



**TERMS AND CONDITIONS
OF BID and BIDDING
PROCEDURE FOR THE
REHABILITATION OF THE
CLOSED EXPORT AND
INDUSTRY BANK**

Philippine Deposit Insurance
Corporation



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BIDDING PROCEDURE FOR THE REHABILITATION
OF THE CLOSED EXPORT AND INDUSTRY BANK
("Bidding Procedure")**

PREMISE

The Philippine Deposit Insurance Corporation (PDIC), Receiver of the closed **EXPORT AND INDUSTRY BANK** ("EIB" or the "Bank") is conducting a public bidding for the rehabilitation of **EIB**.

The objective of the bidding is to ensure a viable rehabilitation for EIB that is most advantageous to EIB's depositors and creditors. The mode of rehabilitation may be through purchase of assets and assumption of liabilities, merger, consolidation or acquisition.

The rehabilitation proposal for EIB should address the requirements for capital strengthening, liquidity, sustainability and viability, and governance. In principle, rehabilitation should be more beneficial for EIB's depositors and creditors than a liquidation scenario. The rehabilitation should necessarily be premised on the consent of EIB's depositors, stockholders and creditors of record and the willingness of the qualified bidders to rehabilitate the bank.

For this exercise, PDIC has constituted a Bidding Committee ("BC") that shall oversee and conduct the bidding process, and a Project Team ("PT") that shall manage the processes prior to the bidding to ensure the smooth implementation of the project.

PDIC has engaged the services of Alba Romeo and Co., as financial auditor for EIB, to make an independent determination of the bank's financial condition, and ascertain the reasonable valuation of its assets and liabilities.

PDIC published in the Business Mirror issues of 7 and 10 August 2012, the attached Invitation to Pre-qualify and Bid (Annex A) aside from issuing letters of invitation to major banks.

Banks which have expressed interest to rehabilitate the bank conducted due diligence in line with the Due Diligence Protocol issued by PDIC (Annex B), to make their own assessment of the valuation of assets and liabilities of EIB and independently ascertain the bank's financial condition.

PDIC, in consultation with the Bangko Sentral ng Pilipinas (BSP), have evaluated and determined the qualified bidders from among interested parties based on the criteria specified in Section II.1.

The qualified bidders have expressed preference for the mode of rehabilitation through purchase of assets and assumption of liabilities. Accordingly, for purposes of maximizing recovery, the mode of rehabilitation shall be for the purchase of assets and assumption of liabilities, and PDIC shall conduct a separate bidding for the commercial bank license.

The rehabilitation shall be premised on the following:

1. Restructuring of EIB's outstanding obligations to PDIC provided that the cost of restructuring shall not be more than the cost of liquidation;

2. The necessary consents of EIB's stockholders, depositors and creditors shall have been obtained;
 3. No benefit shall accrue to the stockholders.
- The rehabilitation of EIB, including the award and distribution of the proceeds of the commercial bank license, shall be subject to the final approval of the Monetary Board.

I. SUBJECT OF THE BID

The rehabilitation of EIB shall be in two tranches:

- a) **Tranche 1** - purchase of assets and assumption of liabilities. The bid shall take into consideration the net assets and the rehabilitation components that will provide maximum recovery to the uninsured depositors and other ordinary creditors of the bank.
- b) **Tranche 2** – disposition of the commercial bank license of EIB.

The subject of the bid covered by this Procedure is that of **Tranche 1**. The winning bid shall be the one that will be most beneficial to EIB's depositors and creditors, i.e., the bid (expressed in present value terms using a discount rate of 5%) that will give them the highest amount of recovery. The bid shall be expressed in Philippine Pesos.

The bidding for Tranche 2 shall be governed by separate bidding procedures and prequalification requirements.

The rehabilitation of EIB, including the award and distribution of the proceeds from the disposition of the commercial bank license, shall be subject to the final approval of the Monetary Board.

II. DETERMINATION OF QUALIFIED BIDDERS FOR TRANCHE 1

1. QUALIFICATION OF BIDDERS

All prospective bidders who intend to participate in the bidding shall comply with the requirements specified below and with banking regulations.

PDIC, in consultation with the Bangko Sentral ng Pilipinas (BSP), and other appropriate government agencies, shall determine if prospective bidders may be allowed to participate in the bidding by evaluating the capability of each prospective bidder using the following measures:

- (a) Capital Adequacy Ratio (CAR) of at least 12% before and after the EIB transaction, as computed by the BSP based on the latest financial condition of the prospective bidder as reported to the BSP and taking into account regulatory requirements, and the financial condition of EIB as of closure date based on the results of the independent financial audit;
- (b) Compliance with capital requirements for branching as required under BSP regulations;
- (c) Minimum CAMELS rating of "3", provided that Management rating shall at least be "3";
- (d) No findings of unsafe and unsound banking practice;

(e) Not under Prompt Corrective Action (PCA) status by the BSP.

