



# **VOLTA ALUMINIUM COMPANY LIMITED (VALCO)**

**SEARCH FOR A STRATEGIC PARTNER FOR THE  
VALCO MODERNISATION PROJECT**



**REQUEST FOR PROPOSAL ("RFP")**

**31 JULY 2023**

## Important Notice – Disclaimer

This Request for Proposal (“RfP”) is issued by Volta Aluminium Company Limited (“VALCO”) solely for use by potential Bidders to assist them in preparing and submitting Proposals in response to this RfP in relation to the investment in VALCO to enable the modernisation of VALCO’s Smelter (the “transaction”). This RfP has been prepared with the assistance of PricewaterhouseCoopers (Ghana) LTD (“PwC”) acting as Transaction Advisor. Capitalised terms that are used but not defined in this Important Notice are defined in Section 1 (Definitions and Interpretations).

Neither VALCO, PwC nor any of their respective agents, representatives, advisors, or consultants:

- a) make, will make, or will be deemed to have made, any representation or warranty, express or implied, as to the accuracy, reliability, or completeness of the information contained herein, in the physical data room or the electronic data room, or any information otherwise provided or made available to prospective bidders, whether orally or in writing, in connection with the Tender or this RfP;
- b) shall have any liability for this RfP, for the transaction or for any other written or oral communication transmitted or provided to a prospective bidder in connection with the Tender or a prospective bidder’s evaluation of the transaction; or
- c) will be liable to reimburse or compensate a prospective bidder for any costs or expenses incurred by a prospective bidder in evaluating or acting upon this RfP or otherwise in connection with the Tender, the transaction or otherwise.


This RfP constitutes an invitation to submit a Proposal. Neither the receipt of this RfP, nor any information contained herein or supplied herewith or subsequently communicated to any Person, whether orally or in writing, in connection with the proposed transaction involving VALCO, its consultants, or their subcontractors, is to be taken as constituting the giving of investment, legal, technical, or other advice. None of the information set forth herein constitutes an offer or invitation to sell, or any form of commitment or recommendation or the solicitation to invest, or otherwise participate in the transaction, or any offer to sell any of the assets or securities of VALCO.

Neither this RfP nor any other written or oral information made available to any Bidder or any other Person or their respective representatives, agents, or advisors, or consultants will form the basis of any offer or contract. A Proposal regarding the transaction or any part thereof will give rise to contractual obligations only if and when the final transaction documentation has been executed in writing by VALCO and the Preferred Bidder.

All Bidders or interested Persons are advised to seek their own independent financial, legal, tax, technical, and other advice. Recipients of these materials should inform themselves about and observe any applicable legal requirements in their jurisdictions.

VALCO undertakes no obligation to correct, amend, or update any materials provided in connection with the Tender or the transaction.

VALCO reserves the right, in its sole discretion, to modify any of the rules or procedures relating to this RfP and any subsequent tender, including the right to refuse to accept offers or, without prior notice or assigning any reason therefore, to terminate the Tender. Neither VALCO nor any agents, representatives, advisors, or consultants, will be liable or responsible to any person or party for any cost or expense incurred in relation to this RfP or in any investigation, negotiation, or transaction, whether or not consummated, which may follow.



VALCO hereby advises Bidders that VALCO has engaged PwC to act as Transaction Advisor in connection with the implementation of the transaction. Safeguarding the actual and perceived impartiality, fairness, transparency, and competitiveness of the transaction are of the highest priority to VALCO and PwC.

In the interest of promoting the impartiality, fairness, transparency, and competitiveness of the transaction, VALCO may, at its election, make this RfP available to the public.

In submitting a Proposal in relation to this RfP, each Bidder certifies that it understands, accepts, and agrees to the disclaimers contained herein. Nothing contained in any other provision of this RfP, nor any statements made orally or in writing by any person or party shall have the effect of negating or superseding any of the disclaimers set forth in this notice

## Important Notice – Data room access

Bidders are to note that access to the data room will only be granted upon;

- a) the successful execution of the Confidentiality/ Non-Disclosure Agreement, enclosed in the RfP as Annex 12,
- b) the successful submission of an up-to-date certificate of incorporation, certificate of formation, or other applicable certificate or extract from the competent registry of companies for the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium); and
- c) the payment by the Bidder to VALCO of a non-refundable participation fee of US\$10,000 (Ten Thousand United States Dollars Or Ghana Cedi equivalent at prevailing interbank rates). VALCO's bank account details has been provided in Annex 23.

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# **1 Definitions & Interpretation**

## **1.1 Definitions**

In this RfP, unless the context otherwise requires, capitalised terms shall have the meanings given to them in Annex 1. Capitalised terms that are used but not defined in this RfP have the meanings given to them in the Transaction Agreements.

## **1.2 Rules of Interpretations**

The rules of interpretation set out in Annex 1 shall apply to this RfP.



## 2 Introduction

### 2.1 Background to the Transaction

Volta Aluminium Company Limited (“VALCO” or the “Company”) is an aluminium smelting company incorporated and existing under the Laws of Ghana since 1967. VALCO was established as a result of the vision of the first President of the Republic of Ghana, Dr Kwame Nkrumah, to establish an Integrated Aluminium Industry (“IAI”) in the country. The Company is a product of the thoughts and vision of Dr Nkrumah and the late Edgar Kaiser, Chairman and Founder of Kaiser Aluminium & Chemical Corporation (KACC), the immediate past majority shareholder of VALCO. VALCO is a private company limited by shares having 100% of its shares held by the Ghana Integrated Aluminium Development Corporation (“GIADEC”) on behalf of the Government of Ghana (“GoG”).

VALCO’s smelter has a nameplate capacity of 200,000 tons per annum (200ktpa), however, in recent years, it has been operating between c.20% and c.40% of its rated capacity, with performance of c.20% of rated capacity in the last two years. It produces primary aluminium with product types ranging from Sows, Pigs and Rolling Ingots to Extrusion Billet. Since its establishment, VALCO has run on P69 Technology which is currently considered obsolete by international standards. Coupled with other factors such as the obsolete state of the Company’s equipment, limited investments and inadequate working capital, VALCO has operated significantly below its full potential and capacity in the last couple of decades. As at December 2022, VALCO had 737 staff which comprised 604 permanent staff and 133 temporary staff.

GoG has the agenda of leveraging the country’s large bauxite deposits and hydro power resources to develop an IAI in Ghana as one of the major pillars for industrialisation and economic transformation. Considering the strategic role that VALCO is expected to play in Ghana’s IAI project currently under execution, the aim is for the VALCO smelter to be modernised – covering mainly the upgrade of technology and equipment – to produce primary aluminium which should be processed further into semi-finished to high-end, value-added aluminium downstream products before being exported, while providing feedstock to other local aluminium downstream companies. The overall objective for the proposed modernisation is to increase the smelter capacity and improve efficiencies to global standards

VALCO is seeking to replace the existing P69 smelter technology, which is considered obsolete, with Emirates Global Aluminium (“EGA”) proprietary D18+ Cell Technology as baseline or a more advanced technology. The EGA proprietary D18+ Cell Technology and similar technologies (with the same or better attributes), when procured and fully implemented, is expected to enhance yield by increasing the Smelter capacity from the original 200,000 tonnes per annum (“200ktpa”) to 300ktpa at an estimated investment of c.US\$600 million, to be split into two phases. It is expected that the major retrofit will involve an estimated investment outlay of c.US\$350 million and c.US\$250 million for Phases I and II respectively<sup>1</sup>. VALCO seeks to identify and engage a Strategic Partner with the capacity to deploy the D18+ Smelter Technology (as baseline technology) or better, backed by the needed investments and strategic global linkages in consideration for an equity stake in a restructured<sup>2</sup> VALCO.

Bids are invited for the award of an equity partnership by entering into a Share Subscription Agreement and Shareholders’ Agreement<sup>3</sup> to be executed between the Preferred Bidder and VALCO. Upon completion of the transaction, the Preferred Bidder will become the Majority Shareholder of VALCO.

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<sup>1</sup> The Information Memorandum which provides details of the Transaction and the proposed phases of the modernisation project is available in the virtual data room.

<sup>2</sup> We envision that the proposed involvement of a Strategic Partner will eventually result in a change in the shareholding structure of the current VALCO

<sup>3</sup> The Share Subscription Agreement and the Shareholders’ Agreement set forth the detailed terms and conditions for the award of the Strategic Partnership to the Preferred Bidder.

## 2.2 Funding of the Proposed Modernisation

VALCO's initial estimate of the cost of the proposed modernisation is US\$600 million, based on the assumption that the D18+ technology would be deployed. Bidders are at liberty to propose alternative cell technology that are comparable or superior to D18+ and the related cost of such technology may be materially different from VALCO's preliminary cost assessment. **VALCO invites Bidders to offer their own suggestions as to how the overall objectives of the project may be achieved.**

VALCO's initial assessment is that the proposed modernisation would be funded with both equity and debt. The capital injection from the Preferred Bidder in exchange for majority shareholding in VALCO will start off Phase 1 of the modernisation which is estimated to cost c.US\$350 million. VALCO expects to raise debt to top up the capex requirement for Phase 1. Phase 1 comprises the upgrade and interconnection of three potlines of 300 cells. It will also include the upgrade of VALCO's Carbon Plant and the Casthouse.

Phase 2 is estimated to cost US\$250 million and VALCO is considering financing it wholly with debt on the strength of VALCO's projected balance sheet, after the implementation of Phase 1 of the modernisation project. Phase 2 comprises the upgrade and interconnection of two potlines of 200 cells. As previously stated, Bidders are invited to articulate their own suggestions on how to fund the proposed modernisation project.

## 2.3 Post Transaction Capital Structure of VALCO

VALCO is currently wholly owned by GIADEC on behalf of Government of Ghana. At the close of the transaction, GIADEC anticipates a 60:40 partnership with the Preferred Bidder taking up a majority stake in VALCO. GIADEC is open to alternative proposals from Bidders, subject to the satisfaction of GIADEC's 30% legal minimum shareholding as prescribed by the GIADEC Act. The consideration for the majority equity stake in VALCO constitutes part of the funding required to commence the modernisation project.

## 2.4 Power Supply to the Restructured VALCO

VALCO currently operates two potlines with approximately 90 active pot cells. The operating potlines consume, on average, 100MW of firm power generated and provided by the Volta River Authority ("VRA") from hydro sources in Ghana. Post modernisation, VALCO will run five potlines with a total of 500 pot cells. The estimated power requirement for the five potlines is 500MW. VRA has committed to providing VALCO with at least 220MW of hydro-generated power in the long term. The commitment is based on a government policy directive. The difference of 280MW of power will be supplied by VRA from other generation sources at globally competitive rates.

## 2.5 Timetable for the Bidding Process

The estimated timetable for the Bidding Process (the "**Estimated Timetable**") is attached hereto as Annex 4.

VALCO may, in its sole discretion and without prior notice to the Bidders, amend the Estimated Timetable. VALCO shall use reasonable efforts to give all Bidders notice of any changes to the Estimated Timetable, however VALCO shall not be liable to any Person whatsoever arising out of failure to give such notice or otherwise arising out of changes to the Estimated Timetable.

## **2.6 Bidders' Conference and Site Visits**

VALCO intends to hold a conference for all Bidders on the date stated in Annex 4. In the week of the Bidders' conference, Bidders will also have the opportunity to visit the VALCO smelter. Bidders are advised to take advantage of optional organised site visits to be arranged by VALCO, in relation to which more information will be provided in due course. These visits will allow Bidders to visit the operational site of VALCO's smelter at Tema, in the Greater Accra Region of Ghana, to assist them in preparing their Proposals. The costs of the visits shall be at the Bidders' own expense. Site visits will only be allowed in the presence of a representative/appointee from VALCO.

Following interaction during the site visits and discussions at the Bidders conference, VALCO may, in its discretion, issue addenda to this RfP from time to time. In order to facilitate the efficient review by Bidders of any changes to this RfP, VALCO anticipates that such addenda may take the form of a revised version of this RfP and may attach revised versions of the Transaction Agreements. In the event that any changes to the RfP would affect the estimated timelines, the existing timelines shall be revised and communicated to Bidders.

## **2.7 Communications**

Except as otherwise provided in this RfP, VALCO shall communicate with Bidders using the e-mail address provided in the Bidder's Proposal Letter. Except as otherwise provided in this RfP, Bidders shall communicate with VALCO using the e-mail address(es) provided in Annex 2.

## **2.8 Data Rooms**

VALCO has established a physical data room and an electronic data room to assist Bidders in their review of the proposed Transaction. The electronic data room may be accessed via the internet using personalised usernames and passwords which PwC, acting on behalf of VALCO, will make available to Bidders at their request. The physical data room may be accessed upon request to VALCO during normal business hours. The physical data room is located in VALCO's operational and administrative building in Tema.

Before access is given to the electronic data room or the physical data room, each Bidder (and in the event that the Bidder is a consortium, each member of the Bidder) shall enter into a Confidentiality Agreement in the form attached as Annex 12. Additionally, Bidders shall be required to provide details of their formation or incorporation as well as to pay a non-refundable participation fee of US\$10,000 (Ten Thousand United States Dollars Or Ghana Cedi equivalent at prevailing interbank rates).

Representatives of a Bidder shall follow such reasonable procedures as VALCO may require at all times while accessing the data room. A Bidder shall not remove, copy, alter, or destroy any data contained in the physical and electronic data rooms.

Bidders will be able to access the data rooms throughout the proposal preparation period. Where a Bidder requires information/ documentation that may not be available in the data room, the Bidder may place a formal request with the VALCO contact provided in Annex 2 who will follow up with relevant outfit within VALCO and revert back to the Bidder with the requested information and circulate it to all Bidders. Access to the data rooms will be blocked at 5:00PM GMT on the last day for submitting proposals.

## **2.9 Costs**

Each Bidder shall bear its own costs and expenses associated with the preparation and submission of responses to the Tender, including, without limitation, all costs and expenses related to preparation of the Proposals and the Bidder's preparation of responses to questions and/or requests for clarification related thereto.

## **2.10 Applicable Laws**

This RfP shall be governed by the laws of Ghana. Foreign Bidders should note this and act accordingly.

## 3 Participation Criteria

### 3.1 Bid Participation Criteria

Each Bidder (or if applicable, member of a Consortium) must meet all of the following criteria at the time of submission of their Bid and at all subsequent times during the Bid process, other than the criteria in paragraphs (d), (e), and (f), which shall be met as set forth in such paragraphs:

- a. A Bidder may be a corporation, joint stock corporation, limited liability company (or similar form of company that confers limited liability on the members thereof), or partnership (including a limited partnership, limited liability partnership, or similar form of partnership that confers limited liability on the members in the partnership)
- b. A Bidder may take the form of a Consortium. Members of a Consortium shall be jointly and severally responsible for complying with the terms and conditions of the Bid and the RfP and members of Consortium shall appoint and authorise a Lead Member to represent and irrevocably commit all the Consortium members for all purposes during the conduct of the Bid (other than executing the Transaction Agreements).
- c. If a Bidder is a Consortium, then the Consortium shall necessarily include a Strategic (operator in the global aluminium industry) who shall hold at least [25%] of the shares in the Consortium
- d. The Transaction Agreements will provide that the individual members of the Consortium shall not sell or otherwise transfer their direct or indirect [equity] interests in the modernised VALCO for a specified period post the admission as the Preferred Strategic partner.
- e. The Transaction Agreements will provide that the Preferred Bidder shall make minimum equity injection into VALCO for the subscription of shares at a point of time as set forth in the RfP. This initial equity injection which will subsequently be treated as part of the investments needs for the modernisation project shall be the amounts included in the Preferred Bidder's Proposal. Bidders will be required to confirm in their Proposal that they will be in a position to timely fund such investments by providing proof of committed available funds as a Condition Precedent to the Transaction.
- f. Bidders are prohibited from partnering (directly or indirectly) with other Bidders without the prior written approval of VALCO, to be granted or withheld in VALCO's sole and absolute discretion. If a Bidder is a Consortium, no member of such Consortium shall be a Bidder or a member of another Consortium without the prior written approval of VALCO, to be granted or withheld in VALCO's sole and absolute discretion.
- g. No Bidder or member of a Consortium may be a Relevant Person with respect to another Bidder or member of another Consortium without the prior written approval of VALCO, to be granted or withheld in VALCO's sole and absolute discretion.

### 3.2 Legal Participation Criteria

Each Bidder shall submit the documents set out in Sections [3.2.1] and [3.2.2] below:

#### 3.2.1 Participation Qualification Documents

Each Bidder shall provide the following:

- a. A Proposal Cover Letter signed by the Bidder (or if the Bidder is a Consortium, the Lead Member) in the form of Annex 1;
- b. The following legal documents and background information:
  - i. basic information on the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium), as detailed in Annex 2, including an up-to-date list of all shareholders of the Bidder that hold 5% or more of the outstanding shares in such Bidder (or one list for each Consortium member);
  - ii. the memorandum of incorporation, certification of incorporation, certification of formation, and/or by-laws of the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium), or similar formative documents that are applicable under the laws of the formation of the Bidder or Consortium member, as the case may be, and any amendments;
  - iii. an up-to-date certificate of incorporation, certificate of formation, or other applicable certificate or extract from the competent registry of companies for the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium); and
  - iv. if available, certificate(s) issued by the relevant public authority of the jurisdiction of Bidder (or, in the event that the Bidder is a Consortium, of each of its members), not older than ninety (90) days confirming that the Bidder is not under liquidation, bankruptcy, court receivership, or similar proceedings.

