



**CLARIFICATORY BULLETIN NO. 4**  
**23 October 2018**

**NEW MAJOR PLAYER (NMP) SELECTION PROCESS**

Issued under Section 7.2 of NTC Memorandum Circular (MC) NO. 09-09-2018 and Section 5.2 of the Instruction to Participants (ITP), this Clarificatory Bulletin is issued by the NMP Selection Committee (SC) based on the questions officially received by the SC through the NMP email as of 22 October 2018.

<b>Queries/Issues</b>	<b>Clarifications</b>
1. Re: Authorized Signatory/ies, please confirm our understanding that the members of the Participant under Sec 4.1(b) of the ITP may authorize (in their Resolution) more than one (1) representative to sign the Authorization, Omnibus Sworn Statement and Sworn Undertaking.	Yes, provided that all signatories are specifically covered by corresponding authorizations issued by their respective principals.
2. Re: Authorized Signatory/ies, please confirm that the authorized representative who will execute the Authorization may not necessarily be the same as the authorized representative who will execute the Omnibus Sworn Statement and the Sworn Undertaking. In other words, the Authorization, Omnibus Sworn Statement and the Sworn Undertaking may be executed by different authorized representatives.	Yes, provided that all signatories are specifically covered by corresponding authorizations issued by their respective principals.
3. Re: Authorized Signatory/ies, please confirm our understanding that based on Annexes 3 and 4 of the ITP, the Participant under Sec. 4.1(b) of the ITP shall attach, as annex to each of the Authorization and the Omnibus Sworn Statement of such Participant, a “Resolution of the parties of the binding Bidding Agreement.” To show proof of authority of the persons signing the said Resolution of the parties, are the special powers of attorney/secretary’s certificates/board resolutions (as applicable) of all the parties of the binding Bidding Agreement required to be attached to the said Resolution of the parties?  Further, may we kindly request for a form for the said “Resolution of the parties”?	Yes. In order to account for the representative signatory’s/ies’ authority to bind their respective principals, the appropriate special powers of attorney/secretary’s certificates/board resolutions (as applicable of all the parties to the binding Bidding Agreement) must be attached to the said Resolutions.  The Participants are in a better position to provide the form and language of the “Resolution of the Parties”, which to a great degree depend on the particular nature or complexity of multi-party composition of the committed investors to a Bidding Agreement.

<p>4. Please confirm that the authority of the person purchasing the Selection Documents from the NTC and paying the ITP Fee, on behalf of the Participant or member of the Participant under Section 4.1(b), is no longer required to be submitted.</p>	<p>Yes, an authorization by the person purchasing the Selection Documents from NTC is no longer required to be submitted. For the bid submission, a clear copy of the official receipt issued by the NTC and the original copy of the notarized authorization of the representative are the required submissions.</p>
<p>5. Re: Signing of NMP Selection Documents Form A, we note that up to four (4) representatives may be authorized to sign or initial the pages of the required original print-outs of NMP Selection Documents Form A. We understand from the Form A training that these four (4) representatives can sign alternatively. Please confirm.</p>	<p>Yes, authorized representatives may sign the Form A sheets alternatively.</p>
<p>6. Re: Forms, please confirm that the forms provided in the MS Word files of the following ITP Annexes shall be used, notwithstanding that there are no references to these annexes in the body of the ITP: a) Annex 3 - Authorization; b) Annex 4 - Omnibus Sworn Statement; c) Annex 5 - Sworn Undertaking; d) Annex 6 - Checklist and Tab Guide for Documentary Requirements of the New Major Player Selection Process; and (e) Annex 10 – NMP Undertaking (in favor of the PCC)</p>	<p>Yes. Participants may also opt to prepare its own template for the mentioned documents but must be extremely careful to specifically adopt the mandatory provisions <i>in toto</i>.</p>
<p>7. Re: Formatting of Selection Documents, please confirm that there is no prescribed paper size, font, font size or formatting (such as, whether paragraphs are justified or not and margins) for the Selection Documents that need to be executed (such as, the Resolution of the parties of the binding Bidding Agreement, Authorization, Omnibus Sworn Statement, Sworn Undertaking and NMP Undertaking in favor of the PCC).</p>	<p>Yes. There is no prescribed paper size, font type, font size or formatting.</p> <p>For efficient use of paper, the Selection Committee encourages Participants to use: paper size – Folio 8.5” x 13”; Font – Times New Roman; Font Size – 14; Formatting – Justified; Margins – Top and Bottom – 1”, Left- 1.5” and Right – 1”.</p> <p>Form A and Form B– Landscape layout</p> <p>All other sheets – Portrait layout</p> <p>Participants may override size of paper by changing ‘Paper Size’ in the ‘Page Layout’ tab</p>
<p>8. Re: Authentication/Consularized Selection Documents, please confirm our understanding that during the bid submission, foreign members of the Participant do not need to submit the authenticated/consularized copies of any of their Selection Documents, including any notarized special power of attorney/secretary’s certificate/board resolution executed abroad designating their authorized representatives to sign the Bidding Agreement, Resolution of the parties to the Bidding Agreement and any other Selection Document.</p>	<p>Yes. Authentication or consularization of foreign executed documents will only be required during the process for issuance of the CPCN to the NMP.</p>
<p>9. Re: Participation Security, please confirm that one member of the Participant under Sec 4.1(b) of the ITP may procure the Participation Security on behalf of such Participant.</p>	<p>Yes.</p>