Any capital shortfall shall be addressed through deposit in escrow of the amount of capital required to comply with the foregoing requirements proof of which must be submitted to PDIC no later than 5 calendar days after notification.

Only prospective bidders who shall have been determined by the PDIC in consultation with the BSP to have sufficiently addressed the requirements for rehabilitation shall be eligible to participate in the Bidding (the "Qualified Bidders").

2. ISSUANCE OF ELIGIBILITY NOTICE TO QUALIFIED BIDDERS

Notice to prospective bidders of their eligibility or ineligibility to participate in the Bidding shall be issued by the PDIC. Only Qualified Bidders shall be allowed to eventually participate in the Bidding.

III. PRE-BID PROCESS

1. ISSUANCE OF THE BIDDING PROCEDURE

The Bidding Procedure shall be contained in this document, together with the following annexes and documents:

- a. Bid Terms and Specifications
- b. Form of Letter of Interest
- c. Form of Acceptance of Bidding Procedure
- d. Bid Form
- e. Sworn Statement to Accompany the Bid Form
- f. Bid Security

2. PRE-BID DOCUMENTARY REQUIREMENTS

Each Qualified Bidder that desires to participate in the Bidding shall submit the following documents to the PT not later than **5:00 pm on 9 October 2012**:

- a. Letter of Interest, in the form attached hereto as **Schedule 1**
- b. Pre-Bid Documentary Requirements, as follows:
 - (i) Acknowledgment of receipt of the Bidding Procedure and acceptance of its terms and conditions, in the form attached hereto as **Schedule "2"** (Acceptance of the Bidding Procedure), the same to be made under oath;
 - (ii) a notarized certificate executed by the Qualified Bidder's corporate secretary naming the Authorized Representative of the Qualified Bidder ("Authorized Representative"), including the scope and limit of authority and specimen signature, stating that such Authorized Representative is authorized to: (a) receive all Bid Bulletins, Transaction Documents, communications, correspondences, notices and legal process for the Bidder; (b) represent the Bidder in the Bidding, including the submission and opening of Bids; (c) correct any deficiency in the Bid Form; and (d)

bid for and bind the Bidder in the event that another round of bidding is called to settle a tie;

(iii) acceptance letter of the Qualified Bidder's Authorized representative indicating such Authorized Representative's complete address, telephone number, facsimile number and e-mail address;

(iv) A letter of undertaking to put up the necessary capital to ensure that the 12% RBCAR requirement is complied with if its RBCAR after acquiring EIB falls below 12%.

c. Original copy of the Bid Security

Should a Qualified Bidder fail to submit a Letter of Interest or any of the Pre-Bid Documentary Requirements on or before **5:00 pm on 9 October 2012**, it shall not be allowed to participate in the Bidding.

3. BID SECURITY

Each Qualified Bidder shall submit, together with the Pre-Bid Documentary Requirements specified in Section III.2, a Bid Security in the form of a manager's check payable to Philippine Deposit Insurance Corporation in the amount of P20 Million (Twenty Million Pesos).

The Bid Security shall guarantee that the Qualified Bidder shall comply with its obligations under the Bidding Procedure and the final Transaction Documents during the Bid Validity Period, or any extension thereof. Should a Qualified Bidder violate the Bidding Procedure, the PDIC may forfeit the Bid Security submitted by such Qualified Bidder for the full amount of the Bid Security. Among the instances of a violation of the Bidding Procedure are the following:

- a. Withdrawal, whether conditional or otherwise, of the Bid;
- b. Refusal or failure of the Qualified Bidder, if declared the Winning Bidder, to accept the award;
- c. Refusal or failure of the Qualified Bidder, if declared the Winning Bidder, to comply with the terms and conditions of the award;
- d. Material misrepresentation on documents submitted or breach of warranty, as determined by the PT;
- e. A Bidder which by itself or by anyone on its behalf has offered or paid, directly or indirectly, any employee or director of PDIC or any of the professional advisors engaged by PDIC, in connection with the Bidding any consideration or commission for the Bidding or Transaction Documents; or a Bidder which by itself or by anyone on its behalf has exerted or utilized any corrupt or unlawful influence to secure or solicit the Bidding, the Transaction Documents or award of the Transaction for any consideration or commission;
- f. A Bidder which shall collude or commit acts of collusion or machination in order to manipulate the outcome of the Bidding.

In addition, PDIC may forfeit the Bid Security in the event that the Qualified Bidder his agents, representatives, or any third party acting for and anyone on his behalf, or upon instruction of the Qualified Bidder, commits any act or omission that would result in the delay, postponement or cancellation of the Bidding or which would prevent the completion of the Transaction as scheduled by the PDIC, such as seeking and obtaining a writ of injunction or prohibition or restraining order against PDIC to prevent or restrain the Bidding or any proceedings related thereto, the selection of the Highest Bidder and the execution or performance of the final Transaction Documents, or otherwise initiating any court or arbitration proceeding against PDIC, in connection with any dispute, controversy or claim arising out of or relating to this Bidding Procedure, or the breach, termination, or invalidity thereof.