If the public authorities of the relevant jurisdiction(s) do not issue any of the certifications required under Section 3.2.1 (b)(iii) or 3.2.1(b)(iv), the Affidavit issued pursuant to Section 3.2.1(c) will be sufficient to satisfy such requirement.

- c. An Affidavit, in the form of Annex 6, from the Legal Representative of the Bidder or from an officer of the Bidder confirming that the Bidder (or if the Bidder is a Consortium, from the Legal Representative of or an officer of each member of the Consortium, confirming that such member of the Consortium):
  - i. is not under liquidation, bankruptcy, court receivership, or similar proceedings;
  - ii. has not been convicted by a final and binding judgment for a crime committed in the course of performing its professional activity;
  - iii. does not have unsettled tax liabilities in respect of judgments awarded by any court or similar proceedings in the period of three (3) years prior to the publishing of the RfP, save in each case to the extent that it has made a suitable accounting provision for such liabilities in accordance with applicable accounting regulations;
  - iv. does not have liabilities on the grounds of sentences rendered in criminal or misdemeanour proceedings in the period of at least three (3) years prior to publishing of the RfP;
  - v. neither it nor to its knowledge any Relevant Person (including as applicable any member of the Consortium) has been convicted of fraud, bribery, corruption, collusion, or money laundering or for a criminal act involving dishonesty, physical violence, harm to human life, trafficking in persons, or trafficking in controlled substances, nor is under investigation for, such criminal activities;

- vi. it is not subject to a conflict of interest or potential conflict of interest which arises from a relationship between it, its employees, or any Relevant Person or body or their officials or employees which has or have direct or indirect influence in the scope or manner of execution of the Transaction, or the conduct of the Tender, and which relationship can give rise to reasonable concerns about the impartiality (in relation to it) of the Tender or the Tender Evaluation Committee;
- vii. it is not excluded from a bid or other public procurement process in Ghana; and
- viii. it is not:
  - A. debarred from financing by any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 ([www.crossdebarment.org](http://www.crossdebarment.org)) for the activities required to carry out the obligations under the Transaction;
  - B. listed on any financial sanctions lists promulgated by the UN Security Council or its Committees pursuant to any resolution under Chapter VII of the Charter of the United Nations; or
  - C. engaged, and it does not engage, in operations (directly or through any subsidiary) or transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees pursuant to any resolution under Chapter VII of the Charter of the United Nations or national sanctions in Ghana.

If the laws of the relevant jurisdiction do not regulate affidavits, a statement given in front of a notary, court, or administrative official of that jurisdiction will be sufficient to satisfy the requirements of this Section 3.2.1(c).

### 3.2.2 Power of Attorney

Each Bidder (or if the Bidder is a Consortium, each member of the Consortium) shall provide a written power of attorney in the form attached hereto as Annex 3, duly notarised, indicating that the person(s) signing the Qualification Application and other documents included with the Pre-Qualification Application has(ve) the signatory authority to execute such documents. The person named in such power of attorney shall be a senior officer of the Bidder.

## 3.3 Technical Participation Criteria

The Bidder, or in the case of a Consortium, at least one member of the Consortium, shall have, during the previous five (5) years:

- a. operated an aluminium smelter for at least five (5) consecutive years (the “Operation Criteria”);
- b. operated a modern Smelter Technology such as D18+ Smelter Technology (as baseline technology) or better for at least five (5) consecutive years (the “Smelter Technology Criteria”).

Each Bidder shall submit evidence of the Operation Criteria and Smelter Technology Criteria (together “Evidence of Technical Criteria”).

### **3.4 Financial Participation Criteria**

In the event that a Bidder is not a Consortium, it shall have a Net Worth of at least US\$400 million, as disclosed in the most recent audited financial statements. In the event that a Bidder is a Consortium, the aggregate Net Worth of all members of the Consortium shall be at least US\$400 million and the Lead Member of the Consortium shall have a Net Worth of at least US\$100 million, as disclosed in the most recent audited financial statements.

Evidence shall be submitted in the form laid out in Annex 21 and by the submission by each Bidder (or member of the Consortium) of audited financial statements for the most recent prior three (3) financial years for which audited statements are available and unaudited financial statements for the most recently concluded [quarter/ half year].

In the event that a Bidder, or a member of a Consortium, does not prepare financial statements under IFRS, such Bidder or member of a Consortium shall provide an auditor's certificate or other confirmation of Net Worth as measured under IFRS or confirmation that the Net Worth value presented is not substantially different from that calculated under IFRS or a certificate stating that the Net Worth would be in excess of US\$400 million if measured under IFRS.

Each Bidder is required to submit in addition to a Financial Proposal Form a notarised Statement of Financial Qualification in the format prescribed in Annex 10.



## 4 Preparation and Submission of Proposals

### 4.1 Language of Proposals

All Proposals shall be written in English, and all correspondence and documents related to the Proposals exchanged by the Bidders and VALCO shall be written in English; provided, however, that any printed literature furnished by a Bidder may be written in another language, so long as such literature is accompanied by a translation of its relevant passages in English, in which case, for purposes of interpretation of the Proposals, the translation shall govern. Any translations of official or corporate documents shall be produced and certified by a translator that is capable of translating materials for the purpose of introducing them into evidence in a court of law in the jurisdiction in which the Bidder (or member thereof) is organised.

### 4.2 Proposal Structure and Content

Each Bidder may submit only one Proposal, which shall consist of a technical proposal (the “**Technical Proposal**”) and a financial proposal (the “**Financial Proposal**”) for the Transaction.

Complete information shall be provided, and failure to provide the full information requested may lead to a rejection of the Proposal. In addition, any materially false data contained in either the Technical Proposal or Financial Proposal shall constitute grounds for the disqualification of the Bidder. The Bidder should use only the standard documents contained in this RfP, without making any modifications to the terms thereof.

#### 4.2.1 Technical Proposal

The Technical Proposal shall contain:

- a) a completed Proposal Letter in the form of Annex 9;
- b) a Business Plan (“**Business Plan**”) that describes the Bidder’s proposed plan for the VALCO modernisation Project and its operations. The Business Plan shall contain the following sections and shall be completed in accordance with the instructions contained in Annex 17:
  - i. an executive summary (“**Executive Summary**”) that briefly introduces the technical qualifications of the Bidder and summarises each of the sections of the Business Plan;
  - ii. a profile that provides background of the Bidder and shows examples of the Bidder’s past performance with the development and implementation of large-scale smelter related capital projects. The profile shall include the key lessons learned by the Bidder regarding implementation of projects comparable to the VALCO Modernisation Project. In addition, the Bidder shall explain how these lessons learned can be applied to the specific situation of VALCO.
  - iii. a plan (“**Strategic Plan**”) that presents the Bidder’s vision for the restructured VALCO, addresses the Bidder’s short-term and long-term objectives and ties the Bidder’s strategy to the ultimate objective of modernising the VALCO smelter to increase its installed capacity to 300ktpa;
  - iv. a plan (“**Investment Plan**”) that describes (to the extent practicable) the anticipated nature, composition, value, and timing of the investments that the Bidder proposes to make in connection with the VALCO Modernisation Project. As a minimum, the Investment Plan shall identify the investments required to address the components of the Modernisation Project itemised below. The order of the list below shall not be construed to indicate any relative importance:
    - a) capital expenditure in line with but not limited to:

- i. upgrading the cell technology of the smelter. Bidders shall propose their preferred cell technology and state how it compares to D18+ cell technology;
    - ii. installation of a state-of-the-art facility in the cast house to add value to the molten metal; and
    - iii. upgrading the general plant, equipment and other facilities to ensure that the smelter operates efficiently;
  - b) introducing international best practice in relation to operational, technical, commercial, financial, environmental and health and safety matters, and the efficient use of capital investments; and
  - c) In addition, the Bidder may propose other capital expenditures, describing the objectives of and justification for these additional investments.
- v. a plan (“**Structure, Organisation & Staffing Plan**”) that describes broadly how the Bidder proposes to organise and staff the Company. This shall include the proposed structure of VALCO management as well as skills training for staff. As a minimum, the Structure, Organisation & Staffing Plan shall include:
  - a) the proposed organisational structure for the Company;
  - b) technical and other support that may be provided by the Bidder; and
  - c) details of the type of management expertise the Bidder will bring to VALCO.
- vi. a plan (“**Local Content Plan**”) that describes how the Bidder proposes to incorporate local participation in the operations of the Company. As a minimum, the Local Content Plan shall include the proposed approach to carrying out a technology transfer and capacity building program for local staff of the Company. Please refer to Annex 17 Section BP6.
- vii. a plan (“**Communications and Public Relations Plan**”) which describes the Bidder’s anticipated general approach to public relations, including communicating with VALCO’s key customers during the initial weeks and months after becoming a shareholder in VALCO, and details regarding projects and initiatives designed to increase acceptance by key stakeholders of modernised VALCO as follows:
  - a) Employees
  - b) Key customers
  - c) Key suppliers
- c) any other information that the Bidder believes is necessary in order for the Tender Evaluation Committee to evaluate the Technical Proposal on the basis of the criteria that appear in Section 5.3;
- d) in the event that the Bidder desires to take any exceptions to the terms of the Transaction Agreements (“Exceptions”), the Transaction Agreements with clearly marked Exceptions (indicated in track changes or with redlines created by similar redlining software) to the Transaction Agreements, together with an explanation of the Exceptions in the table in the form set out in Annex 16.

As part of its Technical Proposal, each Bidder shall be required to complete each of the items contained within Sections BP1 through BP7 of Annex 17.

#### 4.2.2 Financial Proposal

The Financing Proposal shall describe how the Bidder proposes to finance its equity stake in VALCO and work with the Company to raise funding for the proposed smelter modernisation. The Financial Proposal shall contain at least the following information:

- a) a plan (“**Financing Plan**”) that describes how the Bidder intends to finance its equity stake in VALCO and propose a plan for the financing of the overall modernisation project;
- b) the sources of the equity that will be contributed by the Bidder to capitalise the Company and the timing of the contributions of equity;
- c) the proposed funding mix [between debt and equity] to finance the proposed modernisation of the VALCO smelter; and
- d) 20-year financial projection in Microsoft Excel spreadsheet with clearly stated underlying assumptions and key performance indicators. The prices of aluminium and inputs stated in the financial model shall be based on London Metal Exchange (“LME”). Where a Bidder uses alternative pricing, the basis of such pricing shall be clearly stated.

All amounts in the Financial Proposal shall be denominated in United States Dollars.

The Financial Proposal shall contain a completed Financial Proposal Form in the form of Annex 10.

### 4.3 Proposal Security

#### 3.3.1 Form of Proposal Security- Bid Guarantee

Each Bidder is required to deliver, as part of its Technical Proposal, a demand guarantee or letter of credit issued or confirmed by a Qualified Bank with a drawing amount of US\$1,000,000 (One Million United States Dollars) and terms that are consistent with the terms contained in Annex 11 (“Bid Guarantee”).

Each Bidder shall ensure that the Bid Guarantee remains valid for a period of ninety (90) Days after the expiration of the initial Proposal Validity Period. VALCO may request that the initial Proposal Validity Period be extended, in which event all Bidders that agree to extend the validity of their Proposal will be required to ensure that their Bid Guarantee is also extended accordingly. In the event that a Bidder refuses to extend the validity of its Proposal, such refusal shall constitute grounds for the disqualification of the Bidder.

VALCO will return the Bid Guarantees of the unsuccessful Bidders as promptly as possible, but not later than thirty (30) Days after the selection of the Preferred Bidder, or, in the case of the second and third highest ranked Bidders, not later than thirty (30) Days after the execution by the Preferred Bidder of the Transaction Agreements. When a Preferred Bidder is selected, VALCO shall request the second and third highest ranking Bidders to extend their Bid Guarantees in order for VALCO to engage them on the basis of their Proposals, in the event that VALCO does not conclude the transaction with the Preferred Bidder.

### 3.3.2 Forfeiture of Bid Guarantee

The Bid Guarantee shall be subject to forfeiture in its entirety in favour of VALCO upon the occurrence of any of the following events (each a “**Drawing Event**”):

- a) the Bidder withdraws its proposal at any time during the Proposal Validity Period or any extension thereof;
- b) the Bidder (including the Preferred Bidder), any consortium member, any proposed contractor or an affiliate, or any of the officers, employees, agents, or advisors of any of these entities (i) commits any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice, (ii) has a Conflict of Interest or (iii) violates the Bidding Period Lock-Up Rules, regardless of the stage of the Bidding Process when the violation existed, was committed, or discovered;
- c) the Bidder is disqualified due to a material misrepresentation in any statement made or document submitted as part of its Proposal; or
- d) the Preferred Bidder fails to comply with the Post- Award Requirements within sixty (60) Days from official receipt by the Preferred Bidder of the Letter of Award, or within any extension period granted by VALCO;
- e) the Preferred Bidder fails to sign the Share Subscription Agreement and the Shareholders’ Agreement within the period prescribed in the Letter of Award or any extension thereof;
- f) other events as described in this RfP as grounds for forfeiture of the Proposal Security.

The Bidder, by submitting its Proposal pursuant to this RfP, shall be deemed to have acknowledged and confirmed that VALCO will suffer loss and damage on account of default by the Bidder and that the Proposal Security shall be forfeited and appropriated by VALCO as mutually agreed genuine pre-estimated compensation and damages payable to VALCO for any loss suffered as a result of the default, without prejudice to any other right or remedy that may be available to VALCO hereunder or otherwise.

### 4.4 Proposal Validity Period

Proposals shall remain valid for a period of **90 Days** from the date the Proposal is submitted to allow the Tender Evaluation Committee sufficient time to evaluate Proposals and complete negotiations as to any Exceptions taken by the Bidder (the “**Proposal Validity Period**”). A Proposal with a stated validity period of less than 90 Days shall be rejected by the Tender Evaluation Committee as non-responsive. VALCO may request an extension of the Proposal Validity Period if required to enable it to conclude the evaluation and selection of the Preferred Bidder and the execution of the Transaction Agreements.

### 4.5 Format, Signing, Sealing, and Marking of the Proposal

- a) The Proposal shall comprise the documents described in Sections 4.2.1 and 4.2.2.
- b) Where a Bidder opts to submit their proposal in response to this RfP physically to VALCO, such a bid shall be contained in three envelopes as follows:
  - I. The Technical Proposal shall be contained in an envelope (or box) (the “**Technical Envelope**”) marked boldly as follows:

**SEARCH FOR A STRATEGIC PARTNER FOR THE VALCO MODERNISATION PROJECT**

**Technical Proposal submitted by:**

**[Name of Bidder]**

- II. The Financial Proposal shall be contained in an envelope (or box) (the “**Financial Envelope**”) marked boldly as follows:

**SEARCH FOR A STRATEGIC PARTNER FOR THE VALCO MODERNISATION PROJECT**

**Financial Proposal submitted by:**

**[Name of Bidder]**

**DO NOT OPEN UNTIL AFTER THE COMPLETION OF THE TECHNICAL EVALUATION**

- III. The Technical Envelope and the Financial Envelope shall be contained in an envelope (or box) (the “**Proposal Envelope**”) marked boldly as follows:

**SEARCH FOR A STRATEGIC PARTNER FOR THE VALCO MODERNISATION PROJECT**

**Proposal submitted by:**

**[Name of Bidder]**

**THIS [ENVELOPE] [BOX] CONTAINS THE TECHNICAL ENVELOPE AND THE FINANCIAL ENVELOPE**

- c) Bidders shall include the original and the number and type of copies indicated in the table that appears below.

<b>Document Type</b>	<b>Technical Envelope Number of copies</b>	<b>Financial Envelope Number of copies</b>
<b>Original paper submission</b>	1	1
<b>Paper copies</b>	5	5

- d) Physical copies of Proposals shall be accompanied by electronic copies saved on a pen drive. Bidders shall place the original and paper and electronic copies of the Proposals in separate envelopes, clearly marking the envelopes containing the original Proposals as “Original” and the envelopes containing copies of the Proposals as “Copy No. 1,” “Copy No. 2,” “Copy No. 3,” “Copy No. 4,” “Copy No. 5,” “Electronic Copy No. 1,” as appropriate and with the pages arranged in exactly the same sequence as the sequence in the original. In the event of any discrepancy between the documents contained in any envelope marked “Copy” and documents contained in the envelope marked “Original,” the documents contained in the envelope marked “Original” shall govern. Properly sealed envelopes containing the original

- and all the copies of the Proposals shall be sealed and placed within their respective Technical and Financial Envelopes.
- e) Where a Bidder opts to submit their proposal in response to this RfP by email to VALCO, such a Bidder shall password-protect the electronic copies of Proposals and share the passwords in separate emails with the VALCO contact stated in Annex 2. The electronic passwords to the Technical Proposals shall be sent to the VALCO contact latest by 5:00PM GMT on the Proposal Submission Deadline. On the other hand, the passwords to the Financial Proposals shall be submitted to VALCO on request, via email.
  - f) Technical Proposals shall not make reference to the content of the Financial Proposal or the Financial Proposal Evaluation Criteria (Set out in Annex 8) so that the technical evaluation may be conducted strictly on the basis of technical merit.
  - g) The electronic copies shall include:
    - i. the complete Technical Proposal or the complete Financial Proposal in PDF format (complete with the signatures and initialisations required by paragraph (h) below);
    - ii. in the event that a Technical Proposal includes any Exceptions, clean and redlined copies of the Transaction Agreements that include the exceptions in Microsoft Word; and
    - iii. in the event that the Proposal includes any Microsoft Excel spreadsheets, the spreadsheet should not contain any hidden cells, with all formulas included and operable.
  - h) The Bidder shall:
    - i. sign the Proposal Letter; and
    - ii. initial all of the pages of documents in the Proposal.
  - i) Each envelope shall indicate the name and address of the Bidder (or if the Bidder is a Consortium, the name and address of the Lead Member) to enable the relevant Proposal to be returned unopened if received in Ghana after the Proposal Submission Deadline or for failure to comply with the terms of this RfP.
  - j) VALCO will assume no responsibility for any Proposal's misplacement or premature opening if the applicable envelopes are not sealed and marked as required by this Section 4.5.
  - k) Electronic copies of the Technical and Financial Proposals in form provided in Section 4.5(g) above shall be submitted via the email address provided in Annex 2.