<p>10. Re: Participation and Performance Security, given the significant amounts of the Participation Security and Performance Security, please confirm that a syndicate of universal or commercial banks in the Philippines and/or a foreign bank (with the confirmation or authentication of a universal or commercial bank in the Philippines) may issue them.</p> <p>Given the significant amounts of the Participation Security and Performance Security, please confirm that the Participant or the NMP may deliver more than one irrevocable standby letter of credit, provided the aggregate face value of all irrevocable standby letters of credit delivered shall equal the required amount of the Participation Security or Performance Security, as the case may be.</p>	<p>Yes, several universal or commercial banks in the Philippines and/or foreign banks (with the confirmation or authentication of a universal or commercial bank in the Philippines) may jointly or cumulatively issue the sum required as Participation or Performance securities.</p> <p>Yes. The Participant or the NMP that will submit more than one irrevocable standby letters of credit shall also submit a Summary Sheet, showing the issuing banks and the corresponding amount of its security, to show that the entire amount is covered.</p>
<p>11. Re: Undertaking in favor of PCC, please confirm our understanding that, based on Annex - 10 of the ITP, the NMP Undertaking in favor of the PCC shall be executed by the authorized representative of each member of the Participant-Consortium under Sec 4.1(b) of the ITP, and not by the authorized representative of the aforesaid Participant-Consortium.</p>	<p>Yes. It is an Undertaking executed by the authorized representative of each member of the Participant and its committed investors in the binding Bidding Agreement.</p>
<p>12. Re: Additional investors after the grant of the CPCN, please confirm that after the grant of the CPCN to the NMP and within the Commitment Period, the NMP may get additional investors to infuse funds into the NMP, subject to the NMP's compliance with the nationality requirement (if still applicable at that time), the additional investors' execution of the Undertaking in favor of the PCC and Congressional approval, if required.</p>	<p>Yes, provided that such additional investor is not a Dominant Telecommunications Player or a Related Party to the Dominant Telecommunications Players, and subject to the foreign equity restriction.</p>
<p>13. Re: Tax Clearance, please confirm that a Tax Clearance as required by E.O. No. 398 will not be required from the Participants or any member of the Participants under Section 4.1(b) of the ITP.</p>	<p>Yes.</p>
<p>14. To avoid any confusion and for the proper guidance of all, may we kindly request that the Selection Committee provide an official definition of "telecommunications services"?</p>	<p>Please be guided by Sections 1.2 and 1.3 of the MC.</p>
<p>15. Re: "Technical capability" is fulfilled with the provision of any of the following (or a combination of any of the following): fixed, wireless, data and broadband?</p>	<p>Yes, provided the experience is in the "provisioning, delivery and operations" of such services.</p>
<p>16. Re: Technical capability, with regard to the requirement to submit a "Certification of technical capability from the respective official telecommunications regulatory agency of any of the countries where the Participant's committed investors are operating," telecommunication regulatory agencies in some jurisdictions may not issue this kind of certification. In such a case, what</p>	<p>Any document/letter issued by the appropriate government agency in-charge of the telecommunications industry that would indicate/establish Participant's technical capability in the provisioning of telecommunications services for the last ten (10) years.</p>

<p>other proof of technical experience will be acceptable?</p>	
<p>17. Re: Submission of AFS and AAFS, please confirm that, if there is no audited financial statements for 2018, the submission of the annual audited financial statements (AAFS) for the years 2015, 2016 and 2017 will be sufficient and that the paid capital reflected in a member's AAFS for 2017 would be considered in computing the aggregate paid capital of the Participant under Section 4.1(b) of the ITP for purposes of that Participant's fulfillment of the financial capability requirement. This is consistent with Sec. 6.2(g), in relation to Sec. 2.2(b) of the NTC-MC. Sec. 6.2(g) of the NTC-MC requires Participants to submit copies of the "AAFS for the last three (3) years, ex. 2015, 2016 and 2017, xxx" and that "[f]or Participants as defined under Sec. 1.10(b), the <u>AAFS</u> of the parties to the Bidding Agreement must show an aggregate paid capital of at least ₱10B." Sec. 2.2(b) of the NTC-MC then states that "[i]n case of a Participant under Sec. 1.10(b), the aggregate paid capital of its members should at least be ₱10B as indicated in their respective latest audited financial statements," which, as aforesaid, refers to the AAFS for 2017.</p>	<p>Yes.</p>
<p>18. For foreign investors who are parties to the Bidding Agreement, they are required to submit equivalent document, duly certified as true copies by the appropriate governmental equivalent of the Philippine SEC. There are jurisdictions where the GIS has no equivalent.</p> <p>Please confirm that, as an alternative, the Selection Committee will accept a notarized certification signed by an officer of the foreign entity setting out the same information found in the GIS. This alternative has been accepted in the bidding for other projects such as the Clark International Airport Expansion Project, Mactan-Cebu International Airport Project, South Integrated Transport System Project, Cavite-Laguna Expressway Project, and others.</p>	<p>Please see Clarificatory Bulletin No. 2, item no. 14.</p> <p>In relation to the Paid Capital requirement, please indicate the Paid Capital accounts and amounts in the equivalent documents, i.e., Paid Capital, additional Paid Capital (premium), less Treasury Shares.</p>
<p>19. There are foreign jurisdictions where entities are not required to submit audited financial statements to any agency. In such a case, what alternative document can the foreign entity submit?</p>	<p>The rendering of audited financial statements by commercial enterprises is an international practice, and the availability of reputable auditing firms is available in almost all national jurisdictions. Therefore, even if committed investors come from countries where their government regulators do not require or mandate their submissions, Participants are still required to submit their Annual Audited Financial Statements (AAFS) and Latest Financial Statements pursuant to ITP Sec. 8.3 (g)(3) and (4).</p>
<p>20. Re: NMP's capex/opex commitments, under the NTC-MC, only the NMP's compliance with its Committed Level of Service, based on the National</p>	<p>Yes. The audit will focus only on National Population Coverage and Minimum Average Broadband Speed.</p>