PDIC reserves the right to recover from the Qualified Bidder additional sums should the amount of the Bid Security be insufficient to cover claims, damages and costs arising from any of the foregoing.

4. PRE-BID CONFERENCES

Pre-bid Conferences may be held prior to the Bidding, the time and venue of which shall be communicated to each Qualified Bidder.

Any statement made at a Pre-bid Conference shall not modify the terms of this Bidding Procedure, unless such statement is specifically issued as a Bid Bulletin.

Any comment, query or request of a Qualified Bidder that has been accepted or acted upon by the BC shall be contained either in the (a) Bid Bulletins or (b) Transaction Documents.

5. TRANSACTION DOCUMENTS

The Transaction Documents, such as the Sale and Purchase Agreement and/or the Deed of Absolute Sale, will be made available to Qualified Bidders. Qualified Bidders may provide comments on and suggest amendments to the Transaction Documents (the "Bidder's Comments") which must be submitted to the PT in duplicate showing marked-up portions (refer to Sec. XII.b, Bidding Schedule). No subsequent request or comment in this respect shall be accepted by the PT. The PT may, at its sole discretion, grant Qualified Bidders the opportunity to discuss the changes proposed by them, the dates for which will be communicated subsequently by the PT.

The PT may, in its sole discretion, accept or reject any of the Bidder's Comments. If the PT considers that a Bidder's Comment should be taken into account, appropriate revisions will be made on the Transaction Documents. Further, the PT may, even in the absence of any proposed amendment and by itself, make amendments to the Transaction Documents if it considers it appropriate to do so. The PT shall have no obligation to give the reason for the acceptance or rejection of Bidder's Comments or the PT's own amendments.

The PT will make available to all Qualified Bidders final versions of the Transaction Documents (refer to Sec. XII.b, Bidding Schedule).

Each Bidder shall submit the following documents on or before the submission date to be announced by the PT (refer to Sec. XII.b, Bidding Schedule):

- a) A sworn statement, in the form attached as **Schedule "4"**, duly executed by the Qualified Bidder thru its authorized representative;
- b) Execution copies bearing the initials of the duly authorized signatories of the Qualified Bidder in four (4) sets;
- c) Options Matrix for Depositors/Ordinary Creditors of EIB which provides the repayment options for their deposits/receivables, and corresponding recovery enhancements for depositors/ordinary creditors;
- d) Business Plan with corresponding 5-year financial projections indicating the strategy of the Qualified Bidder to sustain its viability and sustainability if it wins the bid for the rehabilitation of EIB.

PT shall evaluate all submissions for sufficiency and have the Qualified Bidder address any deficiencies on or before 17 October 2012.

IV. SUBMISSION OF BID

1. BID

The Bid (expressed in present value terms using a discount rate of 5%) shall be expressed in Philippine Pesos representing the amount the Qualified Bidder shall pay for the uninsured deposits and other ordinary credits of EIB and shall indicate the repayment terms.

2. RESERVE PRICE

The Reserve Price is the amount that PDIC has determined as the minimum amount of recovery that depositors and ordinary creditors should receive considering the net value of the free or unencumbered assets and the net benefits to the acquirer of the rehabilitation.

The PDIC Board of Directors shall determine the Reserve Price. It shall be indicated in a document which the PDIC President and at least two other members of the Board shall date, sign and place in a sealed envelope. The sealed envelope shall be opened only after all the Bids have been received by the BC and prior to the opening of the bids.

3. PREPARATION OF BIDS

- a) The Bid shall be indicated in the Bid Form attached as **Schedule "3"**. All the parameters required to be filled in for the bid shall be indicated. No alterations of the Bid Form shall be allowed.
- b) The Bid must be signed by the Authorized Representative under the name of the Qualified Bidder.
- c) The Bid amount shall be expressed in words and figures expressed in Philippine Pesos. In case of discrepancies between amount in words and figures, the amount in words shall be considered as the Bid.

4. CONTENTS OF BIDS

The Bid Form shall contain the Bid and all other details required as indicated therein, signed by the duly authorized signatory of the Qualified Bidder.

The Bid Form shall be put in a bid envelope which must be sealed and signed on the flap by the duly authorized signatory of the Qualified Bidder.

The bid envelope shall be submitted in accordance with Section V.6 hereof.