## 4.6 Deadline for Submission of Proposals

Proposal submission can be done by email or physically delivered to VALCO at the address specified in Annex 2 no later than **5:00PM GMT** on the date stated in Annex 4 as the proposal submission deadline” (the “**Proposal Submission Deadline**”).

A Proposal submitted outside of the prescribed time and at a wrong address shall not be accepted by VALCO and such Bidder shall be automatically disqualified from Bidding.

Each Proposal submitted shall be numbered in the order received and stamped with the time of receipt. In addition, the receipt of Proposals shall be recorded in a register in the order of receipt specifying the date, time and name of the Bidder submitting the same and an acknowledgement receipt for the same shall be issued to the Bidder.

#### **4.7 Clarifications**

A Bidder requiring any clarification of this RfP, or any of the requirements set out herein, may notify VALCO no later than twenty (20) Days prior to the Proposal Submission Deadline. Copies of VALCO's response to such queries, including an explanation of the query but no identification of its source, will be sent to all Bidders who have confirmed the receipt of the RfP to VALCO within five (5) Days of VALCO's receipt of such queries. If similar or repeated queries are made by Interested Bidders, those queries may be listed as one query and responded to only once.

VALCO shall make reasonable efforts to reply in a timely manner to all requests for clarification properly submitted as set forth above but shall not be obliged to reply to any or all requests. However, VALCO shall not be liable to any person whatsoever for the timeliness, completeness, or correctness of any such response, or for failure to provide copies of such response to all Bidders. VALCO shall not be obliged to make any changes to the Transaction Documents or this RfP or the Tender process as a result of any comments received.

#### **4.8 Consortia and Associated Requirements**

The Preferred Bidder, in the case of a Consortium, shall incorporate a Special Purpose Vehicle ("SPV") as a private company limited by shares established under the Companies Act, 2019 (Act 992) and in compliance with applicable laws, to hold shares in VALCO. No Bidder that is a Consortium shall change the members of the Consortium after submitting their proposal.

#### **4.9 Right to Reject Proposals, Terminate Bidding Process, Disqualify Bidders and Waive Minor Defects**

VALCO reserves the right to accept or reject any or all of the Proposals. Without prejudice to the generality of the above, VALCO reserves the right to reject any Proposal, inter-alia, if:

- a) at any time, a material misrepresentation is made or uncovered;
- b) one or more of the conditions of the RfP have not been met by the Bidder,
- c) the Bidder does not provide the supplemental information sought by VALCO for evaluation of the Proposal within the time specified;
- d) there is any form of lobbying with respect to the Bidding Process;
- e) there is illegal conduct or attempt to influence VALCO's evaluation of the Proposals or anything contrary to any law or ethics in order to have an unfair advantage over other Bidders;
- f) a Bidder colludes, connives or is involved in any corrupt or dishonest practice;
- g) there is any Outstanding Dispute; or
- h) there is any other reason for rejection of a Proposal provided for in the RfP or under Applicable Law.

Where VALCO rejects any Proposal, it shall notify the Bidder in writing of the reasons for the rejection. Where VALCO rejects a Proposal because of non-compliance by a Bidder, VALCO shall notify the Bidder in writing of the particulars of non-compliance.

If all the Proposals are rejected by VALCO whether on ground of non-compliance or otherwise, the Bidding Process shall stand terminated and VALCO can re-initiate the entire process.

The Bidder whose proposal is rejected may lodge a written complaint with the Complaints Panel with a copy to VALCO in accordance with the procedure laid down in Annex 22 (the "Complaints Procedure"). Where the Complaints Panel is of the view that (a) a complaint is not frivolous, and (b) the complainant may suffer irreparable harm or damage if the Bidding Process is not suspended, the Bidding Process shall be suspended for a period not exceeding sixty (60) Days. Where an objection is made after the Technical Proposals have been opened and evaluated and the Bidders have been informed of the outcome in writing, VALCO shall not open, nor shall it evaluate the Financial Proposals until VALCO makes a decision on the objection filed.

At any time prior to the execution of the Share Subscription Agreement and Shareholders' Agreement by the Preferred Bidder, VALCO reserves the right not to proceed with the Bidding Process and the execution of the Share Subscription Agreement and Shareholders' Agreement, without incurring any liability to the Bidders or to any other person. VALCO also reserves the right to cancel the Bidding Process at any time before the execution of the Share Subscription Agreement and Shareholders' Agreement if fundamentally serious adverse consequences are likely to occur if the Bidding Process is allowed to go on. VALCO shall notify the Bidders in writing about the reasons for the cancellation in such a case and no Bidder will be entitled to compensation in case of such cancellation.

If at any time after the issuance of the Letter of Award and prior to the signing of the Share Subscription Agreement and Shareholders' Agreement, the Preferred Bidder is found to have (i) engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice, (ii) a Conflict of Interest or (iii) violated the Bidding Period Lock-Up Rules, it will be disqualified, its Letter of Award shall be withdrawn, and its Proposal Security shall be forfeited.

If the Bidder is a Consortium, then the entire Consortium and each member of the Consortium may be rejected or disqualified in accordance with this Section.

Upon rejection of the Proposal or disqualification in terms of this Section, VALCO shall, subject to exercising its right to retain the whole or part of the Proposal Security in accordance with the terms of the Request for Proposals, return the Proposal Security to the rejected Bidders.

VALCO reserves the right to waive any minor defects in the Proposals and accept the offer it deems most advantageous to it. Save and except as provided in this RfP, VALCO shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.



## 5 Proposal Evaluation and Award

### 5.1 Establishment of Tender Evaluation Committee

Prior to the opening of the Proposals, VALCO will establish a Tender Evaluation Committee that will have the responsibility of opening and evaluating the Proposals submitted by Bidders.

### 5.2 Opening of Technical Proposals

The Proposals shall be opened, and the name of each Bidder that has submitted a Proposal shall be read aloud, at a time and place designated by VALCO. The opening of the Technical Proposals may be attended by two (2) representatives from each Bidder.

Prior to opening these Proposals, the Tender Evaluation Committee shall determine whether the Proposals were received by the Proposal Submission Deadline. Only Proposals received prior to the deadline shall be opened. The Proposals received after the Proposal Submission Deadline shall not be considered by the Tender Evaluation Committee and shall be returned unopened to the applicable Bidders.

The Tender Evaluation Committee shall take minutes of the opening of the Proposals and shall provide such minutes to Bidders promptly following the completion of such opening process.

### 5.3 Evaluation of Technical Proposals

#### 5.3.1 Evaluation of Technical Proposals

##### *5.3.1.1 Technical Evaluation – First Step*

In the first step of the technical evaluation, each Technical Proposal will be evaluated to confirm that it is complete and contains all of the required components of a Technical Proposal specified by this RfP as described in Section 4.2.1

If a Bidder's Technical Proposal does not pass the first step of the technical evaluation, then VALCO may, in its discretion:

- a) declare the Proposal to be non-responsive and return such Bidder's Financial Proposal, to such Bidder unopened; or
- b) seek clarifications regarding the Technical Proposal in accordance with Section 5.6.

##### *5.3.1.2 Technical Evaluation – Second Step*

In the second step of the technical evaluation, the Tender Evaluation Committee shall evaluate the Business Plan together with its supporting information and determine the technical score, which shall equal the sum of the number of points awarded in respect of the technical evaluation criteria set forth in Annex 8 (the "**Technical Score**").

The terms "effectiveness" and "adequacy" contained in the evaluation criteria set forth in Annex 8 will be assessed in accordance with the following non-exhaustive measures where applicable.

- a) The completeness and level of detail of the Bidder's plans in addressing the scope of the Technical Proposal.
- b) The extent to which the Bidder's plans clearly articulate their strategy.
- c) The practical feasibility of the Bidder's proposed plans.

- d) The knowledge and expertise demonstrated by the Bidder in their plans.
- e) The suitability of the Bidder's plans to address unique challenges faced by VALCO.
- f) The Bidder's level of understanding of VALCO's business and local Ghanaian business environment.

In the event that a Technical Proposal achieves a Technical Score of less than 75%, the Tender Evaluation Committee shall return such Bidder's Financial Proposal unopened, and the Proposal of which such Technical Proposal is a part shall not be evaluated.

## 5.4 Evaluation of Financial Proposals

### 5.4.1 Evaluation of Financial Proposals

- a) After the evaluation of the Technical Proposals, the public opening and consequent evaluation of those Financial Proposals that will be evaluated shall commence. VALCO shall not open the Financial Proposals until the Technical Proposals have been evaluated in accordance with Section 5.3.
- b) The Financial Proposals shall be opened publicly in the presence of the representatives of the Bidders who choose to attend. The name of each Bidder and the Technical Score earned by that Bidder's Technical Proposal shall be read aloud and recorded when the Financial Proposals are opened. The Tender Evaluation Committee shall take minutes of the opening of the Proposal Envelopes and shall provide such minutes to Bidders promptly following the completion of such opening process. The evaluation criteria for the Financial Proposal is set out in Annex 8.
- c) The Tender Evaluation Committee will assign a score (a "**Financial Score**") to each Financial Proposal in accordance with the Financial Evaluation Criteria in Annex 8 of this RFP.

## 5.5 Proposed Weighting of Scores from Technical and Financial Evaluation Criteria

The Tender Evaluation Committee will assign a combined score (a "Combined Score") to each Proposal that is evaluated in accordance with the following formula:

$$CS = (Sf \times 35\%) + (St \times 65\%)$$

Where:

- CS** means the Combined score calculated for the Bidders Proposal, comprising both the Technical and Financial proposals, with a minimum qualifying score of **75 points**
- Sf** means the Financial Score calculated for Financial Proposal; and
- St** means the Technical Score calculated for Financial Proposal

From the above, a **65%** weighting shall be allocated to the Technical Proposal and **35%** weighting to the Financial Proposal.

The Bidder that submitted the Proposal that achieves the highest Combined Score shall be announced as the Preferred Bidder. The Bidder that submitted the Proposal that received the next highest Combined Score shall be notified that they are the second-ranked Bidder. The Bidder that submitted the Proposal that received the next highest Combined Score shall be notified that they are the third-ranked Bidder.

## **5.6 Request for Clarification of Proposals**

The Tender Evaluation Committee may issue a request for clarification or additional information by electronic mail regarding any part of a Bidder's Proposal, including to address immaterial or minor omissions which do not affect the substantive responsiveness of a Bidder's Proposal at any time during the evaluation of the Proposals. Such request will require the Bidder to clarify certain parts of its Proposal that may be unclear or to provide additional information and/or supporting documents. Responses received from the Bidder shall be included as part of the Bidder's Proposal with a clear reference to the section of the Proposal for which the clarification, additional information and/or supporting documents is provided.

The Bidder shall reply to such requests for clarification or additional information by electronic mail not later than five (5) Days following submission by the Tender Evaluation Committee, or such longer period of time as the Tender Evaluation Committee may establish. In the event that:

- a) a Bidder does not respond to a request for clarification or additional information within the time period specified (or any extension thereof);
- b) a Bidder does not provide the information or documentation so requested; or
- c) the Tender Evaluation Committee is not able to confirm that a Technical Proposal complies with the requirements contained in Section 4.2.1 (either following a request for clarification or otherwise),

then the Tender Evaluation Committee may consider the Technical Proposal to be non-responsive and the Tender Evaluation Committee may reject the Bidder's Proposal.

## **5.7 Finalisation and Execution of the Transaction Agreements**

As is discussed in Section 4.2.1, Bidders shall identify any Exceptions they intend to take to the terms of the Transaction Agreements as part of their Proposal. Any such Exceptions will be considered by the Tender Evaluation Committee during the Proposal evaluation process, as is described above. The Tender Evaluation Committee may, in its discretion, reject a Bidder's Proposal on the basis of the nature or the number of Exceptions. A decision by the Tender Evaluation Committee to open and evaluate a Financial Proposal accompanying a Technical Proposal containing Exceptions does not constitute an acceptance by the Tender Evaluation Committee or VALCO of any of such Exceptions.

After the Preferred Bidder has been notified that it is the Preferred Bidder, VALCO will negotiate the Exceptions taken in the Technical Proposal submitted by the Preferred Bidder. Negotiations regarding the

Exceptions shall conclude, and the Transaction Agreements shall be agreed upon, prior to the expiration of the Exceptions Negotiation Period. During the Exceptions Negotiation Period, VALCO will not entertain additional comments on the Transaction Agreements that are not contained in the Exceptions set forth in the Technical Proposal submitted by the Preferred Bidder. In the event VALCO and the Preferred Bidder have not agreed to the Transaction Agreements within the Exceptions Negotiation Period, or if VALCO determines, in its discretion, that VALCO and the Preferred Bidder will not be able to reach such an agreement within the Exceptions Negotiation Period prior to the expiration thereof, then VALCO may declare the next-highest ranked Bidder as the Preferred Bidder pursuant to Section 5.8, and such new Preferred Bidder and VALCO will begin negotiating the Exceptions taken by such new Preferred Bidder in accordance with this Section 5.7.

## **5.8 Selection of Preferred Bidder**

In the event that:

- a) the Preferred Bidder withdraws from the Bidding process; or
- b) the Preferred Bidder fails to comply with any other term or condition of this RfP and becomes disqualified from further participation in the Tender or the Transaction as a result, then, in any such cases, VALCO may declare the next-highest ranking Bidder (up to the third highest ranking Bidder) as the Preferred Bidder, and such new Preferred Bidder will thereafter be treated as the Preferred Bidder for all purposes of this RfP.

## 6 Requests for Clarifications of RfP

### 6.1 Clarifications

Bidders are requested to direct any requests for clarification by e-mail to the address set forth in Annex 2. Responses to all requests for clarification will be made available to all Bidders without attribution. Bidders should not rely on any oral explanations provided by VALCO or its Transaction Advisor in relation to the RfP, the Tender or the Transaction. This Section 6.1 does not require that VALCO:

- a) circulate the table of comments described in Section 2.4 and in the form prescribed in Annex 15;
- b) share any feedback given to a Bidder with respect to the comments contained in the table of comments described in Section 2.4 with another Bidder; or

VALCO may, by issuance of an addendum to this RfP, delete, modify, or extend any part of this RfP, at any moment before opening the Proposals. Such addenda will be circulated by e-mail to each Bidder and should be acknowledged by return e-mail.

## 7 General Provisions

### 7.1 Introduction to the Bidding Process

This RfP provides the procedures and requirements for the Bidding Process which includes the submission of Proposals by Bidders and selection by VALCO of a Preferred Bidder to partner with VALCO to implement the Project.

During this RfP stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their own cost, such studies as may be required for submitting their respective Proposals. The terms of the share subscription arrangement is as indicated in the draft Share Subscription and Shareholders' Agreements.

The Best Bid shall be the most favourable and compliant Proposal with respect to the technical and financial evaluation criteria and the Proposal that offers the best value for money.

Further and other details of the process to be followed at the Proposal Stage and the terms thereof are spelt out in this RfP. Further, any award of Share Subscription Agreement and the Shareholders' Agreement pursuant to this RfP shall be subject to the terms hereof.

### 7.2 Information Documents

In addition to the RfP, some documents may be provided to the Bidders solely to provide background information on the Project ("Information Documents"), which documents shall be made available in the Data Room.

The Bidder undertakes full responsibility for relying on the information contained in the Information Documents. VALCO, its advisors, or any other associated party do not provide any warranty, undertaking or assurance of the correctness, completeness, accuracy, or reliability of the information contained in the Information Documents.

Further, VALCO, its advisors, or any associated party do not warrant that the information contained in the Information Documents represent all the information in their possession or power (either during the conduct of the Bidding Process or at the time of the signing of the Share Subscription and Shareholders' Agreements) relevant or material to or in connection with the Project or the obligations of any Bidder or the Preferred Bidder under the Share Subscription Agreement. VALCO, its advisors, or any other associated party are not bound by the Information Documents.

VALCO, its advisors, or any other associated party shall not be liable to any Bidder or the Preferred Bidder for any damages caused by such party's reliance on the Information Documents regardless of any erroneous, absent, incomplete, inaccurate or unreliable information or documentation provided by VALCO, even if attended by gross negligence, nor shall such be a ground for the refusal to enter into or rescission of the Share Subscription and Shareholders' Agreements by the Preferred Bidder.

