sqm floor area, with provisions for health center, multi-purpose hall and two (2) classroom Madrasah with a total floor area of 100 sqm in each of the barangay complex to be built;
10. Twenty two (22) two-storey elementary and high school buildings with 20 classrooms each based on Dep-Ed standards;
11. Meetings, Incentives, Conferences and Events (MICE) Convention Hall with 5,000 seating capacity to be located in the areas fronting the lake;
12. Two (2) hectare Memorial Site with museum located in the areas fronting the lake;
13. Preservation of at least three (3) historical/heritage sites (Bato Mosque and two other sites);
14. Port facilities;
15. Multi-modal transport hub; and
16. Two-storey Grand Padian or Central Market with 5,000 sqm floor area per floor or a total of 10,000 sqm floor area in a 2-hectare lot