5. VALIDITY OF THE BID

The submitted Bid shall be a binding obligation on the part of the Bidder. Accordingly, if declared the Highest Bidder, such bidder shall be obligated to honor its bid to purchase the assets and assume the liabilities of EIB and correspondingly pay EIB's depositors and ordinary creditors. In the event of a failure of bidding, the Highest Bid shall automatically be considered as an offer for the rehabilitation of EIB under Section VI item 7 below.

The Bid shall have a validity period of sixty (60) days from the Bid Submission Deadline (as set forth in Section IV.6 hereof) ("Bid Validity Period").

Within the Bid Validity Period, all Transaction Documents should have been duly executed and the required consents to the transaction shall have been obtained.

6. SUBMISSION OF BIDS

The bid envelope containing the Bid Form will be received by the **BC** from **9:00 a.m. until 12 noon on 18 October 2012** ("Bid Submission Deadline"), at the SSS Penthouse, SSS Bldg., Ayala Ave., Makati City, or such other venue as shall hereafter be identified by the PT in a Bid Bulletin.

The bid envelope shall be sealed and clearly marked as follows:

**Bid for the Rehabilitation of
EXPORT AND INDUSTRY BANK**

Submitted by: [Name of Qualified Bidder]

Bids submitted after the Bid Submission Deadline shall be rejected and returned unopened.

The Bids submitted by the following Qualified Bidders shall not be received or shall be disqualified if:

- a) A Bidder which by itself or by anyone on its behalf has offered or paid, directly or indirectly, any member of the PT, any PDIC officer or employee, or any of the professional advisors engaged in connection with the bidding, any consideration or commission for the Bidding or Transaction Documents; or a Bidder which by itself or by anyone on its behalf has exerted or utilized any corrupt or unlawful influence to secure or solicit the Bidding, the Transaction Documents or award the Bid for any consideration or commission;
- b) A Bidder which shall collude or commit acts of collusion or machination in order to manipulate the outcome of the Bidding;
- c) A Bidder makes a misrepresentation in any document submitted to the PT or BC; or

d) Any circumstance analogous to any of the foregoing.

Should the PT discover before the approval of the MB of the transaction that the Highest Bidder committed any of the foregoing acts, PDIC shall disqualify said Highest Bidder and declare the next highest complying bid as the Highest Bid.

7. WITHDRAWALS OF BIDS

A Bidder shall not be allowed to withdraw its Bid after submission thereof.

V. OPENING OF BIDS

Immediately after the Bid Submission Deadline ("Bid Opening Date"), the PT shall open the envelope containing the Reserve Price. Thereafter, each bid envelope submitted will be opened and contents will be evaluated for completeness and compliance with this Bidding Procedure.

Authorized Representatives of the Qualified Bidders should be present at the time, date, and place when the Bids will be opened. Failure of an authorized representative to be present during the opening and/or evaluation of the Bids shall be considered a waiver of the right to witness the opening and/or evaluation of the Bids.

The BC shall invite a representative from PDIC's Internal Audit Group, the Bangko Sentral ng Pilipinas and the Commission on Audit, as observers, to witness the opening of the Bids and sign as witness on the Certificate of Highest Bid or Certificate of Failed Bidding, to be issued by the BC.

The bidding shall be open to the public but PDIC reserves the right to limit attendance due to space limitations and safety considerations. Likewise, PDIC may expel from the venue any person who disrupts the proceedings.

PDIC reserves the right to change the date, time and venue for the submission and opening of the Bids.

VI. EVALUATION OF BIDS

1. The PT shall evaluate the Bid submitted for completeness as to form and compliance with the Terms and Conditions of Bid. The PT shall also validate the present value (PV) computations submitted by the Bidder. In case of discrepancies between the PV computed by the PT and the PV indicated in the Bid Form submitted by the Bidder, the PT's computation shall prevail.
2. After validation of each Bid Form, the PT shall endorse the Bid Form to the BC. The BC shall determine whether the Bid is a complying Bid. A complying bid is a bid that complies with the Terms and Conditions of Bid and is equal to or greater than the Reserve Price.
3. Except for failure to indicate the bid price or when the Bid Price is lower than the Reserve Price, the Qualified Bidders shall be allowed to correct any deficiency in the Bid Form within an hour after being informed by the BC of such deficiency. Failure to correct the Bid Form shall automatically make the bid as non-compliant.
4. Failure to indicate the bid price or when the Bid Price is lower than the Reserve Price, shall make the Bid non-compliant.

5. The BC shall determine the Highest Bid among the complying bids.
6. In case of a tie among Bidders who submit the Highest Bid, the Bidders shall submit new Bids in sealed envelopes within one (1) hour. In no case shall the new Bids submitted under this item be lower than the original Bids previously submitted.
7. The BC shall declare a failure of bidding in case all Bids failed to meet the Reserve Price. The BC will then consider the Highest Bid as an offer to negotiate with the Negotiating Committee to be constituted by PDIC for the purpose.
8. The BC shall announce the results of the bidding and transmit the same to the PDIC Board.