VALCO, its advisors, or any other associated party shall not be liable to any Bidder or Preferred Bidder in respect of any failure, whether before, on or after the signing of the Share Subscription Agreement, to (i) disclose or make available any information, documents or data; (ii) review or update the RfP or Information Documents; (iii) provide any information regarding any inaccuracy, error, omission, defects or inadequacy in any of the RfP or Information Documents or due to any inaccuracy, error, omission, defects or inadequacy therein.

### 7.3 Responsibilities of Bidders

- I. Notwithstanding any information given in the RfP, Information Documents and/ or any additional information/ communications from VALCO, including any briefing notes, it is the sole responsibility of each Bidder to:
  - a) be fully acquainted with the requirements, terms, and conditions of the Bidding Process;
  - b) examine all the RfP and Information Documents and verify the correctness, accuracy, completeness, and reliability of the information contained in these documents;
  - c) familiarise itself with all the Applicable Laws and administrative issuances and regulations of Ghana, whether national or local, that may affect the Bidding Process and the Project; and
  - d) determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain; existing works and plans for future works in the area; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labour, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic projections; the financial viability of the Project; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.
- II. The Bidders (including any consortium members or affiliates) shall not be entitled to and shall not make any claim against VALCO or any other associated party for damages, extensions on time or payments on the grounds:
  - a) of any misunderstanding or misapprehension in respect of the RfP or Information Documents; or
  - b) that incorrect or insufficient information relating to the RfP and/or Information Documents was given to them by VALCO or any other associated party.
- III. It shall be deemed that by submitting a Bid, the Bidder has:
  - a) made a complete and careful examination of the RfP and Information Documents;
  - b) received all relevant information requested from VALCO;
  - c) accepted the risk of inadequacy, error or mistake in this RfP and Information Documents or any other information furnished by or on behalf of VALCO relating to any of the matters pertaining to this RfP or the Project;
  - d) satisfied itself about all matters, things and information including matters referred to in this Section 7.3 necessary and required for submitting an informed Bid, execution of the Project in accordance with the RfP and performance of all of its obligations thereunder;
  - e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in this RfP or ignorance of any of the matters referred to in Section 7.3 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits, etc. from VALCO, or a ground for termination of the Share Subscription Agreement by the Preferred Bidder;
  - f) acknowledged that it does not have a Conflict of Interest; and
    - g) agreed to be bound by the undertakings provided by it under and in terms hereof.

- IV. VALCO shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RfP, Information Documents or the Bidding Process, including any error or mistake therein or in any information or data additionally given by VALCO.

#### **7.4 Costs and Expenses of Participation**

Bidders shall bear all costs, liabilities, losses, and damages associated with or resulting from their participation in the Bidding Process. VALCO shall not be held responsible or liable in any way for any such costs, losses or damages incurred by any Bidder (whether incurred by it directly or indirectly, or by its advisors, contractors, affiliates or other persons), regardless of the results of the Bidding Process.

#### **7.5 Revisions and Amendments to the Request for Proposals**

VALCO reserves the right to amend, revise, modify, or clarify any section of the RfP at any stage of the Bidding Process. VALCO may amend the RfP at its sole discretion based on the comments provided by Bidders, the queries and clarifications sought by the Bidders, the discussions held with the Bidders during the Bidders Conference and/or at its own initiative. All revisions and amendments shall be made by VALCO by issuing briefing notes. VALCO may also on its own motion, if deemed necessary, issue briefing notes containing interpretations and clarifications to all Bidders. All clarifications and interpretations issued by VALCO shall be deemed to be part of the RfP. No interpretation, revision, or other communication from VALCO shall be valid unless in writing to the Bidders, signed by the authorised representative of VALCO and issued in the form of briefing notes.

Any briefing note issued hereunder will be in writing and shall be sent to all the Bidders via e-mail. Additionally, the briefing notes shall be published on the website of VALCO.

In order to afford the Bidders a reasonable time for taking a briefing note into account, or for any other reason, VALCO may extend the Proposal Submission Deadline.

#### **7.6 Verification of Information**

VALCO reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RfP and the Bidder shall, when so required by VALCO, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by VALCO shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of VALCO thereunder.


#### **7.7 Principal location of VALCO and its Smelter**

Bidders are encouraged to submit their respective Proposals after visiting the operating location of VALCO at Heavy Industrial Area, Smelter Site, Tema, Accra, Ghana as shown in Annex 2 and ascertaining for themselves the conditions in the area, existing facilities and structures, surroundings, climate, availability and source of power, water and other utilities for construction [as may be relevant], handling and storage of materials, applicable laws and regulations clearances obtained by VALCO, and any other matter considered relevant to the Project or that might affect the Bidder's performance under the terms of this RfP.

#### **7.8 Ownership of Documents**

This RfP shall remain the property of VALCO and is transmitted to the Bidders solely for the purpose of preparation and the submission of their respective Proposals in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and





submission of their Bid. The provisions of this Section shall also apply *mutatis mutandis* to Proposals and all other documents submitted by the Bidders, and VALCO will not return to the Bidders any Bid, document or any information provided along therewith.

## 8 Letter of Award, Post-Award Requirements & Execution of Share Subscription Agreement

### 8.1 Issuance of Letter of Award

Within thirty (30) Days from the end of the Exception Negotiation Period, VALCO shall issue the Letter of Award to the Preferred Bidder.

The Preferred Bidder shall acknowledge receipt of the Letter of Award by issuing a letter of acknowledgment to VALCO within five (5) days of receipt of the Letter of Award.

### 8.2 Post-Award Requirements

The Letter of Award shall prescribe that, within sixty (60) Days from the Preferred Bidder's official receipt of the Letter of Award, the Preferred Bidder must submit the following documents to VALCO as conditions precedent for the execution and signing of the Share Subscription Agreement ("Post-Award Requirements"):

- a) Copy of Letter of Award duly signed by the authorised representative of the Preferred Bidder in acceptance of the terms therein;
- b) Evidence of the formation of a Special Purpose Vehicle consisting of certified true copies by the authorised officer of the Preferred Bidder, in the case of a consortium, of the certificate of incorporation and constitution of the SPV and proof of appointment of directors of the SPV (collectively, the "Preferred Bidder Constitutional Documents")
- c) If the Preferred Bidder is a consortium, the shareholders of the SPV and the respective percentage shareholdings of its members should be the same as those shown in the Preferred Bidder's Bid; whereas if the Preferred Bidder is a company, corporation, partnership, or any other enterprise, the shareholding structure of the Preferred Bidder should comply with Section 8.2 (f)
- d) Certified true copies issued by the authorised officer of the SPV, duly notarised, of resolutions passed by the board of directors of the SPV attesting that the SPV conducted a meeting of its shareholders and elected its board of directors and corporate officers and authorising the execution, delivery, and performance of the Share Subscription Agreement (collectively, the "Majority Shareholders Resolutions");
- e) If the Preferred Bidder is a consortium, compliance with the equity requirements specified at the Request for Expression of Interest, as evidenced by an original copy of each of the equity documents which have been duly authorised and validly executed and which are in full force and effect and delivered by the parties to them, and in respect of which all conditions required under them have been fully satisfied;

- f) If the Preferred Bidder is a company, corporation, partnership, or any other enterprise, (i) proof that all of the equity of that entity is owned by the enterprise or person meeting the Financial Capability Qualification Requirements under the RfP, as shown by a certificate signed by the authorised signatory of that entity attesting to the actual paid-up capital of the entity, and (ii) subscription agreement between the Preferred Bidder and the entity or shareholders agreement between the Preferred Bidder and the entity or a copy of the share certificate; and
- g) Letters from banks or reputable financial institutions expressing their willingness to provide sufficient credit facilities as required in the Preferred Bidder's Financial Proposal, and indicating the terms and conditions for such facilities, using the form in Annex 19 (Form of Willingness to Lend)

### **8.3 Notification of Compliance with Post-Award Requirements**

Within thirty (30) Days from VALCO's timely receipt of the Post-Award Requirements from the Preferred Bidder in accordance with Section 8.2, VALCO shall determine and notify the Preferred Bidder of its compliance with all the Post-Award Requirements.

### **8.4 Failure to Comply with Post-Award Requirements**

Failure to comply with the Post-Award Requirements within the prescribed sixty (60) Days period, or within any additional extensions granted by VALCO, shall result in the forfeiture of the Preferred Bidder's Proposal Security and the withdrawal of the Letter of Award.

### **8.5 Execution of Share Subscription Agreement**

Within thirty (30) Days of receipt by the Preferred Bidder of notice from VALCO that all of the Post-Award Requirements have been complied with, the Preferred Bidder shall execute the Share Subscription and Shareholders' Agreements with VALCO. The failure by the Preferred Bidder to execute the Share Subscription and Shareholders' Agreements within the prescribed period shall be a ground for the forfeiture of the Preferred Bidder's Proposal Security and the withdrawal of the Letter of Award. However, VALCO on receiving a request from the Preferred Bidder may at its absolute discretion, permit an extension of the period for execution of the Share Subscription and Shareholders' Agreements. The Preferred Bidder shall not be entitled to seek any deviation, modification, or amendment in the Share Subscription and Shareholders' Agreement except as provided in its exceptions in response to the RfP and negotiated by the parties.

### **8.6 Next Best Complying Proposals**

The Bidder with the second-Best Bid shall be notified in writing by VALCO of its selection (in lieu of the Bidder with the Best Bid) if any of the following events or circumstances occurs:

- a) the Preferred Bidder (or the SPV) does not fulfil the Post-Award Requirements or execute the Share Subscription and Shareholders' Agreements within the prescribed periods; or

- b) the Preferred Bidder, any of the Preferred Bidder's consortium members, proposed contractors or affiliates, or the officers, employees, agents, and advisors of any of these entities is found to have
  - (i) engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice,
  - (ii) a Conflict of Interest, or
  - (iii) violated the Bidding Period Lock-Up Rules; or
- c) negotiations between VALCO and the Preferred Bidder are not successful

The Bidder with the second-Best Proposal shall be appointed as the Preferred Bidder from and after the date of receipt of the Letter of Award and must then comply with the Post-Award Requirements. If the Bidder whose Proposal is second best fails to meet any of these requirements, VALCO may invite the Bidder with the third best proposal for negotiations or take any measure as may be deemed fit in the sole discretion of VALCO, including annulment of the Bidding Process and starting the Bidding Process afresh.

For this purpose, VALCO may require the Bidder whose Proposal is second best or subsequently ranked Bidders to extend the validity of their Proposal and Proposal Security for such period as it may deem fit to enable VALCO to carry out and complete negotiations in terms of this RfP.

## 9 General Conditions and Prohibitions

### 9.1 General Conditions

By submitting its Bid, the Bidder acknowledges and agrees that:

- a) it, including all consortium members, proposed contractors and affiliates, and their respective officers, employees, agents, and advisors shall observe the highest standard of ethics during the Bidding Process;
- b) it, including all consortium members, proposed contractors and affiliates, and their respective officers, employees, agents, and advisors shall not commit any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice;
- c) it, including all consortium members, proposed contractors and affiliates, and their respective officers, employees, agents, and advisors, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process; and
- d) it accepts all the terms and conditions of the RfP.

### 9.2 Corrupt, Fraudulent, Collusive, Coercive, Undesirable, and Restrictive Practices

If a Bidder, any consortium member, any proposed contractor or affiliate, the Preferred Bidder or any of their officers, employees, agents and advisors, as the case may be, are found to have, directly or indirectly, engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practice during the Bidding Process, or after the issuance of the Letter of Award or the execution of the Share Subscription and Shareholders' Agreements, VALCO shall:

- a) reject or disqualify the Proposal of or withdraw the Letter of Award to such Bidder, without being liable in any manner whatsoever to the Bidder;
- b) forfeit and appropriate the Proposal Security of such Bidder, without prejudice to any other right or remedy that may be available to VALCO;
- c) seek to impose the maximum penalties for civil and criminal liability available under the Applicable Laws on individuals and/or entities involved in such practices; and
- d) prohibit or disqualify the entity(ies) involved in such practices from participating in any bidding of VALCO either permanently or for such period as it may deem fit from the date that they are found to have directly or indirectly engaged in any such practices.

For the purposes of this section, the following terms shall have the meanings hereinafter assigned to them:

- a) **"Corrupt Practice"** means any of the prohibited acts under the applicable laws and relevant rules and procedures, by which a person improperly and unlawfully enriches or benefits himself or others, or induces others to do so, and includes the offering, giving, receiving, or soliciting of anything of value to influence the actions of any person connected with the Bidding Process or the execution of the Share Subscription Agreement;
- b) **"Fraudulent Practice"** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating and the like, especially when involving misrepresentation, omission, concealment, suppression, non-disclosure, or disclosure of incomplete facts, to influence the Bidding Process or the execution of the Share Subscription Agreement;
- c) **"Collusive Practice"** means a scheme or arrangement between two or more Bidders, with or without the knowledge of VALCO, designed to establish the Proposal parameters at artificial, non-competitive levels;
- d) **"Coercive Practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person's participation in the Bidding Process or the execution of the Share Subscription Agreement;
- e) **"Undesirable Practice"** means (i) establishing contact with any person connected with or employed or engaged by VALCO including those of the Transaction Advisor with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process; and
- f) **"Restrictive Practice"** means any act, scheme, plan, or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among Bidders, consortium members, or the affiliates of any of these entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.

### 9.3 Conflict of Interest

Bidders and consortium members (if the Bidder is a consortium), including their affiliates, must not have any Conflict of Interest. The assessment of the existence of a Conflict of Interest shall be based on the specific facts of each case.

Without limiting the generality of what would constitute a Conflict of Interest, a Bidder shall be considered to have a Conflict of Interest affecting the Bidding Process, under any of the following conditions which are deemed to constitute overt acts or situations which indicate collusion between two or more Bidders:

- a) a Bidder, any consortium member, or any of their affiliates (of either a Bidder or of the consortium member) is a member of another consortium, or an affiliate of a member of another consortium;

- b) a Bidder, any consortium member, or any of their affiliates (of either a Bidder or of the consortium member) which are used to meet any of the qualification requirements under the RfP has ownership interest of at least [fifty-one] percent (51%) in any other Bidder, any consortium member of any other Bidder, or any of their affiliates (of either the other Bidder or any of its consortium members) that are used to meet any of the Qualification Requirements;
- c) a member of the board of directors, partner, officer, employee, professional advisor or agent of a Bidder, any consortium member, or any of their affiliates (of either the Bidder or any of its consortium members) who is directly involved in the Bidding Process for the Project, is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder, any consortium member of any other Bidder, or any of their affiliates (of either the Bidder or any of its consortium members). For purposes of this Section 9.3(c), and without limiting the discretion of VALCO to determine what constitutes Conflict of Interest, "directly involved" shall mean actual participation in the deliberations and decision-making for the Bidding Process that would give the director, partner, officer, or employee knowledge/information regarding the Proposals of the Bidders and which will allow such director, partner, officer, or employee to influence the Proposals.
- d) such Bidder has the same legal representative for purposes of this Proposal as any other Bidder.

For the avoidance of doubt, the matters listed above shall not be considered Collusive Practice as defined under Section 9.2.

Without limiting the generality of what constitutes Conflict of Interest, any of the following shall also be considered a Conflict of Interest:

- a) a Bidder, any of its consortium members, any of its proposed contractors, or any affiliate of any of these persons, has been directly engaged as a consultant by VALCO in the preparation of the RfP or any other relevant document or the design, or technical specifications of the Project or in connection with the Bidding Process; or
- b) a Bidder, any of its consortium members, any of its proposed contractors, or any affiliate of any of these persons, engages any legal, financial, or technical advisor of VALCO in relation to the transaction, or anyone who is or was an employee of VALCO less than [five (5)] years before his or her engagement in relation to the transaction by the Bidder, any of its consortium members, any of its proposed contractors, or any affiliate of any of these persons; or
- c) a Bidder, its consortium member or any affiliate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its consortium member or affiliate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its consortium member or any affiliate thereof.

If at any time prior to the signing of the Share Subscription Agreement, any Bidder, consortium member, or any affiliate of any of these persons, is found to have a Conflict of Interest as defined in this Section 9.3 (Conflict of Interest), it shall be disqualified from further participating in the Bidding Process. If the Conflict of Interest involves another Bidder, then both Bidders shall be disqualified.

## 10 Bidding Period Lock-up Rules

### 10.1 Bidding Period Lock-up Rules

From the Proposal Submission Deadline until the execution of the Share Subscription Agreement (“Bidding Period”), the following lock-up rules shall apply:

- a) For a Bidder who is a company, corporation, partnership or any other entity, no changes shall be made in the equity or ownership structure of such Bidder.
- b) For a Bidder who is a consortium, no changes shall be made in the composition of the consortium and in the committed percentage equity interest of each consortium member in the SPV, except with the permission of VALCO as provided herein.

### 10.2 Restrictions on the transferability of shares in the SPV

After the execution of the Transaction Agreements, the Preferred Bidder shall not sell or otherwise transfer their direct or indirect equity interests (including shares in the SPV) in the modernised VALCO for a period of six (6) years.

### 10.3 Consequence of Violation of Bidding Period Lock-up Rules

Any violation of the Bidding Period Lock-Up Rules shall be a ground for disqualification of a Bidder from the Bidding Process.



## 11 Miscellaneous Provisions

- a) It shall be deemed that by submitting the Bid, the Bidder agrees and releases VALCO, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by Applicable Laws, any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or in the future.
  