The BC reserves the right to reject any and all Bids or declare a failure of bidding, for any valid or justifiable reason, or if there is *prima facie* evidence of collusion among any of the parties involved with the Bidding and any of the Bidders, or between or among the Bidders themselves, or between a Bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition.

VII. DETERMINATION OF THE HIGHEST BID

The Highest Bid shall be that which is equal to or exceeds the Reserve Price (as defined in Sec. IV.2) and which will provide the highest recovery to EIB's depositors and creditors. For purposes of determining the highest bid, the present value of the bid will be computed using a discount rate of 5%.

To illustrate, for a bid amount of P2.5 million payable annually in 5 years, and P3 million payable annually in 15 years, their present values at 5% discount factor shall be as follows:

Bid amount	Repayment Period	Present Value	
P2.5 million	5 years	P2.16 million	Highest Bid
P3 million	15 years	P2.07 million	

The BC shall issue the Certificate of Highest Bid to the Highest Bidder.

VIII. NOTICE OF AWARD OF REHABILITATION TO THE HIGHEST BIDDER

The PDIC shall issue the Notice of Award of Bid to the Highest Bidder after relevant regulatory approvals have been obtained.

In the event that the Highest Bidder fails or refuses to comply with the terms of the Transaction Documents, or in the event that any of the material representations made by the same Highest Bidder to the PDIC in the course of the evaluation of its eligibility to participate in the Bidding is found to be untrue or otherwise ceases to be true and correct, then PDIC may, at its option, cancel and withdraw the Notice of Award issued to the same Highest Bidder and declare the Qualified Bidder who submitted the second highest Bid as the new Highest Bidder, and accordingly issue a Notice of Award in favor of such new Highest Bidder.

IX. TRANSACTION DOCUMENTS

Transfer of assets and liabilities shall be effective after all the Transaction Documents have been duly and validly executed.

X. TAXES, FEES AND EXPENSES

All risks, taxes, costs, fees and expenses incurred, directly or indirectly, by a Bidder in the preparation of its Bid, including expenses it incurred from its due diligence efforts as well as the cost incurred in putting in place the escrow requirement under Sec. II.1 par. 3, including fees and disbursements to its advisors, if any, shall be borne and paid by such Bidder whether its Bid is accepted or rejected for any reason. PDIC, the BC and the PT may not be held liable for such risks, taxes, costs, fees, expenses, and liabilities. PDIC, the BC and the PT may not also be held liable in the event that a court of competent jurisdiction or other governmental authority declares the Bidding, selection and/or award invalid or sets it aside, for any reason whatsoever at any future date.

All applicable taxes to be paid for the transaction shall be for the account of the winning bidder.

XI. FAILURE OF BIDDING

There shall be a Failure of Bidding upon the occurrence of any of the following:

1. Less than two (2) prospective bidders shall have been pre-qualified;
2. No Letter of Interest or Pre-Bid Documentary Requirements is received;
3. All Bidders withdraw from the Bidding prior to the Bid Submission Deadline;
4. All bids received are non-compliant in accordance with Section VI.4.

Upon determination by the BC that there is, or there inevitably will be, a Failure of Bidding, the BC shall forthwith issue a Certificate of Failed Bidding. The BC shall then submit a report to the PDIC Board which may include a recommendation to initiate or conduct negotiation with the Bidder that submitted the highest bid during the failed bidding.

XII. GENERAL/MISCELLANEOUS PROVISIONS

a. ADDENDA AND CLARIFICATIONS TO THE BIDDING PROCEDURE

The PT reserves the right to amend, revise, modify or clarify the Bidding Procedure, at its sole discretion and without providing any reason whatsoever. Any amendment, revision, modification or clarification deemed appropriate by the PT, and disclosures shall be announced through Bid Bulletins, copies of which shall be made available to all Bidders. Upon the issuance thereof, the Bid Bulletins shall be deemed incorporated into (or, as appropriate, shall modify, amend or supersede the relevant provisions) and made integral parts of the Bidding Procedure. It shall be the responsibility of each Bidder to inquire and secure all Bid Bulletins issued by the PT.

Should a Bidder require any clarification relative to the Bidding Procedure or any aspect of the Bidding, it may seek clarification thereon from the PT by way of a formal written request either through fax, e-mail, or personal delivery; provided, that such request shall be entertained by the PT only until **5 p.m. on 10 October 2012**.

Any clarification in response to a Bidder's request shall be announced in a Bid Bulletin. In addition, the PT may issue Bid Bulletin/s regarding any other clarification the PT desires to make at any time.

It is conclusively presumed that the information and procedure set forth in the Bidding Procedure and each Bid Bulletin have been taken into full account by each Qualified Bidder in preparing its Bid.

b. BIDDING SCHEDULE

The schedule and process for the Pre-Qualification and Bidding are as follows:

ACTIVITY	DATE AND TIME
1. Discussion sessions with Pre-Qualified Bidders	12-15 Sept. 2012
2. Issuance of Notice to Prospective Bidders of the results of prequalification.	19 Sept. 2012
3. Issuance of Bidding Procedure	3 October 2012
4. Submission by Qualified Bidders of Letter of Interest to proceed, together with Pre-Bid Documentary Requirements and Bid Security	9 October 2012
5. Submission to PT of the escrow deposits, as applicable	
6. Distribution of Transaction Documents for comments of Qualified Bidders	To be announced (TBA)
7. Submission to PT of Bidder's Comments on the Transaction Documents	TBA
8. Pre-Bid Conferences	3 – 8 Oct. 2012
9. Distribution of final Transaction Documents	TBA
10. Submission by the Bidder of Transaction Documents	16 October 2012
11. Bid submission	18 October 2012, from 8:30a.m. to 12 noon
12. Opening of the Bid Envelopes	1:00 p.m. 18 October 2012
13. Submission to the PDIC Board of the results of the bidding	19 October 2012
14. Submission to the BSP-MB of update on bidding results	22 October 2012
15. Deadline for fulfillment of conditions precedent (e.g. stockholders consent, depositor/creditors consent)	9 November 2012
16. Submission of recommendation to the PDIC Board of the final determination if Bank can be rehabilitated	TBA
17. Submission to the MB of the final determination	TBA

Bidders will be notified promptly of any revision, alteration or modification in the Bidding Schedule.

c. BIDDING INFORMATION

No Bidder shall be entitled to receive or rely on, any information regarding the Bidding or the other Bidders, other than what is contained in the Bidding Procedure, or disclosed in Bid Bulletins and the official announcement of the Bidding results.

d. RESPONSIBILITIES OF BIDDERS

Each Bidder shall be responsible for the following:

1. carefully examining and studying the Bidding Procedure, and all the terms and conditions thereof; it is understood and agreed that the Bidding and the final Transaction Documents may not be invalidated on account solely of any error or misstatement therein, and that no such error or misstatement shall entitle any Bidder to any damages whatsoever or to any reduction in the winning Bid, nor release the winning Bidder from any or all of its obligations under the Bid Documents.
2. fully informing itself and understanding all conditions and matters affecting, or which could affect its Bid, participation or undertaking in the Bidding or the implementation of the acquisition and other contemplated transactions;
3. conducting an independent due diligence examination of EIB and its valuation, and all matters related to the Bidding, and other contemplated transactions;
4. securing, carefully examining and accepting the terms and conditions of all Bid Bulletins; and
5. assessing the risks on the rehabilitation of the bank including contingent liabilities and consents obtained from depositors, other creditors and stockholders.

By submitting a Bid, the Bidder acknowledges that it has reviewed, is fully acquainted with, and unconditionally accepts the terms of this Bidding Procedure, each Bid Bulletin and the Transaction Documents. Moreover, each Bidder is deemed to know, and by submitting a Bid represents and warrants that the same Bid duly complies with, all existing laws, decrees, ordinances, rules and regulations of the Republic of the Philippines and all relevant instrumentalities thereof that may in any way affect the acquisition of the EIB and ownership thereof (including, but not limited to, the laws and regulations providing for restrictions on ownership of shares in banks) and the Bidding.

Failure on the part of the Bidder to observe any of the above responsibilities shall be at the risk of the Bidder. No Bidder shall be granted relief on the plea of negligence, error or mistake in the Bid submitted.

e. OTHER CONDITIONS

1. The Bidding, Bidding Procedure and the Transaction Documents shall be governed by and construed in accordance with Philippine Laws.
2. The information contained in the Bidding Procedure does not constitute a binding obligation of PDIC or the BC to select a Highest Bidder if such bid is not a complying bid.