- b) VALCO may constitute teams, committees, sub-committees, panels, etc. for any or all matters under the RfP including for the purpose of receiving and evaluating Proposals and for the management, implementation, and monitoring of the Project. All references to VALCO under the RfP shall, unless the context otherwise requires, be deemed to include references to such teams, committees, sub-committees, panels, etc.

# Annex 1

## Definitions

Unless otherwise provided, the following terms used in this RfP shall have the following meanings:

Term	Definition or meaning
<b>Affiliate</b>	means, in relation to a Prospective Bidder or a Consortium Member, any person having Control of that Prospective Bidder or Consortium Member, or any person over which such Prospective Bidder or Consortium Member has Control or is under the common Control with such person. For the avoidance of doubt, a Subsidiary of a Prospective Bidder or a Consortium Member is also an Affiliate
<b>Applicable Laws</b>	means with respect to a given person or entity on a given date, any constitution, statute, law, rule, regulation, ordinance, judgment, order or decree of a Government Authority, or any published directive, guideline, requirement or other governmental restriction that has the force of law, or any determination by, or interpretation of any of the foregoing by, any judicial authority, that is or becomes binding on such person.
<b>Audited Financial Statement</b>	means the financial statements of an Entity, prepared in accordance with International Financial Reporting Standards (“IFRS”), duly attested to provide a true and fair view in accordance with IFRS by an auditor who is certified to do so.
<b>Bid</b>	means the offer submitted by a Bidder to VALCO to undertake the Project, consisting of the Bidder’s Technical and Financial Proposals.
<b>Bidder</b>	a Person that submits a Bid in response to this RfP
<b>Bidders’ Conference</b>	means the conference to be held before the submission of Proposals (Pre-Proposal Conference) of this RfP.
<b>Bidding Process or Bidding</b>	means the procurement process beginning from, the issuance of the RfP until the signing of the Share Subscription Agreement.
<b>Bid Guarantee</b>	has the meaning given in Section 4.3.
<b>Bidding Period Lock-Up Rules</b>	has the meaning given in Section 10 (Bidding Period Lock-Up Rules) of this RfP.
<b>Best Bid</b>	means the Bid adjudged by the Tender Evaluation Committee to be the best among all Bids received from Bidders in response to this RfP.
<b>Business Day</b>	means any day of the week other than a Saturday or Sunday that is not a Ghanaian national holiday or a day on which banks are authorised by law or executive order to be closed in Ghana.
<b>Business hours</b>	means 8:00AM to 5:00PM GMT from Mondays to Fridays
<b>Business Plan</b>	has the meaning given in Section 4.2.
<b>Capex</b>	means capital expenditure or costs to be incurred in enhancing or improving the revenue earning capacity of VALCO and means total investment required to modernise VALCO’s smelter, excluding such funds as may be contributed by the Strategic Partner towards increasing VALCO’s working capital.
<b>Coercive Practice</b>	has the meaning given in Section 9.2 of this RfP.
<b>Collusive Practice</b>	has the meaning given in Section 9.2 of this RfP.
<b>Combined Score</b>	has the meaning given in Section 5.5.

<b>Term</b>	<b>Definition or meaning</b>
<b>Communications and Public Relations Plan</b>	has the meaning given in Section 4.2.
<b>Complaints Panel</b>	means the joint committee of persons made up of representatives from VALCO's Board or such Persons appointed by VALCO's Board in respect of which petitions or complaints regarding the Bidding Process must be presented for adjudication.
<b>Conflict of Interest</b>	has the meaning given in Section 9.3 of this RfP.
<b>Confidentiality Agreement</b>	means a letter of agreement substantially in the form of the agreement attached as Annex 12.
<b>Consortium</b>	means a group of companies or other Persons forming a Bidder.
<b>Consortium Member</b>	means an Entity that is a member of a Consortium.
<b>Control</b>	<p>means in relation to a person:</p> <ul style="list-style-type: none"> <li>• Holding or controlling, directly or indirectly, a majority of voting rights exercisable at shareholder meetings (or the equivalent) of that person; or</li> <li>• Having, directly or indirectly, the ability to appoint or remove a majority of the directors or partners; or</li> <li>• Having, directly or indirectly, the ability to direct or procure the direction of the management and policies of that person, whether through ownership of shares, by contract or otherwise, or</li> <li>• Having the ability, directly or indirectly, whether alone or together with another, to ensure that the affairs of that person are conducted in accordance with his or their instructions or wishes;</li> </ul> <p>And the terms controlled, controlling and majority shareholding shall be construed accordingly.</p>
<b>Corrupt Practice</b>	has the meaning given in Section 9.2 of this RfP.
<b>Data Sheet</b>	means Annex 9.
<b>Day</b>	means any calendar day or each day shown on the calendar including Saturdays, Sundays and Holidays
<b>Debt Margin</b>	means the average of the margins (in excess of LIBOR) that will be used to calculate the interest that will be payable by the Company in connection with any funds borrowed by the Company to finance the operations of the Company.
<b>Drawing Event</b>	has the meaning set forth in Section 4.3.2
<b>Effective Date</b>	means the date on which the last of the Transaction Agreements are executed and delivered by the parties thereto.
<b>Equity Yield</b>	means the annual rate of return on equity that the potential strategic partner expects, stated as a percentage in post-tax, U.S. dollars, and nominal terms.
<b>Estimated Timetable</b>	has the meaning set forth in Annex 7
<b>Exceptions</b>	has the meaning given thereto in Section 4.2.1(d).
<b>Exceptions Negotiation Period</b>	means the period during which VALCO and the Preferred Bidder will negotiate any Exceptions taken by the Preferred Bidder pursuant to Section 5.7 of this RfP and agree on modified Transaction Agreements. The period will commence on the day on which the Preferred Bidder is notified that it has been selected as the Preferred Bidder and expire two (2) months later.
<b>Executive Summary</b>	has the meaning set forth in Section 4.2.1.

<b>Term</b>	<b>Definition or meaning</b>
<b>Financial Proposal</b>	has the meaning set forth in Section 4.2.2
<b>Financial Score</b>	has the meaning set forth in Section 5.4(c).
<b>Fraudulent Practice</b>	has the meaning given in Section 9.2 of this RfP.
<b>Ghana</b>	means the Republic of Ghana.
<b>GIADEC Act</b>	means the Ghana Integrated Aluminium Development Corporation Act, 2018 (Act 976)
<b>GoG</b>	means the Government of Ghana.
<b>Government Authority</b>	means the GoG and any subdivision thereof and any national or local governmental department, regulatory department, commission, board, agency, authority, or instrumentality in Ghana.
<b>Important Notice</b>	means the important notice provided at page 1 of this RfP.
<b>Investment Plan</b>	has the meaning set forth in Section 4.2.1.
<b>Lead Member</b>	means the member of a Consortium who can represent and irrevocably bind all members of the Consortium in all matters in the Tender and who will be required to hold a certain minimum shareholding in the Consortium for a specified period.
<b>Legal Representative</b>	means with respect to any Person, the individual who has the legal authority to enter into binding agreements and execute documents on behalf of such Person, as identified pursuant to Section 3.2
<b>Liquidity ratio</b>	measured by the Bidders Quick/ Acid Test ratio computed as (Current assets - inventory)/ Total current liabilities
<b>Majority Shareholder</b>	means the party (or the SPV created by the Preferred Bidder in the case of a Consortium) who has executed the Share Subscription Agreement with VALCO and responsible for executing the Project.
<b>Majority Shareholder Constitutional Documents</b>	has the meaning given in Section 8.2 of this RfP.
<b>Minimum Qualification Requirements</b>	means the Legal, Technical, Financial and Other Qualification Requirements set out in this document.
<b>Mutatis Mutandis</b>	means “once the necessary changes have been made”.
<b>Net Worth</b>	means the value of all the non-financial and financial assets owned by a Bidder or Consortium less the value of all its outstanding liabilities as disclosed in the most recent audited financial statements of the Bidder or Consortium.
<b>O&amp;M</b>	means Operations and Maintenance.
<b>Outstanding Dispute</b>	means any pending judicial, administrative or alternative dispute resolution proceeding, including suspension or blacklisting proceedings, between the Bidder, any consortium member, their affiliates that are directly involved in the Project or contractor proposed by the Bidder or consortium, on the one hand, and VALCO or the GoG on the other, in connection with the Project.
<b>Person</b>	means a corporation, partnership, joint venture, trust, unincorporated organisation, or any other legal entity

<b>Term</b>	<b>Definition or meaning</b>
<b>Post-Award Requirements</b>	means the requirements which must be complied with by the Preferred Bidder as a pre-condition to the execution of the Share Subscription Agreement, as described in Section 8.2 (Post-Award Requirements) of this RfP.
<b>Project</b>	means the modernisation (major retrofit) of the Company's smelter to improve its efficiencies to global standards and expand the installed capacity of the smelter.
<b>Preferred Bidder</b>	means an investor, or Consortium, who provides the most technically and economically advantageous Proposal.
<b>Prohibited Person</b>	means, in relation to (i) a Prospective Bidder or any of its Consortium Members, or (ii) a proposed Operation member, whose experience is proposed to meet the Minimum Qualification Requirements or (iii) an Affiliate, which: <ul style="list-style-type: none"> <li>• Has been named on a list of sanctioned persons promulgated by the United Nations Security Council or its committees pursuant to resolutions under Chapter VII of the Charter of the United Nations;</li> <li>• Has been named on the list of ineligible firms of the international financial institutions including, inter alia, the World Bank, African Development Bank Group, European Investment Bank, European Bank for Reconstruction and Development, Asian Development Bank and Inter-American Development Bank; or</li> <li>• Is a person who has had their service or project contracts terminated by the Government of Ghana for poor or unsatisfactory performance and or inability to deliver the work they were contracted to do; or</li> <li>• Is a person from a country with which the Republic of Ghana is at war; or</li> <li>• Is or has been involved in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practice or having a Conflict of Interest as far as the current Project is concerned.</li> </ul>
<b>Preferred Bidder</b>	means Bidder, or Consortium, who provides the most economically advantageous Proposal.
<b>Proposal</b>	means a proposal submitted by a Bidder in response to this RfP
<b>Proposal Envelope</b>	has the meaning given in Section 4.5.
<b>Proposal Letter</b>	means a letter in the form of Annex 9.
<b>Proposal Security</b>	means the security to be provided by a Bidder as a part of its Proposal in accordance with Section 4.3 of this RfP.
<b>Proposal Stage</b>	means the period commencing with the date of issuance of the RfP and ending with the Bid Submission Deadline.
<b>Proposal Submission Deadline</b>	has the meaning set forth in Section 4.6.
<b>Proposal Validity Period</b>	has the meaning set forth in Section 4.4.
<b>Qualification Criteria</b>	means the Legal Criteria, the Financial Criteria, and the Technical Criteria
<b>Qualified Bank</b>	means a bank in good standing as demonstrated by a minimum rating from a creditable rating agency. The bank's credit rating shall be at least <b>BBB</b> per Fitch Ratings or its equivalent by a creditable ratings agency.
<b>Relevant Person</b>	means, with respect to a Person: <ul style="list-style-type: none"> <li>• any Person controlling, controlled by, or under common control with such Person;</li> <li>• any director, senior executive, or manager of such Person or of any Person referred to in paragraph (a);</li> </ul>

Term	Definition or meaning
	<ul style="list-style-type: none"> <li>any consultant, agent, or representative supporting such Person in connection with the Project; and</li> <li>any Person with an aggregate ultimate beneficial interest in at least 5% of the share capital or ownership interest in such Person (howsoever held)</li> </ul>
<b>Restrictive Practice</b>	has the meaning given in Section 9.2 of this RfP.
<b>Request for Proposal or “RfP”</b>	means this Request for Proposals.
<b>Shareholders' Agreement</b>	means the shareholders' agreement to be entered into between VALCO, the Strategic Partner and any other VALCO shareholder.
<b>Share Subscription Agreement</b>	means the share subscription agreement to be entered into between VALCO and the Strategic Partner.
<b>Solvency</b>	computed as (Net Income + Depreciation) / Total Liabilities
<b>Special Purpose Vehicle or SPV</b>	means a special purpose vehicle that may be established by the Preferred Bidder to enter into the Transaction Agreements and undertake the Transaction.
<b>Staffing Plan</b>	has the meaning set forth in Section 4.2.1.
<b>Strategic Partner</b>	means the Preferred Bidder who will enter into the Transaction Agreements with VALCO.
<b>Strategic Plan</b>	has the meaning set forth in Section 4.2.1.
<b>Subsidiary</b>	means in relation to an Entity (the “Holding Entity”), any other Entity (the “Subsidiary Entity”) in which such Holding Entity holds, whether directly or indirectly, more than 50% of shares or voting rights of the Subsidiary Entity
<b>Successful Bidder</b>	means the Bidder who is selected by VALCO in terms of this RfP to implement the Transaction and to whom a Letter of Award is issued.
<b>Technical Criteria</b>	means the Operation Criteria and the Investment Criteria
<b>Technical Envelope</b>	has the meaning set forth in Section 4.5.
<b>Technical Score</b>	has the meaning set forth in Section 5.3.1.2.
<b>Technical Proposal</b>	has the meaning set forth in Section 4.2.
<b>Tender</b>	means the process commencing from the date of issuance of the RfP and ending with the signing of the Transaction Agreements.
<b>Tender Evaluation Committee</b>	means the committee to be established by VALCO to review Proposals submitted in connection with the Tender.
<b>Total Assets</b>	means total consolidated assets measured in accordance with IFRS
<b>Total Liabilities</b>	means total consolidated liabilities measured in accordance with IFRS
<b>Transaction</b>	means the transaction contemplated by this RfP, as described in Section 2.1 and as further described in the remainder of this RfP.
<b>Transaction Advisor or TA</b>	PricewaterhouseCoopers (Ghana) LTD.
<b>Transaction Agreements</b>	means the Share Subscription Agreement, Shareholders Agreement, and other agreements entered into in connection with the Transaction.
<b>Undesirable Practice</b>	has the meaning given in Section 9.2 of this RfP.
<b>US Dollars, Dollars or US\$</b>	means the lawful currency of the United States of America.



Term	Definition or meaning
<b>VALCO Board</b>	means the board of directors of VALCO.

## General Rules of Interpretation

- a) In case of ambiguities or discrepancies within this RfP, the following rules of interpretation shall apply:
- 1) between two or more Sections of this RfP, the provisions of a specific Section relevant to the issue under consideration shall prevail over those in other Sections;
  - 2) between the Sections of this RfP and the Annexes, the Sections shall prevail;
  - 3) between any two Annexes, the Annex relevant to the issue shall prevail; and
  - 4) between any value written in numerals and that in words, the latter shall prevail.

The rule of construction, if any, that a contract should be interpreted against the party responsible for the drafting and preparation thereof, shall not apply.

- b) Unless the context otherwise requires:
- 1) "Include", "includes", and "including" are deemed to be followed by "without limitation" or "but not limited to", whether or not actually followed by such words or words of like import;
  - 2) References to any Annex or Schedule shall be deemed to include references to such document as amended, supplemented, novated, varied or replaced from time to time.
  - 3) References to a person include his successors and permitted assigns;
  - 4) References to any gender include all genders, and references to the singular include the plural, and vice versa;
  - 5) References to Sections or Annexes which do not specify what document they are referenced to are Sections or Annexes to this RfP;
  - 6) Headings are for convenience only and shall not affect the interpretation or construction of any provision of this RfP;
  - 7) Unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed; and
  - 8) References to a "day" shall be to a calendar day, to a "month" shall be to a calendar month, and to a "year" shall be to a period of time commencing on a particular date and ending on the day before the anniversary of such date.

The interpretation and construction of this RfP shall rest solely with VALCO. VALCO shall not assume any responsibility for any erroneous interpretations or conclusions by the Bidders out of data furnished or indicated in the Request for Proposals.



## Annex 2

### Data Sheet

<b>Project Name</b>	Search for a Strategic Partner for the VALCO Modernisation Project
<b>Issuer of Request for Proposals</b>	The Chief Executive Officer Volta Aluminium Company Heavy Industrial Area, Smelter Site, Tema Ghana  <b>Attention: Mr. Dan Acheampong</b>
<b>Address of primary contact person</b>	The Chief Executive Officer Volta Aluminium Company Heavy Industrial Area, Smelter Site, Tema Accra, Ghana  <b>Key Contacts</b>  Dan Acheampong CEO, Volta Aluminium Company <a href="mailto:modernisation2023@valcotema.com">modernisation2023@valcotema.com</a>
<b>Address for Submission of Proposals</b>	The Chief Executive Officer Volta Aluminium Company Heavy Industrial Area, Smelter Site, Tema Ghana
<b>Email Address for Submission of Email Copies of the Proposals</b>	Dan Acheampong: <a href="mailto:modernisation2023@valcotema.com">modernisation2023@valcotema.com</a>
<b>Email Address for Submission of Complaint</b>	Seth Adjei: <a href="mailto:modernisation-complaint2023@valcotema.com">modernisation-complaint2023@valcotema.com</a>
<b>Language of Proposals</b>	English

# Annex 3

## Basic Information Form

[TO BE COMPLETED BY THE BIDDER]

### **Bidder Information:**

Name:

Type: (Corporation, Partnership, etc.)

Commercial registration No.:

Domicile:

Address of principal office:

Telephone number:

Fax number:

E-mail address:

Website address:

Primary areas of business:

### **Contact Person:**

(the contact person shall be one of the individuals who is named as a signatory in the power of attorney referred to in Section 3.2.2)

Name:

Address:

Telephone Number:

Email Address:

### **Consortium members information:**

(if applicable, fill in details for all members, identifying the Lead Member)

Name:

Type: (Corporation, Partnership, etc.)

Commercial registration No.:



Domicile:

Address of principal office:

Telephone number:

Fax number:

E-mail address:

Website address:

Primary areas of business:

**Contact Person:**

(the contact person shall be one of the individuals who is named as a signatory in the power of attorney referred to in Section 3.2.2)

Name:

Address:

Telephone Number:

Email Address:

## Annex 4

### Estimated Timetable

No.	Activity	Responsible Party	Target Date
1	RFP launch	VALCO	31-July-23
2	Bidders submit comments table for discussion during Bidders' Conference	Bidders	7-August-23
3	Site visits	VALCO	7 – 9 August-23
4	Bidders' conference	VALCO	10-August-23
5	Last date for submission of queries on the Request for Proposals	Bidders	28-August-23
6	Last date for replying to the queries of the Bidders	VALCO	4-September-23
7	Proposal Submission Deadline	VALCO	25-September-23
8	Opening of proposals	VALCO	26-September-23
10	Completion of Evaluation of proposals and ranking of bidders	Tender Evaluation Committee set up by VALCO	9-October-23
11	Seek Approval from the VALCO Board	VALCO	To be determined
12	Commence negotiations between VALCO and preferred bidder	VALCO and Preferred Bidder	To be determined
13	Finalise negotiations between the VALCO and preferred bidder	VALCO and Preferred Bidder	To be determined
14	Seek Executive/Cabinet Approval	VALCO	To be determined
15	Seek Parliamentary Approval	VALCO	To be determined
16	Notification to Preferred Bidder that they have been selected as the Preferred Bidder	VALCO	To be determined
17	Execution of transaction agreements	VALCO and preferred bidder	To be determined

The Estimated Timetable set forth above is subject to adjustment by VALCO.

# Annex 5

## Form of Proposal Cover Letter

[TO BE COMPLETED BY THE BIDDER]

[On letterhead of the Bidder or, in the event the Bidder is a consortium, the Lead Member]

[Date]

**RE: Search for a Strategic Partner for the VALCO Modernisation Project**

**TO:** The Chief Executive Officer  
Volta Aluminium Company  
Heavy Industrial Area, Smelter Site, Tema  
Ghana

Attention: Mr. Dan Acheampong

Dear Sir,

Pursuant to the Request for Proposal dated **[date]**, [Name of Bidder/ Lead Member of the Consortium] hereby submits the present Application in conformity with the Request for Proposal and requests to be considered for qualification for the Tender.

[Complete if a Consortium:

The Lead Member is: [Insert name of the Company]

[Other Consortium Members,

[Name of Bidder/Lead Member], [and each Consortium Member (if applicable)] hereby:

1. represents and warrants that:

- a. as of the date of this Qualification Application all of the information submitted in this Application, including the enclosed forms and documents, is complete and accurate in all respects and not misleading;
- b. it has sufficient legal capacity and authority to participate in the Tender; and
- c. it agrees to comply with all the bid rules governing the Tender as issued by VALCO from time to time; and

2. acknowledges:

- a. all rights of VALCO under the Request for Proposal including all rights to: (i) suspend, cancel, modify, or extend the Tender at any time; (ii) reject any Application; (iii) modify all dates set or projected in the Request for Proposal; (iv) request additional information reasonably required to assess the Application; and (v) amend the qualification procedures and rules or make clarifications thereof;
- b. the Important Notice to the Request for Proposal; and

Attached herewith to this Proposal Cover Letter are the following documents, as appropriate:

- a. The following legal documents and background information (each in English):
  - i. Basic Information Form (Annex 2) for the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium), including an up-to-date list of all shareholders of the Bidder that hold 5% or more of the outstanding shares in such Bidder (or one list for each Consortium member);
  - ii. the memorandum of incorporation, certification of incorporation, certification of formation, and/or by-laws of the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium), or similar formative documents that are applicable under the laws of the formation of the Bidder or Consortium member, as the case may be, and any amendments;
  - iii. an up-to-date extract from the competent registry of companies for the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium); and
  - iv. if available, certificate(s) issued by the relevant public authority of the Bidder (or, in the event that the Bidder is a Consortium, of each of its members), not older than ninety (90) days confirming that Bidder is not under liquidation, bankruptcy, court receivership or similar proceedings.

If the public authorities of the relevant jurisdiction(s) do not issue any of the certifications required above, the Affidavit issued pursuant to paragraph (b) below will be sufficient to satisfy such requirement.
- b. Affidavit for the Bidder (or if a Consortium, for each member of the Consortium) (Annex 6);
- c. Power of Attorney (Annex 3) authorizing the person(s) signing the Qualification Application and other documents included with the Qualification Application to sign such documents;
- d. Evidence of Net Worth (Annex 21) for the Bidder (or if a Consortium, for each member of the Consortium).
- e. Audited financial statements for the most recent prior three (3) financial years for which audited statements are available and unaudited financial statements for the most recently concluded quarter, in each case for the Bidder (or if a Consortium, for each member of the Consortium).
- f. Evidence of Technical Criteria (Annex 8).
- g. If the Bidder is a Consortium, a written commitment addressed to VALCO, in the form of a letter duly executed by the Legal Representative of each Consortium member, which:
  - i. confirms each member's entry into the Consortium;
  - ii. identifies the member that will assume the role of Lead Member on behalf of the other members, with the authority to commit all the Consortium members for all purposes during the conduct of the Tender (other than by executing the Transaction Agreements); and
  - iii. identifies the amount and type of the capital contribution that each member of the Consortium will make to the company to be established to enter into the Transaction Agreements.

[Name of Bidder] hereby designates [x] as its authorized representative to receive notices in respect of the Request for Proposal and the Bid Process at the following address, telephone and facsimile numbers, and email:



*[Authorized Representative's address, telephone and facsimile numbers, and email]*

[signature]

In the capacity of *[position]*

Authorized to sign this Qualification Application for [Name of Applicant]

# Annex 6

## Form of Affidavit

**[Date]**

**RE: Search for a Strategic Partner for the VALCO Modernisation Project**

**TO:** [Name and surname of recipient of Qualification Application]


[Title]

[Address]

[Name of Bidder/member of Consortium] hereby represents and warrants that, as of the date of this letter [Name of Bidder/member of Consortium]:

- i. is not under liquidation, bankruptcy, court receivership, or similar proceedings;
- ii. has not been convicted by a final and binding judgment for a crime committed in the course of performing its professional activity;
- iii. does not have unsettled tax liabilities in respect of judgments awarded by any court or similar proceedings in the period of three (3) years prior to the publishing of this RfP, save in each case to the extent that it has made a suitable accounting provision for such liabilities in accordance with applicable accounting regulations;
- iv. does not have liabilities on the grounds of sentences rendered in criminal or misdemeanour proceedings in the period of at least three (3) years prior to publishing of this RfP;
- v. neither it nor to its knowledge any Relevant Person (including as applicable any member of the Consortium) has been convicted of fraud, bribery, corruption, collusion or money laundering or for a criminal act involving dishonesty, physical violence, harm to human life, trafficking in persons, or trafficking in controlled substances, nor is under investigation for, such criminal activities;
- vi. it is not subject to a conflict of interest or potential conflict of interest which arises from a relationship between it, its employees, or any Relevant Person and any ministry, department, agency, or body in Government or their officials or employees which has or have direct or indirect influence in the scope or manner of execution of the Transaction, or the conduct of the Tender, and which relationship can give rise to reasonable concerns about the impartiality (in relation to it) of the Tender or the Tender Evaluation Committee;
- vii. it is not excluded from a bid or other public procurement process in Ghana; and
- viii. it is not:
  - a) debarred from financing by any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 ([www.crossdebarment.org](http://www.crossdebarment.org)) for the activities required to carry out the obligations of the Project;
  - b) listed on any financial sanctions lists promulgated by the UN Security Council or its Committees pursuant to any resolution under Chapter VII of the Charter of the United Nations; or



- 
- c) engaged, and it does not engage, in operations (directly or through any subsidiary) or transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees pursuant to any resolution under Chapter VII of the Charter of the United Nations or national sanctions in Ghana.

Yours Sincerely,

[Authorised Signature]

[Name, surname and Title of Authorised Signatory]

[Name of Firm]

[Address]

# Annex 7

## Form of Power of Attorney

On this [Date]

Before me

The Notary in this office

The undersigned

Mr./Mrs./Ms. [Name and surname]

In his capacity as [Capacity]

Nationality [Nationality]

Holder of Passport / ID No. [Number]

Issued from [Institution]

Dated [Date]

Residing at [Address]

Hereby appoints Mr./Mrs./Ms. [Name and surname] in his capacity as [Capacity] to:

- a) Execute under hand, or under seal, and deliver to the competent authorities all the documents listed hereto;
- b) Deliver and receive any document or instrument in relation to the documents listed hereto; and
- c) Do all things necessary and incidental in respect of the matters set out herein including to do, execute and perform any other deed or act ought to be done executed or performed to perfect or otherwise give effect to the documents listed hereto.

And is hereby authorized to appoint others for all or part of the powers delegated by the present Power of Attorney.

- |   |   |
|---|---|
| A. DATE   | <i>[Date of Execution]</i>  |
| B. THE GRANTOR  | <i>[Name of Bidder/Consortium member]</i>   |
| C. THE ATTORNEY   | <i>[Name of Bidder's Representative/ Consortium Lead Member]</i>                                  |
| D. PLACE IN WHICH DOCUMENTS ARE TO BE EXECUTED AND DELIVERED: | <i>[Note – to be completed with the Qualification Application delivery address once provided]</i> |

E. DOCUMENTS

All documents in respect of the Grantor's Qualification Application in relation to the subscription of Shares in VALCO and investments in the modernisation project of VALCO

IN WITNESS WHEREOF the above Grantor has executed this Power of Attorney (under seal) on the date set out above.

*[Seal]*

*[Signature of Grantor Representative]*

*[Name and surname, Title of Grantor Representative]*

*[Seal and signature of Notary]*

## Annex 8

### Evaluation Criteria for Technical and Financial Proposals

#### Technical Proposal Evaluation Criteria

Technical Evaluation Criteria				
No.	Area	Evaluation Criteria	Sub-Criteria	Points
<b>1</b>	<b>Proposal submission documents</b>	Assess the legal capacity to participate in bid process	1. Provision of a signed notarised application to participate in the Proposal	Yes/No
			2. Provision of a witnessed and signed notarised Power of Attorney in favour of authorised representative	Yes/No
			3. Provision of a witnessed and signed notarised Power of Attorney in favour of lead member	Yes/No
			4. Basic information on the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium), as detailed in Annex 2, including an up-to-date list of all shareholders of the Bidder that hold 5% or more of the outstanding shares in such Bidder (or one list for each Consortium member);	Yes/No
			5. The memorandum of incorporation, certification of incorporation, certification of formation, and/or by-laws of the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium), or similar formative documents that are applicable under the laws of the formation of the Bidder or Consortium member, as the case may be, and any amendments	Yes/No
			6. An up-to-date certificate of incorporation, certificate of formation, or other applicable certificate or extract from the competent registry of companies for the Bidder (or, if the Bidder is a Consortium, for each member of the Consortium)	Yes/No
			7. If available, certificate(s) issued by the relevant public authority of the jurisdiction of Bidder (or, in the event that the Bidder is a Consortium, of each of its members), not older than ninety (90) days confirming that the Bidder is not under liquidation,	Yes/No

Technical Evaluation Criteria				
No.	Area	Evaluation Criteria	Sub-Criteria	Points
			bankruptcy, court receivership, or similar proceedings	
2	<b>Structure and Capabilities of Bidder</b>	Assess the capacity of organisation and consortium to implement the modernisation project.	<ol style="list-style-type: none"> <li>1. Type of business activities, organisations and locations.</li> <li>2. Evidence of transformational strategy deployment in the aluminium smelting sector.</li> <li>3. Corporate structure of Bidder/ lead member (shareholding, board composition etc.).</li> <li>4. Stake, expertise and roles of each consortium member</li> <li>5. Specific examples of capital projects undertaken in the past which are comparable to the VALCO modernisation project</li> </ol>	10
3	<b>Approach to modernisation</b>	Assess the proposed technology and scope for retrofitting the VALCO Smelter	<ol style="list-style-type: none"> <li>1. Bidder's proposed smelter technology in comparison with the D18+ baseline technology.</li> <li>2. Number of years of experience/ proficiency in the use of the proposed technology [minimum number of years of years to obtain full score is 5 years]</li> <li>3. Bidder's detailed technical response on the proposed scope for the modernisation project.</li> </ol>	10 5 5
4	<b>Indicative Modernisation Plan</b>	Evaluate the Project development plan	<ol style="list-style-type: none"> <li>1. Master modernisation plan including proposed development schedule for the planned modernisation project</li> <li>2. Detailed technical considerations for adopting the new technology considering the current infrastructure of VALCO</li> <li>3. Rated efficiencies of the proposed modern technology shall be a minimum current efficiency of 95% and maximum energy efficiency of 13.5 DCkwh/kgal</li> <li>4. Indicative sources of key materials for modernisation</li> </ol>	15
		Assess the major assumptions underlying planned operational improvements in the modernised VALCO	<ol style="list-style-type: none"> <li>1. Bidder's indicative milestones of technical operating parameters.</li> <li>2. Bidder's indicative milestones of production volumes and quality of the volumes expected. Target 90% of total output having a minimum quality of 99.7% of aluminium</li> </ol>	5

Technical Evaluation Criteria				
No.	Area	Evaluation Criteria	Sub-Criteria	Points
5	<b>Strategic Partnership</b>	Assess likely benefits from supply of inputs.	<ol style="list-style-type: none"> <li>1. Supply chain and procurement structure of smelter supplies proposed by Bidder in line with the strategic intents of VALCO.</li> <li>2. Demonstration of the upstream and downstream assets of the Bidder that the modernised VALCO stands to benefit from.</li> </ol>	10
		Assess the degree of local content participation in VALCO including but not limited to the ability and readiness of the Bidder to transfer technology and operational skills to the current staff base of VALCO.	<p>Bidder's plan for local Ghanaians including VALCO's employees:</p> <ol style="list-style-type: none"> <li>1. Minimum of [•] % of the value of the project to go to Ghanaians</li> <li>2. Minimum of [•] % of the cost of construction works for the project to go to Ghanaians</li> <li>3. Minimum of [•] % of the value of all post construction supplies to go to Ghanaians</li> <li>4. Minimum value of maintenance and equipment servicing to go to Ghanaians post modernisation</li> <li>5. Minimum 30% of management staff shall be Ghanaians immediately after modernisation</li> <li>6. Minimum [•] % of Ghanaians to be employed at all times</li> </ol>	7
		Assess the Bidders capacity to market VALCO's products globally.	<ol style="list-style-type: none"> <li>1. Market Plan: Product mix and market support.</li> </ol>	8
6	<b>Operations &amp; Management</b>	Assess the proposed arrangements to operate smelter	<ol style="list-style-type: none"> <li>1. Bidder's Process Control, Quality Assurance, and Organisational management details as specified in the Bid.</li> <li>2. Details of Bidder's planned maintenance strategies and supply arrangement for parts in relation to the Smelter infrastructure.</li> </ol>	5
		Assess the operational management experience related to smelter operations with emphasis on operational management in relation to the Bidder's proposed technology.	<ol style="list-style-type: none"> <li>1. Operational management performance in the last five (5) years inclusive of the current year [i.e. year of this proposal].</li> <li>2. Number of employees managed by the Bidder broken down according to</li> </ol>	15

Technical Evaluation Criteria				
No.	Area	Evaluation Criteria	Sub-Criteria	Points
			<p>management and non-management levels.</p> <p>3. History of safety performance over the last five (5) years inclusive of the current year [i.e. year of this proposal].</p> <p>4. Quality certification of Products or Processes of the Bidder. In the case of a Consortium, the quality certification of products or processes of the Operations member</p> <p>5. Evidence of Environmental Friendliness of the Bidder measured by the footprints and engagements of the Bidder over the last five (5) years inclusive of the current year [i.e. year of this proposal] and how the bidder intends to implement same with VALCO.</p> <p>6. History of industrial relations in a well-established unionised environment (if any) measured by evidence of structured union of the Bidder over the last five (5) years inclusive of the current year [i.e. year of this proposal]</p>	
<b>7</b>	<b>Governance structure</b>	Assess the proposed governance structure for the project	1. Proposed governance structure, appointment to Board and control	<b>5</b>
	<b>TOTAL</b>			<b>100</b>