3. Requesting and/or receiving Bids or any other information or document will not constitute an invitation or commitment by the PDIC or the BC to enter into any agreement, undertaking or covenant with a Bidder.
4. The PDIC, the BC, and the PT does not assume any responsibility for interpretations or conclusions drawn by a Bidder from data furnished by the **EXPORT AND INDUSTRY BANK**, the BC, the PT or any of their advisors, or for the accuracy or completeness of data furnished by the EIB, the BC, or any of their advisors.
5. The PDIC, the BC, and the PT assume no liability for any claim, damage or liability which may arise as a result of, or in connection to, the bidder's preparation of its bid or its conduct of due diligence, nor for any claim, damage or liability which may arise in connection with ensuing transactions as a result of the bid.
6. The BC, at its own discretion, reserves the right to: (i) accept or reject any or all Bids or any part thereof; (ii) terminate the Bidding at any time; (iii) vary any of the terms of the Bidding or amend or modify the Bidding Procedure at any time without giving any reason therefor; (iv) waive any defect in any Bid; (v) accept the Bid which it deems most advantageous to the **EXPORT AND INDUSTRY BANK** depositors and creditors; and (vi) exercise any other remedy granted by Philippine law or the Bidding Procedure. The PDIC, the BC and the PT shall have no liability or obligation to compensate or indemnify any party for any expense or loss that may be incurred by the same party as a consequence of any decision, determination or action made or taken by the BC or the PT in accordance with the terms of this Bidding Procedure or the participation of the same party in the Bidding.
7. The BC's and/or the PT's failure to exercise, or delay in exercising, any of its rights under the Bidding Procedure shall not operate as a waiver thereof, nor shall the BC's and/or the PT's single or partial exercise of any right preclude any other or further exercise thereof, or the exercise of any other right. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by Philippine law to PDIC, the BC and/or the PT.
8. Violation by the Highest Bidder of any of the terms and conditions of the Bidding shall be a ground for cancellation of the award without prejudice to any other rights or remedies provided by Philippine law to the PDIC, the BC and/or the PT.
9. The Highest Bidder shall faithfully comply with all of its obligations under the Bid Documents.
10. All documents which are required to be submitted under oath, sworn to or acknowledged must be sworn to or acknowledged before a Philippine Notary Public or Philippine Consular Official authorized to administer oaths. In case certified true copies of documents are required to be submitted under the Bidding Procedure, the same should be certified by the entity issuing such documents.
11. References in this Bidding Procedure to "Bidder/s" shall be deemed to be references to Qualified Bidder/s, as the context may require.

12. The exclusive venue of any and all actions arising out of, or in connection with, this Bidding Procedure shall be the proper courts of the City of Makati, Philippines.

CONFIDENTIAL

FORM OF LETTER OF INTEREST

[Date]

**THE PROJECT TEAM
FOR THE REHABILITATION OF EXPORT AND INDUSTRY**

Gentlemen:

We refer to the Bidding Procedure for the rehabilitation of **EXPORT AND INDUSTRY BANK** dated _____ (the "Bidding Procedure").¹

The undersigned hereby confirms its interest to participate as Bidder in the Bidding, and accordingly submits herewith the following Pre-Bid Documentary Requirements:

1. Acknowledgment of receipt of the Bidding Procedure, in the form attached as Schedule "2" to the Bidding Procedure;
2. A notarized certificate executed by the Qualified Bidder's corporate secretary naming the Authorized Representative of the Qualified Bidder ("Authorized Representative"), including the scope and limit of authority and specimen signature, stating that such Authorized Representative is authorized to: (a) receive all Bid Bulletins, Transaction Documents, communications, correspondences, notices and legal process for the Bidder; (b) represent the Bidder in the Bidding, including the submission and opening of Bids; (c) correct any deficiency in the Bid Form; and (d) bid for and bind the Bidder in the event that another bidding is called to settle a tie;
3. Acceptance letter of the Qualified Bidder's Authorized representative indicating such Authorized Representative's complete address, telephone number, facsimile number and e-mail address;
4. A letter of undertaking to put up the necessary capital to ensure that the 12% RBCAR requirement is complied with if its RBCAR after acquiring EIB falls below 12%;
5. The Manager's Check in the amount of P20 Million representing the Bid Security.

Very truly yours,

NAME OF BIDDER: _____
SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____
PRINTED NAME OF AUTHORIZED REPRESENTATIVE: _____
DESIGNATION: _____

¹ Capitalized terms used but not defined herein shall bear the meanings respectively ascribed to them in the Bidding Procedure.

FORM OF ACCEPTANCE OF BIDDING PROCEDURE
[To be submitted on the stationery/letterhead of the Bidder]

[Date]

THE PROJECT TEAM
FOR THE REHABILITATION OF EXPORT AND INDUSTRY
Philippine Deposit Insurance Corporation

Gentlemen:

We refer to the Bidding Procedure for the rehabilitation of **EXPORT AND INDUSTRY BANK** dated _____ (the "Bidding Procedure").¹

The undersigned Bidder hereby declares, represents and warrants that:

1. It has received the Bidding Procedure and has read and understood each and every section and page, its provisions, terms and conditions, and any amendment, supplement or modification thereto; and accepts and agrees to be bound and fully abide by and comply with the terms and conditions of the Bidding Procedure and any amendment, supplement or modification thereto, as well as any and all decisions of or directives from the PT or BC pursuant to or as contemplated in the Bidding Procedure.
2. It waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the PT, BC, and/or the PDIC to prevent or restrain the Bidding or any proceedings related thereto, the holding of a bidding or any proceeding related thereto, the selection of the Winning Bidder, and the execution or performance of the final Transaction Documents. Such waiver shall, however, be without prejudice to the right of the undersigned Bidder to question the lawfulness of any disqualification or the rejection of its Bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.
3. It shall at all times comply with Philippine law.
4. It unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Bidding conducted by the BC and the PT up to and including the date hereof.