## Financial Proposal Evaluation Criteria

Financial Evaluation Criteria				
No.	Area	Evaluation Criteria	Sub-Criteria	Points
1	<b>Financial Model</b>	Evaluate completeness and clarity of the Financial Model	Financial model showing: <ol style="list-style-type: none"> <li>1. Evidence of Bidder's set of projected Financial Statements for the modernisation project – including full income statement, statement of financial position and Cashflow which are IFRS compliant. The Financial Model shall cover a 20-year forecast period.</li> <li>2. Clarity and adequacy of the CAPEX, OPEX and other Project Costs as well as their underlying assumptions and timing of the same</li> <li>3. Key performance indicators in relation to the underlisted:                             <ul style="list-style-type: none"> <li>- Energy consumption per tonne of aluminium produced</li> <li>- Capacity utilisation</li> <li>- Production cost per tonne of aluminium produced</li> <li>- Environmental impact</li> </ul> </li> </ol> Refer to Annex 20 for a guide to the expected financial model	Yes/No
2	<b>Capacity to provide funds</b>	Assess the capacity and conditions of the funding agencies	<ol style="list-style-type: none"> <li>1. Letters from a qualified bank expressing its willingness to provide sufficient credit facilities as required in the Preferred Bidder's Financial Proposal, and indicating the terms and conditions for such facilities</li> </ol>	Yes/No
3	<b>Current financial position of Bidder</b>	Evaluate the financial position and capacity to inject the required funding in consideration of the majority stake in VALCO	<ol style="list-style-type: none"> <li>1. Minimum Solvency ratio of 30%</li> <li>2. Minimum Liquidity ratio of 1.5x</li> <li>3. Leverage and equity position of the Bidder with a maximum debt to equity ratio (D/E) of [50%] estimated using the latest set of audited financial statements and confirmed by the last quarter/ half year unaudited financial statements</li> </ol>	20
4	<b>Funding sources</b>	Evaluate the sources of funding expected to finance the subscription of shares in VALCO	<ol style="list-style-type: none"> <li>1. Demonstrate the funding sources and percentage of such sources if internally generated and 3<sup>rd</sup> party financing</li> <li>2. Confirmation of availability of funding with a bank statement, in the case of internally generated funds or confirmation letter from 3<sup>rd</sup> party if 3<sup>rd</sup> party financing would be used to deploy capital</li> </ol>	10  25



Financial Evaluation Criteria				
No.	Area	Evaluation Criteria	Sub-Criteria	Points
5	<b>Forecast profitability of the smelter</b>	Assess the financial plan on the performance of the proposed smelter	<ol style="list-style-type: none"> <li>1. Show the Financial Net Present Value of VALCO's net profits over a 20-year forecast period as shown in the Bidder's financial model using VALCO's weighted average cost of capital ("WACC").</li> <li>2. Demonstrate average EBITDA margin expected from the project of c.15% upon completion of the modernisation project.</li> <li>3. Future dividends generating capacity/ability to generate free cash flows</li> </ol>	20
6	<b>Proposed financing structure (Debt &amp; equity mix) to implement the modernisation project</b>	Understand the source of funding to be used for the project	<ol style="list-style-type: none"> <li>1. Percentage of debt &amp; equity (quasi-debt) in the proposed financing structure for the modernisation project. The targeted Debt to Equity ratio for the modernisation project is 75%</li> <li>2. Average cost of debt financing for the project not exceeding 1-month Secured Overnight Financing Rate ("SOFR")</li> </ol>	15
7	<b>Product mix</b>	Assess the Bidders capacity to enhance production towards high-value or high-margin products globally.	<ol style="list-style-type: none"> <li>1. Percentage of Bidder's product mix considered to be high-value or high-margin products in terms of pricing and value to customers</li> </ol>	10
	<b>TOTAL</b>			<b>100</b>

## **Annex 9**

### **Form of Proposal Letter**

**[On letterhead of the Bidder or, in the event the Bidder is a consortium, the Lead Member]**

**[Date]**

The Chief Executive Officer  
Volta Aluminium Company  
Heavy Industrial Area, Smelter Site, Tema  
Ghana

**Attention: Mr. Dan Acheampong**

**Subject: RE: Search for a Strategic Partner for the VALCO Modernisation Project**

Dear Sir

Reference is hereby made to the Request for Proposals for the search for a Strategic Partner for the VALCO Modernisation Project issued by VALCO on **[date]** (the “**Request for Proposals**”). Capitalised terms used but not defined herein have the meanings set forth in the Request for Proposals. After having carefully examined the Request for Proposals, examined VALCO’s business, and satisfied ourselves with the nature the opportunity referenced above and the general and local conditions to be encountered, we hereby submit our Proposal.

We authorise VALCO to verify the information and documents attached to our Proposal.

We are not aware of any actual or potential conflict of interest arising from a prior or existing contract or relationship with VALCO, their affiliates, representatives, advisors, or consultants. We are not aware of any offers, payments, promises to pay, or authorisations for the payment of any amount, or offers, gifts, promises to give, or authorisations for the giving of anything with a material value by us or any of our respective agents, affiliates, contractors or other representatives to any of the Persons identified in Annex 4.

We agree to abide by this Proposal, which consists of our Technical Proposal and Financial Proposal, for a period of ninety (90) Days from the Proposal Submission Deadline as set forth in the Request for Proposals, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

We understand that you are not bound to accept any Proposal you may receive.

We acknowledge and agree that none of VALCO or their advisors will be responsible for any errors or omissions on our part in preparing this Proposal.

We acknowledge the contents of the Important Notice contained on at the beginning of this RfP, and consent to the matters described therein and agree to be bound by the terms and conditions thereof. Without limiting the foregoing, we (a) acknowledge and consent to any actual or potential conflict of interest which may arise from multiple roles (whether current or prospective) of PwC in connection with the Transaction, namely as Transaction Adviser to VALCO and (if applicable) as an advisor (whether current or prospective) to any Bidder or the Preferred Bidder or their affiliates, and (b) waive any liability to which VALCO or its Transaction Advisors might otherwise be subject to in connection with such actual or potential conflict of interest.

We acknowledge that we are responsible for any and all costs, expenses, and losses incurred in the preparation and submission of our Proposal. None of VALCO or their Transaction Advisors shall be required to compensate us for any such costs, expenses, or losses regardless of the outcome of the Tender.

**[Name of Consortium Member 1]**

**[Name of Consortium Member 2]**

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
_____	_____

**[Name of Consortium Member 3]**

**[Name of Consortium Member 4]**

Signature: _____	Signature : _____
Name: _____	Name: _____
Title: _____	Title: _____

# Annex 10

## Financial Proposal Form

[On letterhead of the Bidder or, in the event the Bidder is a consortium, the Lead Member]

[Date]

The Chief Executive Officer  
Volta Aluminium Company  
Heavy Industrial Area, Smelter Site, Tema  
Ghana

**Attention: Mr. Dan Acheampong**

**Subject: RE: Search for a Strategic Partner for the VALCO Modernisation Project**

Dear Sir

Reference is hereby made to the Request for Proposals for the search for a Strategic Partner for the VALCO Modernisation Project issued by VALCO on [date] (the “Request for Proposals”). Capitalised terms used but not defined herein have the meanings set forth in the Request for Proposals.

After having carefully examined the Request for Proposals, examined VALCO’s business, and satisfied ourselves with the nature of the opportunity referenced above and the general and local conditions to be encountered, we hereby propose the following:

### Profitability and Returns to Shareholders

The broad indicators of the financial proposal over the first 20 years of the VALCO modernisation project are shown below:

Indicators	Net Present Value
Profitability	
Dividend payments	

### Estimated Investment Commitment

The Estimated Investment Commitment for the VALCO modernisation Project is estimated to be [US\$600 million which may be a combination of equity from the preferred bidder and debt to be raised on the balance sheet of VALCO. This estimated cost is subject to change depending upon the technology is that eventually deployed at the smelter. The Estimated Investment Commitment is the capital expenditure, measured in US Dollars, that the Company proposes to make in connection with the VALCO modernisation Project. The investments, core smelter, Casthouse and the vehicles & other small capex investments are as proposed in the Investment Plan.

**[Name of Consortium Member 1]**

**[Name of Consortium Member 2]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**[Name of Consortium Member 3]**

**[Name of Consortium Member 4]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Annex 11

### Terms of Bid Guarantee

Each Bidders' Bid Guarantee shall:

1. name the Volta Aluminium Company Limited as the beneficiary thereof;
2. have a term of not less than the date that occurs 30 Days after the date on which the Proposal Validity Period will expire;
3. become drawable on first demand solely against delivery of a demand and notice to the issuer of the occurrence of a Drawing Event;
4. include, from the perspective of VALCO, feasible and practical drawing procedures which shall permit VALCO to draw by delivering a drawing certificate by email provided that the original is promptly dispatched by international courier; provided, however, that it shall not contain any condition to drawing other than the confirmation by the issuer that any drawing certificate required to be delivered in connection with a drawing appears to comply on its face with the requirements of such Bid Guarantee;
5. be issued or confirmed by a Qualified Bank;
6. in the case of a demand guarantee, expressly state that it shall be subject to the Uniform Rules for Demand Guarantees published by the [International Chamber of Commerce];
7. have a maximum amount available for draw equal to [US\$1,000,000]; and
8. be reasonably satisfactory in form to VALCO; provided, however, that a demand guarantee in the form of the demand guarantee attached hereto as Schedule 1 that otherwise meets the criteria set forth herein shall meet the requirements as to the form of the Bid Guarantee.

# Schedule 1 to Annex 11

## Form of Bid Guarantee

### [Letterhead of Issuing Bank]

#### *Demand Guarantee*

Beneficiary: PricewaterhouseCoopers (Ghana) LTD  
PwC Tower  
A4 Rangoon Lane, Cantonment City  
PMB CT42, Cantonments  
Accra, Ghana

**Subject: Proposal Guarantee No. [•]**

Reference is made to the Request for Proposals for the search for a Strategic Partner for the VALCO Modernisation Project issued by VALCO on [date] (the “**Transaction**”).

We have been informed that the [Bidder] (the “**Principal**”) is required by the Request for Proposals to post to the Beneficiary a demand guarantee for the security of the Proposal (the “**Guarantee**”).

At the request of the Principal, [•] (the “**Bank**”) hereby irrevocably undertakes to pay the Beneficiary, or its assignee, any sum or sums not exceeding in total the amount of [US\$1,000,000] (the “**Guarantee Amount**”) upon receipt by the Bank, at this office, of the Beneficiary’s demand in writing and the Beneficiary’s written statement stating:

- a) that the Principal is in breach of its obligations under the Request for Proposals and that a Drawing Event has occurred under the Request for Proposals as a result;
- b) the respect in which the Principal is in breach, and the Drawing Event that has occurred; and
- c) the amount of the Beneficiary’s demand which shall not exceed the Guarantee Amount.

Any demand for payment shall be purportedly signed by the Beneficiary or its authorised representative or employee.

The Bank hereby (i) acknowledges the Beneficiary’s drawing rights under this Guarantee, (ii) acknowledges that neither the Bank nor the Principal may terminate this Guarantee prior to its stated expiration date without written consent of the Beneficiary and (iii) undertakes to honour a demand made by the Beneficiary pursuant to this Guarantee to the extent such demand otherwise conforms to the requirements set forth herein, and to make payment in respect of such a demand directly to the Beneficiary.

If the Beneficiary presents a demand for payment to the Bank by 4:00 p.m. local time on any day on which the Bank is open for business (each such day, a “**Business Day**”), in conformance with the terms and conditions of this Guarantee, the Bank will honour the same by making payment to the Beneficiary in immediately available funds, in accordance with the Beneficiary’s payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on the Bank’s part, by the third Business Day following the date of the presentation of the demand.

The assignment or transfer of this Guarantee is subject to the consent of the Bank.

This Guarantee shall expire on [●]<sup>4</sup> Consequently, any demand for payment under it shall be received by the Bank on or before that date. Neither the Bank nor the Principal may terminate this Guarantee prior to its stated expiration date without the written consent of the Beneficiary.

The Guarantee Amount is subject to reduction upon the receipt by the Bank of a written request purportedly signed by the Beneficiary stating the amount by which the Beneficiary requests that the Guarantee Amount be reduced.

The presentation of documents may be made by email transmission to [•] provided that the original of such documents shall be sent to us by overnight courier at the same address provided above for the presentation of the documents.

This Guarantee shall be subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce.

Name of Issuing Bank:	.....
Signature	.....
Name	.....
Title	.....

---

<sup>4</sup> To be the date that is thirty (30) Days after the expiration of the initial Proposal Validity Period or, in the case of any extension of the Proposal Validity Period subsequently requested by VALCO, thirty (30) Days after the expiration of such extended Proposal Validity Period.



# Annex 12

## Confidentiality Agreement

### [Bidder's Letterhead]

Beneficiary: PricewaterhouseCoopers (Ghana) LTD  
PwC Tower  
A4 Rangoon Lane, Cantonment City  
PMB CT42, Cantonments  
Accra, Ghana

Dear Sirs

We refer to the request for proposals dated [date] (the “RfP”) in relation to the search for a Strategic Partner for the VALCO Modernisation project and issued by VALCO, acting through its Transaction Advisor, PricewaterhouseCoopers (Ghana) LTD (“PwC”). Capitalised terms that are used but not defined in this Confidentiality Agreement are defined in the RfP.

We intend to submit a Proposal in response to the RfP. We understand that VALCO is prepared to disclose certain Confidential Information (as hereinafter defined) to us (the “Recipient”) and our advisors, in order to enable us to evaluate the proposed transaction and prepare our Proposal (the “Authorised Use”). By this confidentiality agreement (this “Confidentiality Agreement”), we confirm that we will hold the Confidential Information confidential in accordance with the terms described below.

For the purpose of this Confidentiality Agreement, “Confidential Information” means information of whatever nature and in whatever medium relating to VALCO, the Smelter, or the Transaction, which is disclosed to us by VALCO, PwC or their directors, employees, agents, or advisors (collectively, the “Disclosing Parties”) (including any information or analysis derived therefrom), whether such information is disclosed in writing, orally or by any other means. Confidential Information does not include:

- i. information, which is or becomes publicly available, other than as a result of a breach of this Confidentiality Agreement;
- ii. information which becomes lawfully available to the Recipient from a third party which is free from any confidentiality restriction;
- iii. information which prior to being imparted to the Recipient by a Disclosing Party was already properly in the Recipient's possession; and
- iv. information which was independently created by the Recipient without the use or knowledge of Confidential Information.

The Recipient hereby undertakes as follows:

- i. Recipient shall use the Confidential Information only for the Authorised Use.
- ii. Recipient shall treat and safeguard as private and confidential all Confidential Information.
- iii. Subject to (viii) below, Recipient shall not at any time, without the prior written consent of PwC, directly or indirectly disclose or permit the disclosure of any Confidential Information to any person or other party whatsoever, other than to the Recipient and its affiliates, employees, directors, officers, agents and advisors (collectively “Restricted Persons”) who need to know or see the same for the purpose preparing the Recipient's Proposal.

- iv. Recipient shall be responsible for ensuring that all Restricted Persons observe the terms of this Confidentiality Agreement and maintain the confidentiality of all Confidential Information. Recipient shall impose upon each Restricted Person who receives Confidential Information an obligation of confidentiality equivalent to or greater than the obligations placed on Recipient herein, and Recipient shall be responsible for any disclosure of Confidential Information by any Restricted Person in violation of the terms of this Confidentiality Agreement.
- v. Recipient shall only make such copies of any document or other material (in whatever medium) embodying or including any Confidential Information as are necessary for the preparation of its Proposal. Recipient shall keep a record of the location of and Person holding all Confidential Information, and copies thereof.
- vi. Recipient shall promptly return to PwC all Confidential Information (and copies thereof) which was supplied to the Recipient or a Restricted Person, which physically can be returned, and which is in the Recipient's possession or the possession of a Restricted Person:
  - a. upon the request of PwC; or
  - b. upon the decision by the Recipient not to continue its participation in the Tender that is the subject of the RfP.
- vii. Recipient shall destroy any paper or other record (including records stored on computers or similar devices) containing Confidential Information and shall at the same time deliver to PwC a certificate signed by Recipient stating that all Confidential Information and copies have been so returned or destroyed.
- viii. If Recipient is requested or required (by judicial or regulatory order or demand or otherwise) to disclose any of the Confidential Information, Recipient shall notify PwC promptly so that the Relevant Disclosing Party may seek any appropriate protective order and/or take any other action. In the event that such protective order is not obtained, or that PwC waives compliance with the provisions hereof:
  - a. Recipient may disclose to any tribunal or other Person only that portion of the Confidential Information which the Recipient is advised by legal counsel in writing is legally required to be disclosed and shall use Recipient's best efforts to obtain assurances that confidential treatment will be accorded such Confidential Information; and
  - b. Recipient shall not be liable for such disclosure unless such disclosure to such tribunal or other person was caused by, or resulted from, a previous disclosure by the Recipient which was not permitted by the terms of this Confidentiality Agreement.

#### **No Representations or Warranties**

Except as may be contained in the Transaction Agreements, upon the execution and effectiveness thereof:

- i. The Disclosing Parties have not made at any time, now or in the future, any representation or warranty (express or implied) concerning or related to the accuracy or completeness of any Confidential Information, or any other information concerning the Transaction;
- ii. no representation or warranty is or will be made that such information will remain unchanged; and
- iii. The Disclosing Parties shall have no responsibility or liability whatever arising from any Confidential Information, or any other information supplied to the Recipient.

In particular, but without prejudice to the generality of the foregoing, any projected results for future periods which may be contained in the information which Recipient may receive are for indicative purposes only, and the Disclosing Parties do not warrant or in any way accept liability for their accuracy. Recipient must make its own independent assessment of the Transaction and rely on Recipient's own judgment in reaching any conclusion or decision in respect of the Transaction and the Preparation of the Proposal.

### **Reservation of Rights**

The Recipient acknowledges that the Confidential Information is the exclusive property of the relevant Disclosing Party, and it shall not be deemed to confer upon Recipient any rights whatsoever in respect of any part thereof.

### **Recipient Acknowledgement**

The Recipient acknowledges that any breach of the terms of this Confidentiality Agreement may give rise to severe damage to the Disclosing Party, and that VALCO may disqualify the Recipient from the further participation in the Tender should it violate the terms of this Confidentiality Agreement, it being understood that invoking the sanctions contained in this Confidentiality Agreement shall not preclude VALCO or PwC from seeking any additional remedies available under law or equity. A continuing violation of this Confidentiality Agreement shall be considered a single violation so long as the Recipient takes prompt, reasonable actions to terminate the violation. Failure to take prompt, reasonable actions to terminate the violation shall be considered a separate violation.

### **No Offer**

Recipient agrees that any document or information (whether Confidential Information or not) made available to Recipient does not and will not constitute an offer or invitation or form the basis of any contract. The Disclosing Parties shall be entitled at any time to decline to provide or to continue to provide any Confidential Information to the Recipient.

Nothing in this Confidentiality Agreement shall be deemed to create any partnership, agency, or other legal or fiduciary relationship between the parties.

### **Indemnity**

The Recipient shall indemnify and keep fully indemnified the Disclosing Parties at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Parties) arising from any breach of this Confidentiality Agreement by the Recipient and from the actions or omissions of any Restricted Person.

### **Duration of Obligations**

The obligations under this Agreement of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Tender or the proposed Transaction, continue for a period of (5) five years from the termination of this Confidentiality Agreement.

### **Variations**

The agreements contained herein may only be modified or amended in writing by the parties hereto.

**Severance**

The invalidity or unenforceability of any provision of this Confidentiality Agreement shall in no way affect the validity or enforceability of any other provision. Any invalid provision shall be deemed severed from this Confidentiality Agreement and the balance of this Confidentiality Agreement shall be reformed in such a manner as to give effect to the maximum extent possible the original intent of the parties.

**Counterparts**

This Confidentiality Agreement may be executed in counterpart, and this has the same effect as if the signatures on the counterparts were on a single copy of this Confidentiality Agreement.

**Governing Law and Jurisdiction**

This Confidentiality Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Ghanaian law.

The parties irrevocably agree that the courts of Ghana shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Confidentiality Agreement or its subject matter or formation (including non-contractual disputes or claims).

If you are in agreement with the above, please indicate your agreement by signing in the space provided below.

Very truly yours

[Bidder]

By:.....  
Name:.....  
Title:.....  
Date:.....

**Acknowledged & Agreed by  
PwC (on behalf of VALCO):**

By:.....  
Name:.....  
Title:.....  
Date:.....



**Annex 13**  
**Share Subscription Agreement**

See the attached draft of the Share Subscription Agreement



**Annex 14**  
**Shareholders' Agreement**

See the attached draft of the Shareholders' Agreement

## Annex 15

### Form of Comments Table

No	Issue	Reference to Relevant Document & Section	Comment
1.	[Abbreviated Issue Description]	[Document & Section Ref.]	[Identify and describe comment here. Describe the rationale for the comment.]
2			Add rows as is necessary

# Annex 16

## Form of Exceptions Table

No	Issue	Reference to Relevant Document & Section	Exception
1.	[Abbreviated Issue Description]	[Document & Section Ref.]	[Identify and describe the Exception here. Describe the rationale for the Exception.]
			Add rows as is necessary



## **Annex 17**

### **Technical Proposal: Business Plan**

#### **Instructions**

Bidders are required to use the instructions in this Annex (as to format and content) to prepare and submit the Business Plan described in Section 4.2.1(b) of this RfP. Failure to follow the instructions in this Annex may lead to Bidders' Technical Proposals being deemed to be non-responsive and their Financial Proposals returned unopened.

The Business Plan shall contain the following sections:

- Executive Summary (Section BP1)
- Strategic Plan (Section BP2)
- Investment Plan (Section BP3)
- Structure, Organisation & Staffing Plan (Section BP4)
- Financing Plan (Section BP5)
- Local Content Plan (Section BP6)
- Communications and Public Relations Plan (Section BP7)

Instructions for each of these sections are provided below.

## Section BP1: Executive Summary

Bidders are required to provide an Executive Summary that introduces their technical qualifications and briefly describes the key activities, proposed approach, and targets of each of the sections of the Business Plan. The Executive Summary should be presented in the format of Form BP1.1.

As part of the Executive Summary, Bidders are required to submit evidence of their experience (or, in the case of a Consortium, evidence of the experience of at least one member of the Consortium):


### Form BP1.1

Section of the Business Plan	Executive Summary
Technical Qualifications	
Strategic Plan	
Investment Plan	
Structure, Organisation and Staffing Plan	
Financing Plan	
Local Content Plan	
Communications and Public Relations Plan	
Other Priorities as envisaged by Bidder	

**Form BP1.2**

<b>Years</b>	<b>Bidder/ Consortium Member</b>	<b>Country and Description of Areas with Smelter experience</b>	<b>Country and Description of Areas with Aluminium downstream value chain experience</b>	<b>Description of service and products: 1. Sale of Billets etc.</b>	<b>Other relevant information</b>

*Add rows as required*



## **Section BP2: Strategic Plan**

The Bidder shall provide a Strategic Plan that presents their vision for the Company, addresses their short-term and long-term objectives and ties the strategy to the ultimate objective of modernising the VALCO smelter to increase its installed capacity and enable the smelter to produce 300,000 tonnes per annum of aluminium.

There is no prescribed format for the Strategic Plan.



### **Section BP3: Investment Plan**

The Investment Plan should be structured to achieve the increase in the VALCO smelter nameplate to 300,000 per annum of aluminum and should describe (to the extent practicable) the anticipated value, nature, composition, and timing of the investments the Bidder proposes to modernise the VALCO smelter and to increase its installed capacity to 300ktpa.

As a minimum, the Investment Plan shall have the following sections:

- Summary of investments in the VALCO modernisation Project. This information should be provided in the format indicated in Form BP3.1.
- A separate section for each component of the Modernisation describing Bidder's proposed plans and composition of investments to address the specific component. This section shall also provide examples of past performance, if any, by the Bidder with the development and implementation of comparable investment plans, explaining how the lessons learned can be applied to the specific situation of VALCO.



## **Section BP4: Structure, Organisation & Staffing Plan**

The Structure, Organisation & Staffing Plan shall describe broadly how the Bidder proposes to organise and staff the restructured VALCO, including the structure of the management of the Company, and skills training for staff. The Structure, Organisation & Staffing Plan shall include separate sections describing:

- a) the proposed organisational structure for the restructured VALCO;
- b) technical and other support that may be provided by the Bidder; and
- c) details of the type of management expertise the Bidder will bring to VALCO.



## **Section BP5: Financing Plan**

The Financing Plan shall contain the following sections:

- description of the Financing Plan;
- the percentage of the overall equity that will be contributed to capitalise the Company and the contribution by each member of the Bidder, presented in the format of Form BP6.1 (below);
- the sources of the equity that will be contributed by the Bidder to capitalise the Company and the timing of the contributions of equity, presented in the format of Form BP6.2 (below); and
- the funding mix [equity and debt] that will be required to finance the proposed modernisation.

**Form BP5.1: Equity contribution from Consortium Members to restructured VALCO**

Contribution to Consortium Equity	Name of Consortium Member	Equity contribution from Consortium Members (% of overall equity)			
		Year 1	Year 2	Year 3	Year 4
Name of Consortium Member 1:					
Name of Consortium Member 2:					
Name of Consortium Member 3:					
Name of Consortium Member 4:					
<b>Subtotal equity</b>		<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>



**Form BP5.2: Evidence of sources of equity financing**

Consortium Member	Equity Contribution (% of overall equity)	Source of Equity <i>(Provide detailed description)</i>

**Form BP5.3: Evidence of sources of debt financing**

Loan Contributions (% of overall debt financing)	Source of loan ( <i>Provide name of financier</i> )	Letter of Intent or other evidence of commitment ( <i>Specify file name or link</i> )	Summary of terms and conditions (if applicable specify file name)
<b>Short-term loans</b>			
<b>Long-term loans</b>			

**Form BP6: Local Content**

Description	Initial levels of local content
Engineering and Procurement	Minimum of [[•] %] of the value of the project shall go to Ghanaian Companies
Construction Works Installation	Minimum of [[•] %] of the cost of construction works for the project shall go to Ghanaian Companies
Post Construction Works Supplies	Minimum of [[•] %] of the value of all supplies shall go to Ghanaian Companies
Services	Minimum levels for: <ul style="list-style-type: none"> <li>i) catering – [[•] %];</li> <li>ii) janitorial services – [[•] %];</li> <li>iii) value maintenance – [[•] %]; and</li> <li>iv) equipment servicing – [[•] %]</li> </ul>
Management	Minimum of [[•] %] of management staff shall be Ghanaians immediately after modernisation, to be increased to [•] % in 5 years
Operations and Maintenance staff	Minimum of [[•] %] of operations and maintenance staff shall be Ghanaians at any time in the lifetime of the Project
All other staff	[[•] %] shall be Ghanaians at all times
Operation and Maintenance Contract	Minimum of [[•] %] of the value of all operations and maintenance contracts shall be awarded to Ghanaian Companies



### **Section BP7: Communications and Public Relations Plan**

The Bidder shall provide a Communication and Public Relations Plan that includes separate sections describing its proposed general approach to communications and public relations during the first weeks and months of the Agreement starting from the Effective Date, and details regarding projects and initiatives designed to increase acceptance of the Agreement, for each of the following stakeholders:

- a. VALCO employees;
- b. VALCO customers;
- c. VALCO suppliers;
- d. members of the public; and
- e. other relevant stakeholders in Ghana's Aluminium value chain.



# **Annex 18**

## **Engineering Design of the VALCO Smelter**

See attached design.

# Annex 19

## Form of Willingness to Lend

[On letterhead of the Institution]

[Date]

The Chief Executive Officer  
Volta Aluminium Company  
Heavy Industrial Area, Smelter Site, Tema  
Ghana


**Attention: Mr. Dan Acheampong**

Dear Sir

Reference is made to the Request for Proposals for the search for a Strategic Partner for the VALCO Modernisation Project issued by VALCO on [date] (the “**Request for Proposals**”). Capitalised terms used but not defined herein have the meanings set forth in the Request for Proposals.

We acknowledge that [name of Bidder] is participating in the Bidding Process, and we wish to express our interest and willingness, subject to the conduct of a satisfactory due diligence process, to provide or arrange the following credit facility/facilities for the Special Purpose Vehicle that the [name of Bidder] will incorporate, if and when it is declared by VALCO as the Preferred Bidder, with the following indicative terms:

Type of Facility	
Amount	
Interest Rate	
Tenor and Grace Period (if any)	
Repayment Schedule	
Subordination	
Other Relevant Information	



We acknowledge that all of the terms and conditions of the final draft of the Transaction Agreements, including the Schedules attached thereto, as of the Bid Submission Deadline may be subject to amendments or revisions.

Yours faithfully,

**For and on behalf** of [name of Institution]:

*Signature:* \_\_\_\_\_

*Name:* \_\_\_\_\_

*Designation:* \_\_\_\_\_

*Date:* \_\_\_\_\_

# Annex 20

## Financial Model

Name: **Search for a Strategic Partner for the VALCO Modernisation Project**

Name of Bidder:

[Note: All amounts should be stated in United States Dollars and in base 2023 prices. The Financial Model should be for a period of 20 years from the planned date of subscription of VALCO's shares]

Electronic copy. The financial model must be submitted in electronic form, using Microsoft Excel, with the following minimum information for each financial year.

1. Project Cost details over the construction period
  - Engineering Design
  - Civil Works
  - Insurance during construction
  - Interest during construction
  - Others
  
2. Projected Income statement
  - Total Revenues
  - Direct operating costs (Cost of Sales)
  - Operating expenses (OPEX)
  - Personnel costs
  - Maintenance costs
  - Business and Property Taxes
  - Others
  - Total Expenses**
  - Earnings before Interest Taxes Depreciation and Amortisation (EBITDA)
  - Depreciation and amortisation
  - Earnings before Interest and Taxes (EBIT)
  - Interest expenses
  - Earnings before Taxes (EBT)
  - Taxes
  - Net income
  
3. Projected Balance Sheet
  - Assets**
  - Current Assets
  - Long-Term Assets
  - Other Assets
  - Total Assets
  
  - Liabilities and Shareholder's Equity**
  - Short-term Debt
  - Current Portion of Long-Term Debt
  - Other current liabilities



Long-term debt  
Other long-term liabilities

Total Liabilities

Total Shareholder's Equity  
Stated Capital  
Retained Earnings

Total Liabilities and Shareholder's Equity

Total (Short-term and Long-term) Debt / Total Capital Ratio

4. Projected Cash flow Statement

**Cash flow from Operations**

EBITDA  
Changes in working capital  
Taxes

**Net Cash flow from Operations**

**Cash flow from Investing**

Construction  
Acquisition of Property and equipment

**Net Cash flow from Investing Activities**

**Cash flow from Financing**

Interest Income  
Interest Expense  
Gross Borrowing  
Gross Debt Repayment  
Equity contributions  
Payments to Shareholders

**Net Cash flow from Financing Activities**

Net Cash flow

Cash at beginning  
Cash at end

**Equity IRR**

(Please show calculations to derive the equity IRR and compare with cost of equity)

5. Underlying assumptions

Please provide underlying assumptions to each of the cost and revenue amounts in the financial model in line with the Technical and Financial Proposals.

6. Key performance indicators

As a minimum, show key performance indicators in relation to the underlisted:

- Energy consumption per tonne of aluminium
- Capacity utilisation
- Production cost per tonne of aluminium
- Environmental impact

For and on behalf of (Bidder/lead member)

(Signature of Authorised Representative)

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(Name)

(Designation)

# Annex 21

## Evidence of Net Worth

- The Bidder hereby confirms the following Net Worth as disclosed in the most recent audited financial statements:

FINANCIAL YEAR	NET WORTH
[year]	

- In the case of a Consortium, each member of the Consortium hereby confirm the following Net Worth as disclosed in the most recent audited financial statements:

FINANCIAL YEAR	NET WORTH OF CONSORTIUM MEMBERS			
	Lead Member	Member 1	Member 2	Total
[year]				

- Each Bidder (or if applicable, member of a Consortium), has provided audited financial statements for the most recent prior three (3) financial years for which audited statements are available and unaudited financial statements for the most recently concluded [quarter/ half year]:

FINANCIAL YEAR	Financial statements			
	[Bidder]/ Lead Member	[Member 1]	[Member 2]	[Member x]
[year] - audited	[Y/N]	[Y/N]	[Y/N]	[Y/N]
[year] - audited	[Y/N]	[Y/N]	[Y/N]	[Y/N]
[year] - audited	[Y/N]	[Y/N]	[Y/N]	[Y/N]
Most recent [quarter/ half year] - unaudited	[Y/N]	[Y/N]	[Y/N]	[Y/N]

## **Annex 22**

### **Complaints Procedure**

1. A Bidder may lodge a complaint if that Bidder is aggrieved as a result of a breach of any aspect of the Bidding Process.
2. The Bidder may submit a written complaint to the Complaints Panel with a copy to VALCO within thirty days from the date the Bidder becomes aware of the breach to which the complaint relates.
3. Despite clause (2) above, in the case of evaluation results, only written complaints submitted within thirty days from the date the Bidder receives notice of evaluation results shall be considered.
4. The Complaints Panel may, on receipt of a complaint and pending the resolution of the complaint, issue a notice of the complaint to all Bidders and to VALCO.
5. The Complaints Panel shall not act upon the complaint unless the complainant deposits with the Complaints Panel a complaint guarantee in the amount of [US\$ 50,000].

#### **Decision of Complaints Panel**

6. The Complaints Panel shall hear and review complaints in accordance with this RfP.
7. The Complaints Panel shall:
  - a) resolve a complaint within sixty (60) days after the receipt of that complaint;
  - b) issue a written decision indicating the reason for the decision; and
  - c) indicate whether the complaint is upheld in whole or in part and the factors that were taken into account in arriving at the decision.
8. The Complaints Panel shall, not later than five (5) days after a decision is, made furnish the complainant and VALCO with a copy of the decision.
9. The decision of the Complaint Panel will be binding on the Bidder.

## Annex 23

### Bank Account Details

Bidders are required, among others, to make a non-refundable participation fees payment of US\$10,000 (Ten Thousand United States Dollars Or Ghana Cedi equivalent at prevailing interbank rates) to VALCO in order to obtain access to the data room.

The USD Bank account details of VALCO are as follows:

**Bank name:** ABSA BANK GHANA LTD.

**Account name:** VALCO DOLLAR CURRENT ACCOUNT

**Account number:** 0641404055

**Branch:** HIGH STREET, ACCRA

**Account Currency:** GHS

**Swift code:** BARCGHAC

**Wire Routing number:** 026002574

The GHS Bank account details of VALCO are as follows:

**Account Name:** VOLTA ALUMINIUM COMPANY LIMITED

**Bank Name:** ABSA BANK GHANA LTD

**Branch:** TEMA MAIN

**Account number:** 0601833166

**Account Currency:** GHS

**Swift Code Address:** BARCGHAC