[BIDDER'S NAME]

By:

Witnessed by:

[Name] [Name]

[Designation/Title]

Date:

[Notarial Jurat]

¹ Capitalized terms used but not defined herein shall bear the meanings respectively ascribed to them in the Bidding Procedure.

BID FORM

[To be submitted on the stationery/letterhead of the Bidder/(s)]

<Date>

**THE BIDDING COMMITTEE
FOR THE REHABILITATION OF THE CLOSED EXPORT AND INDUSTRY BANK**
Metro Manila, Philippines

Dear Sirs:

The undersigned Bidder hereby submits this Bid for the rehabilitation of **EXPORT AND INDUSTRY BANK (EIB)** subject to the terms and conditions of the Bidding Procedure for the Rehabilitation of the closed Export and Industry Bank.

The Bidder hereby offers the following Bid Price in Philippine Pesos representing the amount that _____ (Bidder) shall pay for the uninsured deposits and ordinary credits of **EIB**:

Bid Price (in words)	
Bid Price (in figures)	
Payment terms	
<input type="radio"/> Outright cash payment	
<input type="radio"/> Installment	Frequency of payment: Number of years: Interest rate:
Present Value (using discount factor of 5%)	

This Bid has a Bid Validity Period of sixty (60) days from the Bid Submission Deadline.

In the event of a failure of bidding, this Bid (if deemed as the Highest Bid) shall automatically be considered an offer to negotiate with the Negotiating Committee for the rehabilitation of EIB.

[BIDDER'S NAME]

Signature of Authorized Representative
Printed Name of Authorized Representative
Title/Designation

SWORN STATEMENT

[Name of Bidder/lead consortium member] (the "Bidder"), with principal office at [•], represented herein by [Name of authorized representative], its [Position/designation of authorized representative], hereby attest:

1. This Sworn Statement is executed pursuant to the Terms and Conditions of Bid and Bidding Procedure for the rehabilitation of **EXPORT AND INDUSTRY BANK** (Bidding Procedure) and relates to the Bid to be submitted by the Bidder thereunder. Capitalized terms used and not defined herein shall bear the meanings respectively ascribed to them in the Bidding Procedure.
2. The Bid represents the Bidder's voluntary offer for the rehabilitation of **EXPORT AND INDUSTRY BANK** on the basis of the terms set forth in the Transaction Documents.
3. The Bid constitutes an unconditional and irrevocable offer, which shall be valid, and may be accepted by the Bidding Committee (BC) within sixty (60) days from the Bid Submission Deadline irrespective of any event that may occur within such period.
4. The Bid is being made on an "as is, where is" basis.
5. The Bidder has read and understood each and every section and page of the Bidding Procedure and each Bid Bulletin, if any, the respective provisions, terms and conditions thereof, and any amendment, supplement or modification thereto as well as the decisions of the BC pursuant thereto; attests to its responsibilities as set forth in Section XII.d (Responsibilities of Bidders) of the Bidding Procedure, and any amendment, supplement or modification thereto; and accepts and agrees to be bound and fully abide by and comply with the terms and conditions of the Bidding Procedure and any Bid Bulletin or amendment, supplement or modification thereto as well as the decisions of the BC and the Project Team (PT).
6. The Bidder and its representatives have been given the opportunity to conduct an independent due diligence investigation, analysis and verification of the **EXPORT AND INDUSTRY BANK** and the Bidder confirms that it and its representatives have been provided adequate access to the Data Room, personnel, premises and records of **EXPORT AND INDUSTRY BANK**. It is Bidder's responsibility to conduct an independent due diligence investigation and its failure to do so shall be at its sole risk.
7. The Bidder waives any and all claims and causes of action against the BC, the PT, the PDIC, or any of their advisors in the event that the Bidding is declared invalid or set aside by a court of competent jurisdiction or any governmental authority for any reason whatsoever.
8. The Bidder waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the BC, the PT, and/or the PDIC to prevent or restrain the Bidding or any proceedings related thereto, the holding of a bidding or any proceeding related thereto, the selection of the Winning Bidder, and the execution or performance of the Final Transaction Documents.

9. The Bidder unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Bidding conducted by the BC and the PT up to and including the Bid Submission Deadline.
10. Each of the documents submitted by the Bidder in satisfaction of the Bidding Procedure is an original copy or a true and faithful reproduction or copy of the original thereof.

IN WITNESS WHEREOF, the Bidder has caused this Sworn Statement to be duly executed by its authorized representative this ___ day of <date>.

[NAME OF BIDDER]

By:

Name:

Designation:

[Notarial Jurat]

CONFIDENTIAL